

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF RHODE ISLAND**

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

CITIZENS BANK, N.A.,

Defendant.

Case No. 1:20-cv-00044-WES-LDA

Judge William E. Smith

Magistrate Judge Lincoln D. Almond

Oral Argument Requested (One Hour)

REDACTED COPY

**RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PROTECTIVE
ORDER PROHIBITING THE DEPOSITIONS NOTICED BY DEFENDANT
ON DECEMBER 21, 2022**

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TABLE OF CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	3
LEGAL STANDARD	8
ARGUMENT.....	8
I. THE BUREAU CANNOT AVOID A DEPOSITION OF MR. GUTIERREZ ABOUT THE BUREAU’S SUPERVISORY EXAMINATION OF CITIZENS	8
II. THE BUREAU CANNOT AVOID A DEPOSITION ABOUT CONSUMER COMPLAINTS THE BUREAU PRODUCED	11
III. THE BUREAU CANNOT AVOID A DEPOSITION ABOUT ITS REQUEST FOR CIVIL MONETARY PENALTIES	13
A. THE “APEX” DOCTRINE IS IRRELEVANT HERE.....	14
B. THE BUREAU’S REMAINING ARGUMENTS ALSO DO NOT MEET ITS HEAVY BURDEN OF BLOCKING FACTUAL TESTIMONY ABOUT ITS PENALTY DEMANDS	15
CONCLUSION	16

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Am. Gen. Life Ins. Co. v. Billard</i> , 2010 WL 4367052 (N.D. Iowa Oct. 28, 2010).....	6
<i>Autotech Techs. Ltd. P’ship v. Automationdirect.com, Inc.</i> , 235 F.R.D. 435 (N.D. Ill. 2006).....	12
<i>Bolden v. FEMA</i> , 2008 WL 482727 (E.D. La. Feb. 19, 2008).....	15
<i>Chaney v. Vt. Bread Co.</i> , 2022 WL 16757624 (D. Vt. Nov. 8, 2022).....	11
<i>Corvello v. New England Gas Co.</i> , 2012 WL 12547377 (D.R.I. Feb. 10, 2012).....	1, 8
<i>EEOC v. Doherty Grp., Inc.</i> , 2016 WL 6583786 (S.D. Fla. Sept. 14, 2016).....	10
<i>Merck & Co. v. Reynolds</i> , 559 U.S. 633 (2010).....	5
<i>Progressive Gaming Int’l, Inc. v. Venturi</i> , 2008 WL 11407330 (D.R.I. Oct. 29, 2008).....	10
<i>Reis v. Nat’l Passenger R.R. Corp.</i> , 2008 WL 11388569 (D.R.I. May 27, 2008).....	11
<i>SEC v. Comm. on Ways & Means of the U.S. House of Representatives</i> , 161 F. Supp. 3d 199 (S.D.N.Y. 2015).....	15
<i>Shoen v. Shoen</i> , 5 F.3d 1289 (9th Cir. 1993).....	10
<i>Sourgoutsis v. U.S. Capitol Police</i> , 323 F.R.D. 100 (D.D.C. 2017).....	15
<i>Souza v. R.I. Carpenters’ Pension Plan</i> , 2006 WL 8456814 (D.R.I. Feb. 16, 2006).....	8
<i>Town of Norfolk v. U.S. Army Corps of Eng’rs</i> , 968 F.2d 1438 (1st Cir. 1992).....	11

Upjohn Co. v. United States,
449 U.S. 383 (1981).....10

RULES

Federal Rule of Civil Procedure 266
Federal Rule of Civil Procedure 306, 8, 9
Federal Rule of Civil Procedure 371, 3, 8, 17
Federal Rule of Civil Procedure 563

Citizens Bank, N.A. hereby respectfully opposes Plaintiff Bureau of Consumer Financial Protection’s Motion for a Protective Order Prohibiting the Depositions Citizens Noticed on December 21, 2022, ECF No. 73 (“Mot.” or “Motion”), and respectfully requests that the Court deny the Motion and award Citizens all relief the Court deems just and proper under Federal Rule of Civil Procedure 37(b).

INTRODUCTION

“Prohibiting the taking of depositions is an extraordinary measure’ requiring the moving party to meet a ‘heavy burden’ of showing justifying circumstances.” *Corvello v. New England Gas Co.*, 2012 WL 12547377, at *3 (D.R.I. Feb. 10, 2012) (citation omitted). The Bureau’s Motion does not cite this standard because the Bureau cannot meet it. Instead, the Bureau misstates the law and record in an effort to excuse its latest discovery violations on grounds that directly contravene the Court’s instructions at the January 10, 2023 discovery conference.

At that conference, Citizens informed the Court that the Bureau’s Rule 30(b)(6) designee failed to provide properly noticed testimony about three issues the Court expressly authorized for fact discovery in this case: (i) the Bureau’s “theory and basis for asserting liability”; (ii) “the basis and calculation of the proposed relief sought”; and (iii) “narrow, reasonable discovery as to whether [the Bureau] knew or should have known of the [B]ank’s alleged violations prior to February 23, 2014.” Mot. 2 (emphasis omitted) (quoting orders). Citizens also reported the Bureau’s refusal to produce any of the three deponents Citizens timely noticed on the issues above after the Bureau’s Rule 30(b)(6) designee identified them (or their divisions) as better sources for information that he was not prepared to address.

The Court’s instructions to the Bureau were clear: the Bureau must behave like any other litigant and produce witnesses for deposition. In issuing this directive, the Court rejected the Bureau’s argument that written discovery from the Bureau is an adequate substitute for deposition

testimony. As the Court explained, the Bureau “must produce the people” who can speak to the claims, facts, and documents the Bureau has placed in issue in this case because, in the Court’s words, “That’s litigation.”

Consistent with the Court’s directives, Citizens asked the Bureau to confirm the noticed January dates (or propose new dates or deponents before the close of fact discovery) for the testimony of: (i) Mr. Robert Gutierrez, the Bureau field manager who conducted the 2015 Supervisory Examination of Citizens the Bureau cites as the factual basis for this case; (ii) a witness from the Consumer Response Division the Bureau’s Rule 30(b)(6) designee identified as the proper source of information about the pre-2014 complaint files the Bureau produced about Citizens’ card practices; and (iii) a witness from the Bureau’s enforcement division who could speak to the facts—including Citizens’ cooperation and the nature and impact of the alleged violations—underlying the Bureau’s request for a maximum Tier I penalty. But in blatant disregard of the Court’s January 10 instructions, the Bureau refused to provide *any* dates or offer *any* deponents for the fact testimony in issue. Instead, when Citizens advised that the Bureau’s misconduct would require a Rule 37 motion to compel and related relief, the Bureau jumped ahead with the current Motion to block all pending and properly noticed depositions.

The Bureau’s meritless and prejudicial approach to these depositions is evident from the Motion’s failure to meaningfully address the Court’s January 10 instructions, the complementary case law above, the Rule 30(b)(6) transcript, or any authority allowing the discovery obstruction at issue here. The Motion asserts that further depositions should be “prohibited” because the Bureau has provided Rule 30(b)(6) testimony, and anything that deposition did not address is “privileged” and outside the “proper scope of discovery in this case.” Mot. 1. But these arguments have no support in the law or record. As detailed below, the Bureau’s Rule 30(b) designee was a Bureau enforcement lawyer who was *admittedly unprepared* to answer scores of factual questions

even about his two designated topics and the Bureau's own produced complaint files against Citizens, and expressly referred Citizens to other Bureau personnel for information about these facts. Those personnel are the ones Citizens timely noticed in December, and the Bureau improperly seeks to block in violation of the Court's instructions and settled law. Other federal courts have admonished the Bureau for disregarding proper discovery process and rejected the Bureau's arguments that "we're the CFPB so we can do what we want," Ex. 1 at 19:5–17, and that Bureau personnel are not subject to depositions, Exs. 2, 3. This case is no different. For the reasons herein, Citizens respectfully requests that the Court deny the Motion and order the Bureau to produce the noticed witnesses as well as pay Citizens' fees and costs for this motions practice and the depositions, subject to all further relief that may be appropriate under Rule 37(b)(2)(A)(i)-(v) and Rule 56.

BACKGROUND

The reason the current dispute has arisen "at the close of the parties' two-year discovery period," Mot. 1, is that the Bureau has spent two years obstructing discovery. Its disregard for the Court's January 2023 deposition directives is just the latest in a long series of discovery misconduct in violation of the Federal Rules. In July 2021, the Court ordered the Bureau to log its sweeping and unsubstantiated privilege claims over hundreds of responsive documents. Text Order (D.R.I. July 30, 2021). Yet the Bureau waited until after 4 pm today to provide (another) supplemental privilege log, logging on a document-by-document basis 183 emails—many to or from Mr. Gutierrez, whom the Bureau refuses to produce—relating to the 2015 Exam. *See* Exs. 4, 5.

In March 2022, the Court ruled that Citizens "is entitled to know [the Bureau's] theory and basis for asserting liability against it, and, if [the Bureau] proves liability, the basis and calculation of the proposed relief sought from the Court." ECF No. 68 at 2–3. And in June 2022, the Court

granted Citizens’ motion to clarify that the Bureau must provide certain discovery relevant to Citizens’ limitations defenses to this 2020 suit for conduct the Bureau seeks to penalize from 2010 to 2015. Specifically, the Court ruled that “the date when the [Bureau] discovered its alleged violations is a relevant area of factual inquiry,” and expressly permitted “narrow, reasonable discovery as to whether [the Bureau] knew or should have known of the [B]ank’s alleged violations prior to February 23, 2014.” Text Order (D.R.I. June 7, 2022).

2022 Productions and Rule 30(b)(6) Notice. The Bureau admits it did not produce documents responsive to the last of the orders above until “August 2022.” Mot. 2. And it admits that the very next month, “September 2022,” Citizens noticed Rule 30(b)(6) testimony on topics that encompassed these productions. *Id.* As the Bureau’s own quotations of the noticed topics make clear, *all* of the noticed topics relate to the Court-ordered areas of fact discovery above. *See id.* at 3 (citing topics expressly directed to the Bureau’s “supervision, investigation, or knowledge of any acts, practices, or conduct by Citizens that relates to [the Bureau’s] claims in this action,” and the “factors, evidence, [and] other information” underlying the Bureau’s “demand(s) for civil monetary penalties”).¹ Nonetheless, and apparently following its usual discovery playbook, the Bureau’s initial response was that Citizens was not entitled to *any* Rule 30(b)(6) deposition whatsoever. Ex. 7 at 1; *see* Ex. 2 (overruling Bureau’s objection to designating any Rule 30(b)(6) witness). In the spirit of compromise, Citizens offered more than a dozen proposals and clarifications to the noticed topics. *See* Ex. 7 at 2–5. But the Bureau rejected virtually all alternatives based (as the Motion now concedes) on sweeping and unsubstantiated objections to

¹ Specifically, the notice sought a representative to testify about the conduct alleged in the Bureau’s complaint, Ex. 6 at 8–9 (Topics 1, 5, and 8), the Bureau’s request for civil monetary penalties, *id.* (Topic 2), the Supervisory Examination and administrative investigation of Citizens that preceded this enforcement action, *id.* at 9–10 (Topics 3 and 12), whether the Bureau identified any ongoing or unremedied harm that would justify its requests for relief, *id.* (Topics 9, 10, and 13), and when the Bureau knew or should have known about the alleged violations, *id.* (Topics 4, 6, 7, and 11).

the topics as seeking “privileged information” and facts “outside the scope of the discovery allowed by the Court.” Mot. 3.

December 1, 2022 Rule 30(b)(6) Deposition. Reserving all rights, and pursuant to the recent Rule 30 amendments encouraging parties to advance discovery through negotiations and specific record evidence before seeking judicial intervention, Citizens took the Bureau’s Rule 30(b)(6) deposition on December 1 on the two topics noted on page 4 of the Motion: “1. The facts supporting the allegations in the Bureau’s complaint”; and “2. The facts related to whether the Bureau discovered the alleged violations prior to February 23, 2014.” Mot. 4; *see Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010) (holding that the discovery rule is triggered when the plaintiff knew or reasonably would have known about the challenged conduct).

The Motion and supporting declaration from the Bureau’s litigation counsel baldly asserts that the Bureau’s Rule 30(b)(6) “witness was prepared,” and that Citizens “disregarded the agreed-upon topics.” Mot. 4 & Watson Decl. ¶¶ 10–12. But the transcript—which the Motion barely cites—speaks for itself. Notably, the transcript shows that:

- Bureau counsel objected based on privilege 77 times and instructed the witness not to answer on that basis 32 times, *see, e.g.*, Ex. 8 at 71, 91, 248, 312;
- Bureau counsel objected to scope 232 times, *see, e.g.*, Ex. 8 at 114, 234—and, for good measure—the witness repeatedly answered that a question was “not within the scope of the topics” even *absent* a scope objection, *see, e.g., id.* at 46–47, 124;²

² The Bureau’s characterization of the Bank’s questions as “harassing” is baseless. Mot. 4. The question that prompted that complaint was whether the Bureau was withholding any facts that the *Bureau’s own Enforcement Manual* instructs the Bureau to disclose because the Bureau

Ex. 8 at 313. That is exactly the question another federal court sanctioned the Bureau for refusing to answer in a deposition. Ex. 3 at 17 (imposing Rule 37 sanctions in part because “the CFPB’s refusal to testify about any exculpatory evidence amounts to a failure to present a knowledgeable witness”). In any event, the law is clear that “questioning of a Rule 30(b)(6) deponent is *not* limited to those subjects identified in the Rule 30(b)(6) notice.” *Am. Gen. Life Ins. Co. v. Billard*, 2010 WL 4367052, at *4 (N.D. Iowa Oct. 28, 2010) (emphasis added) (collecting cases). And 30(b)(6) testimony is a floor, not a ceiling, on deposition discovery. A

- Bureau counsel engaged in time-consuming and improper speaking objections, *see, e.g.*, Ex. 8 at 33–34, 278–79;
- The witness repeatedly answered questions by reading directly from a “testifying aid,” Ex. 9; Ex. 8 at 18 (describing the document as a “testifying aid”), that was prepared by the CFPB’s litigation “case team,” Ex. 8 at 19; *see, e.g., id.* at 164;³
- The witness repeatedly admitted he was not prepared to answer questions within the scope of the fact discovery the Court ordered, including questions about the Citizens complaint files the Bureau produced in August 2022, Ex. 8 at 126–29; *see also id.* at 233–35 (unable to answer questions about the relief requested by the Bureau); and
- The witness specifically identified Citizens’ 2015 examiner (Robert Gutierrez) and Bureau personnel in Consumer Response and Supervisory Enforcement as individuals potentially capable of answering fact questions about this case that the Rule 30(b) designee could not, *see* Ex. 8 at 16, 23, 154–55, 294–95.

December 21, 2022 Fact Deposition Notices. The Bank took the Bureau’s designee up on his suggestions. To obtain the testimony the designee failed to provide, Citizens noticed fact depositions for Christopher Johnson (Assistant Director of the Bureau’s Office of Consumer Response), ECF No. 74-5, David Bleicken (Deputy Associate Director of the Supervision, Enforcement & Fair Lending Division), ECF No. 74-4, and Mr. Gutierrez, ECF No. 74-6. The Bureau immediately asked Citizens to withdraw the notices, just like it previously asked Citizens to withdraw its Rule 30(b)(6) notice, and threatened to move for a protective order. *See* Ex. 10.

January 10, 2023 Discovery Conference. On January 10, 2023, the Bureau asked the Court to allow it to move for a protective order.⁴ The Court, after hearing both sides’ positions,

Rule 30(b)(6) designee “*must testify* about information known or reasonably available to the organization” on noticed topics. Fed. R. Civ. P. 30(b)(6) (emphasis added). But a party can seek additional fact testimony from that witness or others consistent with Rules 26 and 30(b)(1).

³ The witness admitted he did not prepare this aid himself, but that it was instead prepared for him by the Bureau’s litigation “case team members” including “Ms. Watson, Ms. Orleans, [and] Mr. Mothander.” Ex. 8 at 18–20.

⁴ The Bureau accuses Citizens of “misleading” the Court by stating that the Bank “sought to depose a Bureau ‘investigator.’” Mot. 5. The Bank noticed a deposition for Mr. Gutierrez, who oversaw

instructed the parties to confer further about deponents who could provide the fact discovery Citizens requested. Accordingly, on January 12, the parties had a (seemingly) productive meet-and-confer during which the Bank explained in detail the scope of the testimony it sought in order to assist the Bureau in identifying the appropriate individuals who could provide that fact testimony. Citizens also asked the Bureau to agree to the Gutierrez deposition given the Court's directives. The Bureau noted that the discussion was helpful and represented it would respond by early the following week, but refused to agree even to the Gutierrez deposition at that time. Six days later, instead of responding to Citizens and providing the names of relevant individuals or a date for the Gutierrez deposition, the Bureau—only *after* Citizens sent an email following up—responded that it would not produce anyone for deposition and would instead “be filing a motion for a protective order imminently.” Ex. 11. Literally one minute later, the Bureau filed its motion for a protective order, apparently having spent the previous week drafting it instead of attempting in good faith to identify the witnesses the parties discussed after the Court conference. And although the Court ordered the Bureau to “provide Defendant with a document-specific log of legitimately disputed documents” *eighteen months* ago, Text Order (D.R.I. July 30, 2021), the Bureau finally produced a document-by-document log of Mr. Gutierrez's emails *this afternoon*—the day this opposition is due—while offering no explanation why a log covering just 183 emails took so long to prepare. Citizens reserves all rights to challenge these belated and tactical privilege assertions.

the Bureau's examination of Citizens in 2015. *Id.* at 11. Most people would call him an investigator. Moreover, if the Bureau did not believe Mr. Gutierrez was as an “investigator,” the Bureau should have informed Citizens at the parties' conferences or at the hearing, instead of attempting to ambush Citizens through a semantics game designed solely to avoid engaging in discovery as a plaintiff should expect to do.

LEGAL STANDARD

“Prohibiting the taking of depositions is an extraordinary measure’ requiring the moving party to meet a ‘heavy burden’ of showing justifying circumstances.” *Corvello*, 2012 WL 12547377, at *3 (citation omitted). “Such requests are ‘rarely granted.’” *Id.* (citation omitted); *see also Souza v. R.I. Carpenters’ Pension Plan*, 2006 WL 8456814, at *1 (D.R.I. Feb. 16, 2006) (same). Rule 30 provides for deposition testimony by corporate designees, who must be prepared to testify on noticed topics, as well as for additional testimony from individual fact witnesses. And Rule 37 provides a range of relief where, as here, a party improperly obstructs deposition discovery.

ARGUMENT

I. THE BUREAU CANNOT AVOID A DEPOSITION OF MR. GUTIERREZ ABOUT THE BUREAU’S SUPERVISORY EXAMINATION OF CITIZENS.

The Bureau’s Rule 30(b)(6) designee testified that the Bureau is relying “entirely” on information from Citizens—including information the Bank provided during the Supervisory Exam—for the facts underlying its claims for relief. *See, e.g.*, Ex. 8 at 37–38, 68. And although “[t]he facts supporting the allegations in the Bureau’s complaint” was one of the two topics on which the Bureau had agreed to prepare their designee, Mot. 4, he was not equipped to provide the fact discovery Citizens sought. Instead, he relied on a “memory aid” prepared by Bureau counsel to answer the Bank’s questions, and was unable testify beyond the four corners of that document about the facts supporting the liability and remedy claims in the complaint. *See, e.g.*, Ex. 8 at 164 (“Again, let me just refer as an example to the memory aid and we can sort of put meat on the bone here.”); *id.* at 165 (“I’m going back to the memory aid.”); *id.* at 225 (“So the factual support for the credit counseling claim is that which is laid out in Exhibit 2, the memory aid.”); *id.* at 294 (“I

mean what I can say is really what is in Exhibit 2, so the memory aid underlying facts.”)⁵ When asked who at the Bureau could testify about the facts of Citizens’ 2015 Exam, the Bureau’s designee identified the Field Manager who conducted it, Mr. Gutierrez. *See, e.g., id.* at 294–95. Notably, the designee stated that Mr. Gutierrez would be “in a position to speak to the strengths of Citizens’s compliance management system” and other facts that the Bureau’s implementing statute and Enforcement Manual identify as relevant to the Bureau’s claims and penalty requests here because Mr. Gutierrez “cover[ed] Citizens Bank” during “the relevant period.” *Id.* He also testified that Mr. Gutierrez was the only person (other than attorneys) he spoke with in preparing for his deposition. *See id.* at 22–23. And, as the Bureau’s long-overdue log of Mr. Gutierrez’s emails relating to the 2015 Exam make absolutely clear, he is the person to ask.

The Bureau’s efforts to preclude Mr. Gutierrez’s deposition on the grounds that the Bureau has already provided the Rule 30(b)(6) testimony above are meritless. The Federal Rules explicitly *permit* a party to seek Rule 30(b)(1) depositions in addition to Rule 30(b)(6) depositions. Fed. R. Civ. P. 30(b)(6). And the additional deposition is necessary here precisely because the Bureau’s Rule 30(b)(6) designee was *not* prepared to answer questions about the 2015 Exam facts that allegedly support the Bureau’s liability and penalty claims in this case.

The Bureau’s attempt to block Mr. Gutierrez’s properly noticed deposition because the Bureau already made “written discovery” available, Mot. 11–12, is also unavailing. As the Court noted on January 10, written discovery responses are no substitute for depositions, which provide the opportunity to ask questions *about* the documents produced and “probe the deponent’s responses and pursue any meaningful follow-up questioning.” *Progressive Gaming Int’l, Inc. v.*

⁵ The witness’s reliance on a memory aid appears to be part of the Bureau’s standard discovery playbook. *See* Ex. 3 at 14–15 (“Based on the transcripts, it is clear that the CFPB’s witness was not prepared to answer follow-up questions or to stray from the memory aids in any way.”).

Venturi, 2008 WL 11407330, at *1 (D.R.I. Oct. 29, 2008); Ex. 2 at 3 (“[F]actual matters are subject to inquiry even if those matters have been disclosed in interrogatory responses.”); *EEOC v. Doherty Grp., Inc.*, 2016 WL 6583786, at *2 (S.D. Fla. Sept. 14, 2016) (“Depositions and written discovery responses serve different purposes, and parties often propound written discovery and seek deposition testimony on the same important issues in a case.”). “Only by examining a witness live can a lawyer use the skills of his trade to plumb the depths of a witness’ recollection, using to [his] advantage not only what a witness may have admitted in answering interrogatories, but also any new tidbits that usually come out in the course of answering carefully framed and pin-pointed deposition questions.” *Shoen v. Shoen*, 5 F.3d 1289, 1297 (9th Cir. 1993); Ex. 3 at 14 (“[T]he Court repeatedly emphasized the importance of the witness’s ability to provide a ‘human touch’ by responding to Defendants’ follow-up questions.”). For all of these reasons, Bureau counsel’s written discovery provides no basis for a protective order against any of the fact depositions Citizens timely noticed in December, including and particularly for testimony from Mr. Gutierrez.

The Bureau’s unsupported assertion that this (or other) depositions should nonetheless be blocked in their entirety on “privilege” grounds is also baseless. *See* Mot. 12–13 & n.7. Any valid privilege concerns are premature at best. Citizens seeks the *factual* basis for the Bureau’s conclusions in the Supervisory Exam, and neither the attorney-client privilege nor the deliberative process privilege protect facts from disclosure. *See Upjohn Co. v. United States*, 449 U.S. 383, 395 (1981) (“The privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney.”); *Town of Norfolk v. U.S. Army Corps of Eng’rs*, 968 F.2d 1438, 1458 (1st Cir. 1992) (“factual information . . . is not protected by the privilege”). And to the extent the Bureau fears that the Bank’s questions will elicit privileged information, a protective order is unwarranted because the Bureau can address any such concerns by making proper objections “on a question-by-question

basis at the time of the deposition.” *Chaney v. Vt. Bread Co.*, 2022 WL 16757624, at *4 (D. Vt. Nov. 8, 2022); Ex. 2 at 1–3 (rejecting Bureau’s argument that deposition notice was improper because defendant purportedly sought privileged information). That is especially true here, because the Bureau has already waived any privilege objections to testimony concerning the topics covered by the “memory aid,” Ex. 9, it voluntarily introduced as an exhibit to its Rule 30(b)(6) testimony, *see Reis v. Nat’l Passenger R.R. Corp.*, 2008 WL 11388569, at *5–6 (D.R.I. May 27, 2008) (“partial disclosure” of privileged communications on “material issue” waives privilege on same topic).

Finally, the Bureau incorrectly asserts that Citizens “is seeking Mr. Gutierrez’s personal view of the Bureau’s 2015 Exam findings.” Mot. 12. Not so. Citizens intends to inquire about the *facts* underlying the 2015 Exam, as well as the facts in the December 2018 Examination Report from the Bureau, that the Bureau’s Rule 30(b)(6) designee was not prepared to address. *See, e.g.*, Ex. 8 at 293–94 (“I’m not in a position to testify on whether or not Citizens has a strong compliance management system” and identifying Mr. Gutierrez as among “the personnel most likely to have knowledge on that.”). These facts and documents are plainly relevant and proportional to this case. The Bureau has testified that they provide the basis for its liability claims against Citizens. *See id.* at 37–38, 68. And facts about Citizens’ cooperation and compliance management system, the technical nature of the alleged violations, and the degree of consumer impact are all facts that are directly relevant to the Bureau’s maximum Tier I penalty demand under the CFPA and the Bureau’s own Enforcement Manual.

II. THE BUREAU CANNOT AVOID A DEPOSITION ABOUT CONSUMER COMPLAINTS THE BUREAU PRODUCED.

The Bureau also cannot avoid a deposition about several consumer complaints predating 2014 that may have put the Bureau on notice of the conduct at issue in this suit before the Bank self-reported it. This “narrow” and “reasonable” discovery goes to whether the Bureau “knew or

should have known of the [B]ank’s alleged violations prior to February 23, 2014.” Text Order (D.R.I. June 7, 2022) (emphasis omitted).

The Bureau states in its Motion that it has “not identified any evidence” that the complaints “were subject to any of the violations alleged in the Bureau’s Complaint.” Mot. 10–11. But that is exactly the topic about which Citizens intends to depose Mr. Johnson, or a person with knowledge in his department. When the Bureau’s Rule 30(b)(6) representative was asked whether the Bureau “received a complaint from a consumer about Citizens’s denial of a credit card claim for failure to return a fraud affidavit,” the representative admitted that he was “not really steeped in the consumer response processes.” Ex. 8 at 115. Indeed, he could not answer basic questions about how the Bureau handles consumer complaints, *see id.* at 128–34, and later testified that the *Associate Director of Consumer Response* would be “as good a resource as any” to answer such questions, *id.* at 154–55. As the *Associate Director of Consumer Response*, Mr. Johnson appears to be the correct person for Citizens to depose on these issues.

Nor can the Bureau’s lawyers avoid a deposition simply by stating that they have “not identified” evidence that the complaints the Bureau produced relate to the card practices at issue in this lawsuit. Mot. 10. “In the context of a motion for protective order . . . the *ipse dixit* of counsel will not suffice” to justify blocking timely discovery. *Autotech Techs. Ltd. P’ship v. Automationdirect.com, Inc.*, 235 F.R.D. 435, 440 (N.D. Ill. 2006). The Bureau’s consumer complaints, moreover, appear on their face to relate to the conduct alleged in this case. Notably, one of the complaints from 2011 that Citizens asked about in the Rule 30(b)(6) deposition mentions [REDACTED], Ex. 12 at 4, which is the subject of multiple claims in this action, *see* Compl. ¶¶ 31–38. The Bureau produced these documents, and cannot avoid answering questions about them by blocking testimony by the very witnesses its own Rule 30(b) designee identified as knowledgeable parties.

III. THE BUREAU CANNOT AVOID A DEPOSITION ABOUT ITS REQUEST FOR CIVIL MONETARY PENALTIES.

The Bureau seeks \$38 million in civil penalties, Ex. 13 at 3–4, but its Rule 30(b)(6) deponent was unable to answer basic questions about the factual support for that request. The transcript from the Rule 30(b)(6) deposition demonstrates that the deponent refused to disclose the factual basis for its request for relief in this action:

Q. Does the fact that relief is available in the U.S. Code mean it’s justified in a particular case?

MS. WATSON: Objection. Scope. Calls for a legal conclusion.

A. Yeah, that’s not—I don’t have an opinion on that.

Q. You don’t in your position as an enforcement manager in the Bureau?

A. No. Not every remedy is applicable in every case.

Q. Okay. That’s what I’m trying to get at. Here we are in a real lawsuit where you have to put up real facts to seek actual relief against the bank, which is [a] very real business.

And so I don’t want to know what’s available in the U.S. code. I would like to know from you, the Bureau, what portion of this available relief are you actually seeking in this case and what’s the factual basis for seeking that relief? That’s what we are trying to get at here.

MS. WATSON: Objection. Compound. Scope. Calls for a legal conclusion.

A. Yeah, I’m here to testif[y] to the factual underpinnings of the Bureau’s claims, not the demand for relief. So I don’t really have an answer in my 30(b)(6) for you.

Ex. 8 at 233–34.

Citizens has a right to depose a Bureau witness who can provide answers about whether the *facts of this case* support the maximum Tier I penalty the Bureau seeks. The Bureau does not dispute that discovery into the factual basis for the Bureau’s civil monetary penalties is relevant. Nor could it, because the Court has already held that Citizens is entitled to discover “the basis and calculation of the proposed relief,” ECF No. 68 at 2–3, which plainly encompasses the Bureau’s request for penalties, Compl. ¶ 63(d). And the Bureau’s Rule 30(b)(6) witness agreed that “the

Bureau doesn't have to seek the maximum penalty available under the statute," Ex. 8 at 245; that "the CFPA requires that a court consider . . . mitigating factors," *id.* at 246; and that the Bureau's Enforcement Manual sets forth factual criteria for [REDACTED] *id.* at 291. Citizens asked the Bureau's Rule 30(b) designee to identify the facts in this case that would support a maximum Tier I penalty under the factual criteria [REDACTED] [REDACTED] identified in the statute and the Bureau's own Enforcement Manual. *See id.* at 291–312. But the designee could not answer these questions, and referred Citizens to someone in the Supervision, Enforcement & Fair Lending Division, *id.* at 294, so Citizens promptly noticed Mr. Bleicken—the Deputy Associate Director of that Division—and, pursuant to the Court's instructions on January 10, asked the Bureau to confirm dates for him or another Bureau employee who could speak to factual bases for the Bureau's penalty request in this case.

A. The "Apex" Doctrine Is Irrelevant Here.

The Bureau incorrectly argues that Mr. Bleicken cannot be deposed because he is a "[h]igh-ranking" government official. Mot. 6–7. But Citizens does not insist on deposing Mr. Bleicken himself. Citizens simply seeks testimony about the facts underlying the Bureau's request for civil monetary penalties, and specifically the facts that the Bureau's Enforcement Manual identifies as relevant to the calculation of civil monetary penalties. And even if Citizens were seeking to depose Mr. Bleicken specifically, the "apex" doctrine would not apply because he is not a high-ranking government official for purposes of that doctrine.

The "high-ranking official" designation "has generally only been applied to government officials who are at the apex of their organization." *SEC v. Comm. on Ways & Means of the U.S. House of Representatives*, 161 F. Supp. 3d 199, 250 (S.D.N.Y. 2015) (collecting cases); *Sourgoutsis v. U.S. Capitol Police*, 323 F.R.D. 100, 115 n.7 (D.D.C. 2017) (explaining that "[m]ost cases applying this rule involve agency heads"). Mr. Bleicken is not at the apex of the Bureau.

Indeed, as the *Deputy* Associate Director of the Supervision, Enforcement & Fair Lending Division, he is not even at the apex of his own subsection of the Bureau. *See* Ex. 14; *see, e.g., Bolden v. FEMA*, 2008 WL 482727, at *2 (E.D. La. Feb. 19, 2008) (holding that the director of “one [of] FEMA’s many sections” did not qualify as a “high government official”).

B. The Bureau’s Remaining Arguments Also Do Not Meet Its Heavy Burden Of Blocking Factual Testimony About Its Penalty Demands.

For the reasons provided in Part I above, the Bureau’s “written discovery” and “privilege” arguments, Mot. 1–2, 7–8, do not justify blocking testimony from an enforcement deponent just as they do not justify blocking testimony for Mr. Gutierrez. As the Rule 30(b) transcript makes clear, Citizens seeks information about the facts supporting the penalty request here. *See* Ex. 8 at 233–34, 299–313. Citizens does *not* seek allegedly privileged information about “how Bureau attorneys analyzed and applied the [statutory civil penalty] factors” “during internal deliberations.” Mot. 8. And to the extent the Bureau has not already waived privilege by introducing attorney work product as a Rule 30(b)(6) exhibit, it can handle any privilege claims during the noticed depositions. That is why other courts have overruled its requests to block depositions in their entirety due to unspecified privilege concerns. *See* Ex. 2 at 1–2. The Bureau’s motion is especially improper here because it admittedly seeks to prevent Citizens from asking questions about one of the few Bureau documents that has been produced in this action—the Bureau’s Enforcement Manual. Ex. 15. Contrary to the Bureau’s unsupported assertions, Mot. 9, questions about the Enforcement Manual are relevant here because the Bureau produced the Manual as support for its claims and remedies, and the Manual discusses [REDACTED]. *See* Ex. 15 at 121–24. For example, the Enforcement Manual explains that, [REDACTED]. *Id.* at 124. Citizens asked the Bureau’s Rule 30(b) designee what facts in the record here support the

Bureau's demand for a maximum Tier I penalty. But the Bureau's Rule 30(b)(6) deponent could not answer those questions, or even say what facts would qualify as a [REDACTED] Ex. 8 at 299–303. Citizens is entitled to this information so that it can defend its position that the Bureau's request for a penalty at the top of the Tier I range is factually unsupported under the CFPA and the Bureau's own Manual. *See* ECF No. 68 at 2–3 (granting Citizens the right to discovery about “the basis and calculation of the proposed relief sought”).

Such fact testimony does not require Citizens to “depose Bureau investigation counsel” or “trial counsel,” Mot. 10, even though that is exactly the testimony the Bureau placed in issue when it produced an enforcement lawyer as a Rule 30(b)(6) designee and had him read trial counsel's work product into the case record. Ex. 9. Citizens noticed Mr. Bleicken, or the person in his department with the relevant factual knowledge. And whether or not such witnesses are part of Bureau “management,” Mot. 10, the Bureau has provided no reason to conclude that *all* questions to them would violate legal privileges. *Supra* Argument I (collecting cases). The Bureau produced the Enforcement Manual and must answer questions about it in relation to the facts supporting its penalty claims in this case.

CONCLUSION

The Bureau filed this case in federal court and must now participate in discovery according to the usual rules that govern other litigants. The Court should deny the Bureau's motion and order the Bureau to produce Mr. Gutierrez and appropriate witnesses from Consumer Response and the Enforcement Division for deposition. In addition, the Court should award Citizens all relief the Court deems just and proper under Federal Rule of Civil Procedure 37(b). *See generally* Ex. 3 (awarding Rule 37 sanctions against the Bureau).

Respectfully submitted,

Dated: February 1, 2023

/s/ Geoffrey W. Millsom

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EXHIBIT 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

- - -

BUREAU OF CONSUMER FINANCIAL PROTECTION, : Case No. 1:21-cv-262
: **Telephone Status Conference**
Plaintiff, :
- v - : Friday, March 25, 2022
FIFTH THIRD BANK, N.A., : 3:45 p.m.
Defendant. : Cincinnati, Ohio

- - -

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE DOUGLAS R. COLE, DISTRICT JUDGE

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P R O C E E D I N G S

(In open court via telephone at 3:52 p.m.)

- - -

COURTROOM DEPUTY: This is Scott Lang with Judge Cole's chambers. We're here for a telephone status conference on case number 1:21-cv-262, Bureau of Consumer Financial Protection versus Fifth Third Bank.

My apologies. Apparently, I put in the wrong security code, and so people had trouble getting on so, hopefully, everyone is on the call, but I'm going to take a roll.

Who do I have on the line for the plaintiff currently?

MR. SCHUNK: Jacob Schunk, with the Consumer Financial Protection Bureau, along with Ms. Sherman Cater and Mr. Reiferson.

COURTROOM DEPUTY: Is that everyone we should have on there?

MR. SCHUNK: We can certainly start with the three of us.

COURTROOM DEPUTY: What was your last name again?

MR. SCHUNK: Jacob Schunk, S-c-h-u-n-k.

COURTROOM DEPUTY: How about for defendant, Fifth Third?

MR. SCARBOROUGH: This is Ryan Scarborough. I'm on, along with my cocounsel, Laurie Witek, and we have Chris Garvey and Aaron Stucky, who are both in-house lawyers at

1 Fifth Third on as well.

2 COURTRROOM DEPUTY: Okay. And for you guys, is
3 everyone that we need on the call?

4 MR. SCARBOROUGH: Yes. Unfortunately, Mr. Villa is
5 unable to participate. He tested positive for COVID today and
6 is feeling under the weather, to put it mildly.

7 COURTRROOM DEPUTY: Okay. Sorry to hear that. We'll
8 go ahead to get started. We do have a court reporter, so we
9 are recording this.

10 Two quick things before we get started. One, please mute
11 your phones when you're not speaking; and, two, please
12 identify yourselves before speaking.

13 Please hold for the Court.

14 THE COURT: Good afternoon, counsel.

15 MR. SCARBOROUGH: Good afternoon, Your Honor.

16 THE COURT: Mr. Scarborough, I believe we're here at
17 your client's suggestion with regard to an emergency motion
18 that you filed that, as the Court understands, it is directed
19 at a survey that CFPB has sent out to some or all of the Fifth
20 Third customers.

21 It's not clear to the Court how the determined email
22 after [audio distortion] all those people, nor how widely the
23 survey had gone out, but I will allow you to explicate your
24 concerns more fully if you would like at this time.

25 MR. SCARBOROUGH: Thank you, Your Honor. I

1 appreciate that. Let me start by saying I'm truly sorry to
2 bother the Court, particularly on a Friday afternoon, but we
3 filed this motion, given the serious nature of the bureau's
4 actions and the impact that it's having on Fifth Third's
5 customers.

6 Yesterday afternoon, starting about late in the
7 afternoon, around 3:00 or 4:00, the bank started receiving
8 inquiries from customers who were receiving an email survey.
9 They were confused by it. They didn't know if it was
10 legitimate, or if it was coming from Fifth Third, and they
11 clearly were uncertain as to what to do.

12 We took steps to assess what the situation was, and I
13 reached out to Mr. Reiferson and the other counsel who had
14 entered an appearance here for the bureau yesterday evening,
15 shortly after 9:00, to ask them what was going on, and ask
16 them if they could either confer with me that night or as
17 early as possible this morning.

18 Ms. Witek and I followed up with calls to them this
19 morning and didn't receive a call back. Did receive an email
20 from Mr. Reiferson, of which followed a series of email
21 exchanges, but he was unable or unwilling to get on with us
22 and talk today.

23 The issue that we're dealing with, Your Honor, this
24 really stems back to the August 2021 status conference where,
25 if you will recall, the parties had disagreed over the scope

1 of discovery in this case.

2 At that time, the bureau had floated the idea --
3 Mr. Reiferson had floated the idea of going beyond the data
4 for suspect accounts and actually contacting customers with
5 indicia of non-authorization. That would have been hundreds
6 of thousands of the bank's customers.

7 And Mr. Villa objected and said that doing so, that he
8 couldn't imagine something that would be more prejudicial to
9 the bank's relationships with its customers than an
10 indiscriminate mailing to them.

11 After hearing further argument about how the Court should
12 approach discovery, Your Honor indicated that the parties
13 should proceed with sampling, and that that would set the
14 stage for determining any additional discovery needs for this
15 case.

16 And we came away from that conference with the
17 understanding that the bureau was going to pick a sample, and
18 that there wouldn't be a mass communication to the bank's
19 customers without first consulting with the bank or the Court.

20 We tried to litigate this case on the merits, and to
21 reach the merits, we filed our motion for judgment on the
22 pleading. And over the past seven months, we've been giving
23 the bureau information that they need to pick their sample.
24 Seven months later, we're still waiting for the bureau to pick
25 its sample.

1 The bureau, from our perspective, Your Honor, has been
2 slow rolling the sampling process, while at the same time,
3 evidently, now they've been planning an elaborate survey that
4 bears all the hallmarks of a massive email campaign.

5 I don't know, at this point, Your Honor, how many people
6 received the email. I don't know where they got the
7 informa- -- the addresses to contact these customers.

8 I have a suspicion that what they have done is they made
9 a request back in 2018 as part of their civil investigative
10 demand to the bank that it provide contact information for
11 millions of bank customers. The bank obviously had no choice
12 but to comply with that at the time.

13 I suspect, but I don't know, that they utilized the
14 contact information from that to make this -- to make what
15 appears to be a mass mailing.

16 I don't know how many customers received the survey. I
17 don't know what criteria was used to determine the recipients
18 of the survey. I don't know where they got the customer
19 information, much less how long the bureau has been developing
20 this survey, how long the bureau's counsel has known about
21 this survey, or why they didn't alert the Court or consult
22 with us before putting out such a prejudicial survey.

23 At this point, Your Honor, we certainly would have been
24 willing to postpone this hearing until Monday if the bureau
25 would have disabled the survey and taken it down to at least

1 try to mitigate the harm that has occurred; but, barring that,
2 we needed to go forward today because we believe that there
3 needs to be immediate steps taken to try to rectify this.

4 And I understand that with it having already been sent
5 out, it's difficult to un-ring a bell like that, but this is
6 incredibly prejudicial. Everything from the way the questions
7 were framed to the way it was set up, it's incredibly
8 prejudicial.

9 And to do it knowing full well that we had objected to
10 this in August of last year, and had established that this
11 case was going to go forward with sampling before any other
12 scope of discovery issues were going to be addressed, and to
13 then see the bureau slow roll the sampling and take these
14 steps has been not only incredibly disappointing but
15 incredibly unfair.

16 All we want to do is litigate this case on the merits,
17 and we have not been able to do that yet because of the
18 actions that the bureau has taken.

19 THE COURT: Thank you, Mr. Scarborough. I don't know
20 who is going to speak on CFPB's behalf, but I'd be interested
21 in hearing your view on it now.

22 MR. SCHUNK: Thank you, Your Honor. And this is
23 Jacob Schunk for the CFPB. The bureau takes issue with
24 several of the premises underlying what Mr. Scarborough has
25 just identified.

1 So I think, for present purposes, though, it's sufficient
2 to focus on one, which is that the bureau had told the Court
3 and Fifth Third that it was going to do this.

4 Specifically, in a joint status report from October 15th,
5 the bureau said, "The bureau also intends to conduct extensive
6 informal outreach to former employees and consumers during and
7 without affecting the discovery period."

8 As Fifth Third is well aware, we've been contacting
9 former employees. We know Fifth Third knows that because we
10 gave them a list of former employees that we were going to
11 contact, and they started contacting them.

12 So the fact that we were engaged in the same conduct that
13 we said we were going to do, and they took no issue -- this is
14 in October, so after August. They asked no questions. They
15 didn't say we want a brief appearance. Nothing.

16 And now I think it's likely forgot about that, and is now
17 coming to the Court with this urgency trying to get the Court
18 to stop an agency, the federal government, from talking to
19 consumers in an effort to prove its case.

20 It's unfounded. It's also -- the urgency is not on us,
21 Your Honor. The urgency is on Fifth Third for not asking more
22 questions then.

23 THE COURT: Do you have a docket entry for that,
24 Mr. Schunk?

25 MR. SCHUNK: I don't have a docket entry, Your Honor.

1 I think it was emailed from -- Mr. Scarborough signed it on
2 October 15, 2021. The certificate of service was from Krysta
3 Gumbiner, Your Honor.

4 THE COURT: Do you know the documents about which
5 he's speaking, Mr. Scarborough?

6 MR. SCARBOROUGH: Your Honor, I assume what he's
7 referring to is some sort of a joint status report, that's
8 what he's described, but I have no specific -- at this time, I
9 don't have it in front of me.

10 THE COURT: Mr. Schunk, could you email what you just
11 were referring to?

12 MR. SCHUNK: Excuse me, Your Honor?

13 THE COURT: Could you email the document to which you
14 were referring to the Court and to Mr. Scarborough?

15 MR. SCHUNK: Yes, Your Honor. Your Honor, I've
16 located the October status report that was filed.

17 THE COURT: To what page are you referring to,
18 Mr. Schunk?

19 MR. SCHUNK: Page 15, Your Honor.

20 THE COURT: If someone could forward it to the Court
21 too so I could take a look at it, I'd appreciate it.

22 Do you see the reference he's making, Mr. Scarborough?

23 MR. SCARBOROUGH: I'm still looking, Your Honor.

24 THE COURT: Scott, can you forward it to me as soon
25 as it comes into chambers?

1 COURTROOM DEPUTY: Yes, Your Honor.

2 MR. SCARBOROUGH: I have it in front of me, Your
3 Honor. I've read it now.

4 THE COURT: I still don't have it in front of me, so
5 I don't know who was going to email it to chambers, but I
6 don't have it yet.

7 MR. SCHUNK: Sorry, Your Honor. This is Jacob
8 Schunk. I sent a copy to Mr. Lang and cc'd Mr. Scarborough.

9 THE COURT: Okay. Remind me, you said page 15,
10 Mr. Schunk?

11 MR. SCHUNK: Yes, Your Honor. The full paragraph
12 right after the bureau heading.

13 THE COURT: Well, Mr. Scarborough, I see a sentence
14 that says it "still intends to conduct extensive informal
15 outreach to former employees and consumers during and without
16 affecting the discovery period." Do you see that?

17 MR. SCARBOROUGH: Yes. I'm looking at that, Your
18 Honor. Can I address that?

19 THE COURT: Yes, you may.

20 MR. SCARBOROUGH: Thank you, Your Honor. Your Honor,
21 this is the height of what I would call the fine print defense
22 here.

23 This is a 26-page status report that was submitted by the
24 parties. This was submitted after the bureau already knew
25 that Fifth Third objected, and had lodged its objection to any

1 sort of -- any sort of mass communication to customers.

2 And to point to this as a justification six months
3 after -- five to six months after the fact is the height of
4 fine print.

5 The bureau is an agency that's focused on preventing
6 unfair, deceptive, abusive conduct. And they quite commonly
7 point to fine print-type defenses as being unfair or deceptive
8 or abusive, and that's exactly what's happening here.

9 Your Honor, the whole focus of our informal conferences
10 over the past six or seven months has been on picking a
11 sample; that the Court has made it clear that the sample was
12 going to dictate and guide any additional scope of discovery
13 that would be determined.

14 And so for it -- and the bureau pushed for far more
15 accounts, far more than the 3,875 accounts that the Court
16 ultimately indicated that the parties should proceed with.

17 So for the bureau to turn around -- the rest of discovery
18 is stayed at this point. For the bureau to turn around and
19 say we're working on a sample for 3,875, but we're going to
20 send a mass email -- and, again, I don't know how many of
21 these customers they sent the email to because they haven't
22 told us, but it has all the hallmarks of a mass email.

23 And to turn around, after the Court has limited them to
24 3,875 accounts on a sample, and to send a survey like this to,
25 I don't know if it's thousands, tens of thousands, hundreds of

1 thousands or more, because we gave them millions of customer
2 contact information as part of their CI- -- in response to
3 their CID. For them to turn around and do this, knowing that
4 we had objected and say, aha, but you never objected a second
5 time.

6 Your Honor, we don't have to object twice. We objected
7 the first time it came up. And so then to come around and
8 say, aha, but you didn't see it in the fine print, you didn't
9 catch us because you were responding and focusing on the
10 thrust of the discussions at the time, which was what is the
11 scope of discovery with sampling, what is the period that
12 should -- the case management schedule that should govern this
13 case, and you didn't see and object to a one-sentence
14 reference in a 26-page document, and that's the hook. That's
15 a --

16 THE COURT: Well, Mr. Scarborough --

17 [Indiscernible crosstalk.]

18 MR. SCARBOROUGH: -- Your Honor, and that should not
19 be.

20 THE COURT: Mr. Scarborough --

21 MR. SCARBOROUGH: That should not be. Yes, Your
22 Honor.

23 THE COURT: Mr. Scarborough, I appreciate what you're
24 saying. It seems to me it would have a little bit more
25 persuasive effect if you didn't have the one paragraph

1 response to that very sentence, just to a different portion of
2 it.

3 I mean, the sentence talks about informal outreach to
4 former employees and consumers. I see your response -- the
5 entire second paragraph of your response is, in fact, directed
6 to that sentence, but it's just directed to the employee part.
7 Am I missing something?

8 MR. SCARBOROUGH: It is directed to the employee
9 part, Your Honor, because at that time, we were exchanging
10 correspondence with Mr. Reiferson, who was indicating
11 specifically that there were former employees that they wanted
12 to contact.

13 And we were working with Mr. Reiferson to ensure that he
14 could contact those folks without implicating any sort of
15 privilege issues. There was no communication at that time
16 from Mr. Reiferson that they were going to be contacting
17 customers.

18 There was no -- the letters that were being exchanged
19 were focused solely and exclusively on former employees. So
20 that was the backdrop to this submission that was being made,
21 because the letters that were being exchanged between
22 Mr. Reiferson and my partner, Mr. Villa, were about former
23 employees.

24 We had already objected -- in August, Your Honor, we had
25 already objected to contacting customers on a mass basis like

1 this.

2 THE COURT: I see. All right. Well, so independent
3 of any of this, I'm a little disappointed that CFPB would send
4 out what appears to be a mass emailing without at least
5 coordinating and giving -- I can only imagine that the folks
6 at CFPB understood that this may result in a -- I don't know
7 if deluge is the right word, but at least a substantial number
8 of customer outreaches to Fifth Third.

9 To just kind of receive an email survey like this that's,
10 you know, frankly got a lot of the hallmarks of spam, or
11 phishing expeditions, or other things, so I'm a little
12 surprised that CFPB would think it was a good idea to just
13 reach out.

14 I am interested in knowing, Mr. Schunk, how many of these
15 emails did you send out to Fifth Third clients?

16 MR. SCHUNK: Thanks, Your Honor. At this time, given
17 the expedited nature of this, I'm just not able to answer
18 questions regarding the work product of attorneys, which is
19 what this is, Your Honor. We would need to go up the chain
20 quite a ways to determine to what extent we're able to answer
21 those questions.

22 I do have some reaction to Mr. Scarborough, if the Court
23 would like to hear some of that, though, Your Honor?

24 THE COURT: Well, I'd first like an explanation as to
25 why you can't answer the question I just asked.

1 MR. SCHUNK: Again, Your Honor, given the expedient
2 time frame of this, we've not had the time yet to talk to our
3 supervisors regarding the extent to which we are able and
4 willing to disclose information regarding the government's
5 litigation positions.

6 THE COURT: I see. Okay. What else would you like
7 to say, Mr. Schunk?

8 MR. SCHUNK: Just very briefly, Your Honor. And,
9 again, I won't belabor this, other than to say that we would
10 disagree with, if not everything, but most everything
11 Mr. Scarborough says.

12 Focus on the pertinent points, though. It is not the
13 bureau's position that we are entitled to do this because of
14 what we put in the status report.

15 We're entitled to do this because we're the Consumer
16 Financial Protection Bureau litigating a case against an
17 entity, and we are able to talk to consumers as part of that
18 effort. And the cases cited here are all distinguishable for
19 multiple reasons.

20 But the reason the sentence is important is because it
21 demonstrates that there's no urgency to this. Fifth Third had
22 noticed that we were going to do this but, to be clear, we
23 don't rely on the sentence for doing it, "the right." We have
24 the right.

25 The point of bringing the [audio distortion] to the

1 Court's attention that perhaps Fifth Third take an issue with
2 this, they could have and should have done it before now, Your
3 Honor. That's all.

4 THE COURT: I see. Well --

5 MR. SCARBOROUGH: Your Honor --

6 THE COURT: No, Mr. Scarborough.

7 Let me be clear. I will give CFPB an opportunity to
8 respond to the motion that's been filed; but, in the interim,
9 I am ordering that no further emails go out, and that the link
10 be disabled so that people cannot answer the survey in the
11 intervening time until the Court's got a better sense of what
12 CFPB is willing to show the Court about its outreach effort
13 here, and how broadly this may be impacting Fifth Third's
14 relationships with its client.

15 I think it was a poor choice to reach out in a manner
16 that looks to the Court to be designed to create a wedge
17 between Fifth Third and its customers, without having at least
18 discussed with Fifth Third how such a survey could be done,
19 who might be appropriate recipients, and various other aspects
20 of the survey.

21 You know, this is litigation, but I understand there's,
22 you know, team A and team B, but that doesn't mean that
23 parties can't work together collectively during the discovery
24 process to avoid surprises like the types of surprises coming
25 up as a result of this what may be or may not be mass email

1 and, apparently, I'm not entitled to know the answer to that
2 question.

3 But, you know, I just want to be very clear I want it to
4 stop until the Court's had an opportunity to review whatever
5 additional information CFPB sees fit to provide.

6 Any questions about that, Mr. Schunk?

7 MR. REIFERSON: Your Honor, this is Barry Reiferson.
8 I'm sorry, a little background noise. I'm about to board a
9 plane.

10 I did want to respond a little bit. I don't want the
11 Court to come away with the idea that we're not willing to
12 answer the Court's questions, as Mr. Schunk described.

13 What we're being asked to disclose is attorney work
14 product, and it's difficult for any party, including a
15 government agency, to do that without authorization to do
16 that.

17 And, you know, when Mr. Scarborough says this was
18 discussed and they objected, you may recall that it was
19 objected to in the context of the joint effort.

20 We said -- we had asked in, you know, pre-litigation
21 discussions if Fifth Third would be willing to join the bureau
22 and reach out to hundreds of thousands of consumers in a joint
23 effort to find the facts. They said no. But that doesn't
24 mean that the bureau can't do its job in preparing for
25 litigation without Fifth Third's help. And that's where we

1 are.

2 I take the Court's point that, you know, it's always best
3 if the parties speak repeatedly, and we do speak repeatedly;
4 but, you know, Fifth Third has indicated it's not willing to
5 work with us.

6 We've asked Fifth Third for phone numbers of employees or
7 former employees that we could contact. They've refused to
8 give us phone numbers to allow us to do our job. So they
9 don't work with us, and so we're left to do the job on our
10 own, without its help.

11 In hindsight, perhaps it would have been better to make
12 one last effort, but we didn't do that and this is where we
13 are.

14 I can say the outreach scope or volume was, so far,
15 significantly lower than the hundreds of thousands that we
16 spoke about as far as a potential joint effort.

17 THE COURT: I'm pleased to hear that, Mr. Reiferson.
18 I mean, I'm a little bit surprised to hear Mr. Schunk's
19 apparent view that, I think he said we're the CFPB so,
20 essentially, we can do whatever we want.

21 I assume, Mr. Reiferson, that you wouldn't contend that
22 the CFPB could just pick some bank that it wanted to destroy
23 all the customer relationships with and just send out mass
24 mailings to that bank's customers encouraging them to move
25 elsewhere, right? I assume --

1 MR. REIFERSON: I would agree that the bureau would
2 not -- the bureau would not attempt to simply pick a bank and
3 destroy its customer relationship, and we haven't done that
4 here.

5 THE COURT: Well, but I didn't hear a lot of
6 boundaries around Mr. Schunk's claim that we're the CFPB so we
7 can do what we want to.

8 That may well be the case. It's not going to be the case
9 in this litigation so, you know, I would encourage everybody
10 to be a little more careful with regard to things like this.

11 I mean, put yourself, Mr. Reiferson, in the position of
12 the bank, who all of a sudden has got a bunch of customers
13 calling about what looks like -- honestly, when I look at
14 these emails, they look like phishing emails of some kind, and
15 asking questions about emails that they know nothing about.

16 I mean, certainly you can understand that may not be a
17 very comfortable position for the bank's officer to be in.

18 MR. REIFERSON: I understand, Your Honor. As I said,
19 in hindsight, we may have done it differently. You know, Your
20 Honor touched on something the last time we spoke, and that
21 is, you know, the parties, including the attorneys, have
22 drifted apart and have kind of become, you know, perhaps
23 overly adversarial.

24 That was not our goal here; but, you know, we do have a
25 history with this bank in this litigation. As I said, we

1 asked them just give us phone numbers of people you've already
2 spoken with, and they won't do that so, you know, we have to
3 have -- we have to go find phone numbers.

4 So we don't -- the parties have drifted apart. The
5 lawyers have become adversarial, and that's regrettable, and I
6 regret it, and I'll try to do better to avoid it in the
7 future. But that's the context in which this was done, and it
8 was not intended to --

9 THE COURT: Well, to the extent you've got concerns
10 and are getting into a tit-for-tat mode, you know, raise your
11 concerns with the Court. I don't like this either direction.

12 If Fifth Third is making you incur a lot of costs to get
13 data that they could easily provide you, I'm going to be not
14 particularly favorably disposed towards that either, but I
15 don't think that taking matters into your own hands is really
16 the way to go about litigation, and it's unlikely to bring the
17 parties more closely together.

18 You know, feel free, when you have disputes, to reach out
19 to the Court, and the Court will try to do its best to try and
20 help. But I don't want this to go on until I've got a lot
21 more information about it, and so I want the effort shut down
22 for now.

23 MR. REIFERSON: Understood, Your Honor. Your Honor,
24 of course, you know, if the order the Court deems appropriate,
25 the bureau would voluntarily, however, break the link,

1 essentially. So my understanding is an email with a link to a
2 survey, we can replace that for those that have already been
3 sent out with a sentence, or something along the lines of,
4 "This survey is closed. Thank you for your time." And we're
5 willing to do that without a Court order.

6 THE COURT: Mr. Scarborough, is that acceptable?

7 MR. SCARBOROUGH: Your Honor, when would this happen?
8 Because I'd want to make sure that this gets done as soon as
9 possible.

10 MR. REIFERSON: I believe the answer is as soon as
11 possible.

12 [Indiscernible crosstalk.]

13 MR. REIFERSON: Within minutes, I believe.

14 THE COURT: Okay. Go ahead, Mr. Scarborough.

15 MR. SCARBOROUGH: And, Your Honor, I do think it
16 should be memorialized in an order in some fashion to note
17 that this is -- because, again, we're going to have -- after
18 the bureau responds, we're going to have to deal with this
19 more broadly in terms of any future outreach that is -- that
20 the bureau intends to make. And, Your Honor, I did want --

21 THE COURT: Mr. Scarborough, I would --

22 MR. SCARBOROUGH: -- to --

23 THE COURT: -- encourage you not to --

24 [Indiscernible crosstalk.]

25 MR. SCARBOROUGH: I'm sorry. That's fine,

1 Your Honor. I appreciate it. I appreciate you taking the
2 time and making the time for us on a Friday afternoon.

3 I know, from when I clerked, that I was never fond of
4 getting emergency motions on a Friday afternoon.

5 THE COURT: The Court's always available, so that's
6 not the problem. My point is just I think Mr. Reiferson has
7 made a fairly reasonable offer to replace the link on the
8 survey within, I believe he said minutes, with something that
9 said, you know, "This survey is closed. Thank you." I think
10 that's actually a pretty good resolution.

11 It will be reflected in the transcript from this call, a
12 version of it will probably be reflected in the minute entry,
13 but I don't know what you're trying to get through this order
14 thing, but maybe you could help me understand it more fully.

15 MR. SCARBOROUGH: That's fine, Your Honor. I
16 appreciate the time.

17 THE COURT: All right. So I think we've got it
18 resolved. Mr. Reiferson, as I understand it, Mr. Scarborough
19 has accepted your offer to have the link sort of, to use your
20 phrase, broken. And are you anticipating responding,
21 Mr. Reiferson, to the motion itself?

22 MR. REIFERSON: Yes, Your Honor.

23 THE COURT: Okay. Well, I will take the matter back
24 up, then, once we have a response to the motion. Of course,
25 Mr. Scarborough, you will have an opportunity to reply as

1 well.

2 Anything else I can do at this juncture, Mr. Scarborough?

3 MR. SCARBOROUGH: No, Your Honor. Thank you very
4 much.

5 THE COURT: Thank you. Mr. Reiferson?

6 MR. REIFERSON: No, Your Honor. Thank you for your
7 patience.

8 THE COURT: Yeah. And apologies for getting you at
9 the airport, Mr. Reiferson. I know that's probably not what
10 you had planned for the afternoon, but --

11 MR. REIFERSON: I appreciate you making time.

12 THE COURT: Very good. Everybody have a good
13 weekend. Bye.

14 (Proceedings concluded at 4:25 p.m.)

15 - - -

16 C E R T I F I C A T E

17 - - -

18 I, M. SUE LOPREATO, RMR, CRR, certify that the foregoing
19 is a correct transcript from the record of proceedings in the
above-entitled matter.

20 /s/ M. Sue Lopreato
21 M. SUE LOPREATO, RMR, CRR
22 Official Court Reporter

April 1, 2022

23 - - -

24

25

EXHIBIT 2

enforcement and deliberative process privilege, and (3) the depositions are an improper attempt to question Bureau counsel as to counsel's mental impressions and analyses. Defendants assert that a government agency such as the Bureau should be subject to the same discovery obligations as any other party in a case and that the discovery sought is factual in nature and not an attempt to obtain attorney work product.

“Rule 30(b)(6) expressly applies to a government agency and provides neither an exemption from Rule 30(b)(6) nor special consideration concerning the scope of discovery, especially when [the agency] voluntarily initiates an action.” S.E.C. v. Kramer, 778 F. Supp. 2d 1320, 1327 (M.D. Fla. 2011) (internal citation and quotations omitted). While the Bureau is subject to the same discovery obligations as other parties, it is also entitled to the same protections as other parties, as well as special privileges enjoyed by the Government. S.E.C. v. Merkin, 283 F.R.D. 689, 694 (S.D. Fla. 2012). Thus, witnesses cannot be required to disclose mental impressions, case strategies, or legal opinions. U.S. ex rel. Baklid-Kunz v. Halifax [REDACTED] Med. Ctr., No. 6:09-cv-1002-Orl-31TBS, 2012 WL 3537070, at *4 (M.D. Fla. Aug. 14, 2012); S.E.C. v. Rosenfeld, No. 97 CIV. 1467 (RPP), 1997 WL 576021, at *3


(S.D.N.Y. Sept. 16, 1997). However, factual matters are subject to inquiry even if those matters have been disclosed in interrogatory responses. F.D.I.C. v. Brudnicki, No. 5:12-cv-00398-RS-GRJ, 2013 WL 5814494, at *3 (N.D. Fla. Oct. 29, 2013). Also, the Bureau is not required to produce an attorney representative, but even if it does, Defendants may only inquire about, and that representative is only required to disclose, facts, not mental impressions or legal opinions. A.R. ex rel. Root v. _____, 304 F.R.D. 668, 670 (S.D. Fla. 2015). Also, the Bureau may assert any privileges to which it is properly entitled. Id. at 671.

Based on the foregoing, the Bureau's objection to Rule 30(b)(6) depositions is **OVERRULED**. Should there be specific objections to topics designated by Defendants, the parties are relieved from following the protocols under the Court's Standing Order. The Bureau may file motions for protective orders as to such topics after conferring with opposing counsel. Responses to such motions shall be due 7 days after service of the motion, and replies shall be due 7 days after service of the response. Should the parties desire an extension of discovery in order to complete Rule 30(b)(6) depositions of the Bureau, counsel should confer and make a proposal to the Court. Should an

extension be granted, expert disclosures and discovery will be stayed until these Rule 30(b)(6) depositions are completed.

As a separate matter, counsel for Marcus Brown has raised an issue with the Court concerning Mr. Brown's deposition. Counsel should confer regarding that issue and, if it is not resolved, submit their positions to the Court.

SO ORDERED, this 21st day of September, 2016.



RICHARD W. STORY
UNITED STATES DISTRICT JUDGE

EXHIBIT 3

Background

The Consumer Financial Protection Bureau (“CFPB”) brings this suit against numerous individuals and entities in connection with a massive debt-collection scheme. According to the CFPB, several individuals (“Debt Collectors”) created limited liability companies in Georgia and New York to perpetrate a debt-collection scheme targeting millions of consumers. The Debt Collectors allegedly used the telephone broadcast services of Defendant Global Connect to broadcast millions of threatening and false statements to consumers in telephone calls and messages.

When consumers provided their payment information, the Debt Collectors then used several payment processors to withdraw funds from the consumers’ accounts. Those payment processors include Defendants Global Payments, Pathfinder, Frontline, and EMS (collectively, “Payment Processors”). The CFPB accuses the Payment Processors, along with Global Connect, of violating the Consumer Financial Protection Act (“CFPA”), 12 U.S.C. §§ 5531, 5536(a), by providing substantial assistance to the debt collectors’ unfair or deceptive conduct (Counts VIII and X), and by engaging in unfair acts or practices (Counts IX and XI).

Presently pending are a number of sanctions motions filed by Defendants. One of those motions—Pathfinder’s Motion for Rule 11 Sanctions [352]—stands on its own. The remaining motions seek sanctions under Federal Rule of Civil Procedure (“Rule”) 37 for issues arising out of Defendants’ Rule 30(b)(6) depositions of the CFPB. The Court will provide a brief background for each of those motions.

I. Pathfinder’s Motion for Rule 11 Sanctions

In May 2015, only two months after this case was filed, Pathfinder served on the CFPB a motion for sanctions under Rule 11. (See Dkt. [352-3].) Pathfinder contended that the CFPB’s case against Pathfinder lacked a basis in law and fact, and that it was merely an exercise in government overreach. Over eighteen months later, and with fact discovery complete, the CFPB was still asserting its claims against Pathfinder. As a result, on January 4, 2017, Pathfinder filed its Motion for Rule 11 Sanctions [352] with the Court. While the particular content of the motion has changed since Pathfinder served it on the CFPB, the overarching argument is the same: the CFPB’s claims against Pathfinder are frivolous and warrant dismissal.

II. Defendants' Rule 30(b)(6) Depositions of the CFPB and Subsequent Motions for Rule 37 Sanctions

By August 2016, several Defendants had served the CFPB with Rule 30(b)(6) deposition notices. The CFPB objected to those notices, arguing that the Court should not require it to sit for 30(b)(6) depositions for three reasons: (1) the CFPB had already provided the information that Defendants were seeking in written responses to Defendants' contention interrogatories; (2) the noticed topics included inquiry into topics protected by the law enforcement and deliberative process privilege; and (3) the depositions were an improper attempt to depose the CFPB's counsel as to counsel's mental impressions and analyses. (See Dkt. [316-1] at 2.) The Court rejected those arguments and refused to categorically bar depositions of the CFPB. (See generally Dkt. [316].) The Court noted that Defendants could not depose the CFPB regarding its counsels' mental impressions, case strategies, or legal opinions, but that—at the same time—factual matters were within the bounds of inquiry. (Id. at 2-3.)

Before long, the Payment Processors and Global Connect had all served the CFPB with 30(b)(6) deposition notices. The CFPB responded with motions for protective orders, arguing that the vast majority of Defendants' noticed

topics should be stricken or narrowed. In those motions, the CFPB recycled many of the same arguments it had used in opposing the depositions in the first place. For example, it asserted that many topics were duplicative because they sought information the CFPB had already outlined in its responses to defendants' contention interrogatories. The CFPB also asserted that many topics intruded into privileged areas and would require it to divulge information protected by the work product doctrine. The CFPB was particularly concerned about being asked to marshal its evidence and to link its allegations to the specific facts that support those allegations.

In ruling on the motions for protective orders, the Court consistently permitted topics that sought the facts relevant to the CFPB's claims. To give a few examples, the Court permitted the following topics in full:

- The facts relating to the CFPB's claim that EMS knowingly provided substantial assistance to the unlawful conduct of the Debt Collectors by approving merchant applications from the Debt Collectors that were replete with indicia of fraud. (See Dkt. [343-2, 374].)
- The factual bases, including the source of those facts, for each and every allegation pleaded against Frontline in the CFPB's Complaint. (See Dkt. [342-2, 375].)
- The factual bases, for each and every one of the CFPB's

allegations or contentions set out in the Complaint pleaded against Global Connect . . . , including identifying the sources of those facts (See Dkt. [348-2, 376].)

The Court also permitted the following topics, but narrowed them to “all facts relevant to [the CFPB’s] claims against [the pertinent Defendant], including all facts that [the CFPB] could reasonably identify as exculpatory.”

- Any and all facts that the CFPB obtained about Global through its investigation and/or that the CFPB pleaded in its Complaint. (Dkt. [327-2, 371].)
- The CFPB’s investigation of Frontline regarding Frontline’s processing of transactions for the Debt Collectors, including all facts that the CFPB obtained about or concerning Frontline. (Dkt. [342-2, 375].)
- All facts within the CFPB’s knowledge related to Pathfinder’s processing of transactions for the Defendant Debt Collectors or other persons who collect debt. (Dkt. [368-2, 392].)

Each of these rulings reinforced the Court’s earlier finding that Defendants were entitled to question the CFPB about the factual underpinnings of its allegations against them.

On April 11, 2017, Global Payments took the first 30(b)(6) deposition of the CFPB. Global Payments, Frontline, and Pathfinder all took issue with the CFPB’s responses during that deposition. Because Frontline and Pathfinder

were scheduled to take the CFPB's deposition later that week, the Court held a telephone conference on the very next day, April 12, 2017. Defendants raised two broad objections to the CFPB's deposition responses. First, they objected to the CFPB witness's use of "memory aids" to deliver rote, sometimes unresponsive answers to Global Payments' questions. Second, they objected to the CFPB's counsel's extensive use of privilege objections to prevent the witness from answering questions about the facts the CFPB was relying on to support its allegations.

Responding to the second concern, the Court again reiterated that "factual support for contentions is an area of inquiry that's appropriate, it's not protected by work product." (Dkt. [397-5] at 27:24-25.) Later, the Court further clarified that point, hoping to provide guidance for the upcoming depositions:

[W]hen the question is asked, you look at what it goes to, and if it goes to an element of the claim, then that is a fair question. If it's asking the witness to analyze it beyond offering the facts then you're out of bounds and you're arguably getting over into work product

(Dkt. [397-5] at 41:1-5.) Over the following weeks, the CFPB was deposed by Frontline, Pathfinder, EMS, and Global Connect. Defendants contend that,

during each of those depositions, the problems identified during the telephone conference persisted.

As a result, there are now three motions for Rule 37 sanctions pending. The first is Global Payments, Frontline, and Pathfinder's Consolidated Motion for Rule 37 Sanctions [397], while the second and third are EMS and Global Connect's joinders in that consolidated motion [407, 418]. Together, Defendants argue that the CFPB's conduct was contrary to the Court's instructions and prevented them from taking meaningful depositions. They contend that the Court should sanction the CFPB's conduct by striking Counts VIII, IX, X, and XI.

Discussion

I. Pathfinder's Motion for Rule 11 Sanctions [352]

Pathfinder moves for sanctions under Federal Rule of Civil Procedure ("Rule") 11, which says:

By presenting to the court a pleading . . . an attorney . . . certifies that to the best of the [attorney's] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support

FED. R. CIV. P. 11(b)(1)-(3). Rule 11 empowers courts to “impose an appropriate sanction” when they determine that Rule 11(b) has been violated.

FED. R. CIV. P. 11(c)(1).

Pathfinder begins by noting the crux of the CFPB’s claims against it:

Pathfinder should have noticed the debt collectors’ excessively high chargeback rates for particular months and should have heeded those and other ongoing warning signs of fraudulent activity. It then argues that neither the CFPB’s pre-suit investigation nor discovery have revealed evidence to support those allegations. Instead, Pathfinder contends, support for the CFPB’s allegations is limited to a misleading selection of a single month of chargeback data for certain debt collectors. Pathfinder argues that the evidence clearly shows that its monitoring conduct, viewed properly as a whole, met industry standards and practices, and that the CFPB’s maintenance of its claims therefore warrants sanctions.

As the Advisory Committee Notes for Rule 11 explain, “Rule 11 motions

... should not be employed ... to test the legal sufficiency or efficacy of allegations in the pleadings” or “to emphasize the merits of a party’s position.” FED. R. CIV. P. 11 advisory committee’s notes (1993 Amendments). Yet Pathfinder’s motion does just that. It reflects a disagreement with the CFPB about its view of the evidence and the application of that evidence to the relevant law. A Rule 11 motion filed in advance of any ruling on summary judgment is not the proper procedural mechanism for the Court to resolve such a disagreement. As a result, Pathfinder’s motion is **DENIED**.

II. Defendants’ Motions for Rule 37 Sanctions [397, 407, 418]

A. Legal Standard

The pending motions implicate both Rule 37(b) and Rule 37(d). Rule 37(b) provides that a district court may impose sanctions upon a party for failure to comply with a discovery order. It says:

If a party or a party’s officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(4)—fails to obey an order to provide or permit discovery ... the court where the action is pending may issue further just orders. They may include the following:

...

(iii) striking pleadings in whole or in part

Fed. R. Civ. P. 37(b)(2)(A). Rule 37(b) gives district courts broad discretion to fashion appropriate sanctions for the violation of discovery orders. See Malauetea v. Suzuki Motor Co., Ltd., 987 F.2d 1536, 1342 (11th Cir. 1993).

At the same time, that discretion is not unlimited, and an extreme sanction requires “a willful or bad faith failure to obey a discovery order.” Id. But “when a defendant demonstrates flagrant bad faith and callous disregard of its responsibilities, the district court’s choice of the extreme sanction is not an abuse of discretion.” Emerick v. Fenick Indus., Inc., 539 F.2d 1379, 1381 (11th Cir. 1976).

As for Rule 37(d), it similarly provides that a court may order sanctions when “a party . . . or a person designated under Rule 30(b)(6) . . . fails, after being served with proper notice, to appear for that person’s deposition.” A failure to appear includes circumstances where the witness “is not knowledgeable about relevant facts, and the principal has failed to designate an available, knowledgeable, and readily identifiable witness.” Resolution Trust Corp. v. Southern Union Co., Inc., 985 F.2d 196, 197 (5th Cir. 1993). The breadth of sanctions available under Rule 37(d) is the same as those available under Rule 37(b). See FED. R. CIV. P. 37(d)(3).

B. Analysis

Across their motions, Defendants raise two arguments in support of sanctions: (1) the CFPB did not present a knowledgeable witness under Rule 30(b)(6); and (2) the CFPB's privilege and work product objections were highly improper and obstructed Defendants from receiving answers to questions that the Court had expressly identified as fair territory. Global Payments, Pathfinder, and Frontline insist that reopening the depositions would be futile, and that the only appropriate sanction is striking the claims against them. EMS and Global Connect join that position, but argue alternatively that the Court reopen their 30(b)(6) depositions. As discussed more thoroughly below, the Court finds that the CFPB's pattern of conduct warrants substantial sanctions.

A. The CFPB's Failure to Produce a Knowledgeable Witness

Defendants first argue that the CFPB consistently failed to produce a knowledgeable witness. Specifically, they argue that the witness's heavy—if not exclusive—reliance on various memory aids was improper. The CFPB responds to this argument by repeatedly noting the Court's comment during the April 12 telephone conference that the 30(b)(6) depositions were not to be

conducted as memory tests. (See Dkt. [397-5] at 4:20-25.)¹ The CFPB further contends that, given the volume of facts and documents in this case, testimony without memory aids was impossible.

Reviewing the various deposition transcripts reveals, however, that these “memory aids” are more properly characterized as scripts. At one point, Global Payments asked the CFPB’s witness to explain the CFPB’s factual understanding of what happened in Pathfinder’s underwriting of Credit Power, one of the Debt Collectors’ entities. (See Dkt. [397-2] at 68:25-69:14.) The witness then proceeded to read directly from the memory aid. (*Id.* at 69:15.) Though he was frequently interrupted by counsel, the time stamps show that the witness’s response to this single question lasted nearly forty minutes and was read, in its entirety, from the memory aid. This was hardly an isolated incident. To give another example, Global Payments’ counsel later asked the witness the following:

Q Okay. So for the first, that Global Payments knew that UDPS and CP were prohibited and high-risk merchants. What facts does the Bureau have that Global had actual knowledge of that?

¹ The cited page numbers for all transcripts refer to the page numbers in the CM/ECF headers, not the page numbers on the documents themselves.

(Id. at 206:1-5.) The witness responded by reading, practically uninterrupted, for forty five minutes. (Id. at 206:10-239:16.) The parties took a break from the deposition, and returned fifteen minutes later. The deposition resumed with an additional fifteen minutes of reading, and even that did not complete the witness's answer. (Id. at 240:7-252:20.) While these are the most egregious examples, similar ones abound throughout the transcripts. Indeed, the witness was hardly able to offer any testimony at all beyond what he read off the memory aids. And as the Defendants frequently pointed out, the readings were often unrelated to the question asked.

In the April 12 telephone conference, the Court repeatedly emphasized the importance of the witness's ability to provide a "human touch" by responding to Defendants' follow-up questions. (See, e.g., Dkt. [397-5] at 7:22-8:3.) At one point, the Court said the following:

So there's an allusion in Mr. Engel's e-mail to me today that the witness will be prepared by the CFPB to be able to address matters that aren't just memory tests, which some of the factual aspects of it are. So my expectation is that the witness would answer those questions and, for lack of a better term, the human touch questions, but would be prepared to answer those and to represent the position of the CFPB.

(Id. at 28:1-7.) Based on the transcripts, it is clear that the CFPB's witness was

not prepared to answer follow-up questions or to stray from the memory aids in any way. The Court was quite clear, both in its initial order that the CFPB sit for 30(b)(6) depositions and during the April 12 telephone conference: more was expected of the CFPB's witness than rote answers similar to what was already available to Defendants through contention interrogatories. By relying almost exclusively on the memory aids, the CFPB's witness failed to abide by the Court's instructions.

Turning away from the issue of the memory aids, Defendants also argue that the CFPB's witness was not knowledgeable because he was not prepared to testify as to any exculpatory facts. In several of the Orders ruling on the CFPB's motions for protective orders, the Court instructed the CFPB to be prepared to testify as to any facts that it "could reasonably identify as exculpatory." (See, e.g., Dkt. [371] at 2.) Despite those instructions, the CFPB repeatedly took the position that its investigation had not yielded a single exculpatory fact. For example, early in Global Payments' deposition, the following exchange took place:

Q The judge in his ruling said that the Bureau was to provide a witness who would testify as to all facts the plaintiff could reasonably identify as exculpatory. Are you familiar with

that part of the judge's ruling in your testimony here today?

A Yes.

Q What, if anything, did you do to identify exculpatory facts?

A I didn't identify any.

Q So in the 300 hours that you spent preparing for this, you didn't identify a single fact that was exculpatory as to Global Payments?

Mr. Engel: Objection. Asked and answered.

A That's correct.

(Dkt. [397-2] at 24:2-17.) This same issue cropped up again later, when the CFPB's counsel said, "our view is that there aren't any exculpatory facts. Your view is different. But we're not required beforehand to identify what you may think is exculpatory and educate a witness to provide that testimony." (Id. at 132:11-16.) Similar exchanges occurred during both Pathfinder's deposition, (see dkt. [397-4] at 80:19-23), and Global Connect's deposition, (see dkt. [418] at 44:3-14).

In other words, despite frequently reminding the Court of the immense volume of documents and facts in this case, the CFPB's position is that not a single fact is exculpatory to any of the Defendants. In asserting that position,

the CFPB takes advantage of the Court's instruction to testify about any exculpatory facts that *it* could reasonably identify. It makes the CFPB's job much easier if it simply claims to not be able to identify any such facts. But the CFPB's position is not a reasonable one. Surely, in the mass of evidence in this case, the CFPB could find *some* exculpatory evidence. Its insistence that it could not reflects an unwillingness to comply with the Court's instructions and a bad faith attempt to frustrate the purpose of Defendants' depositions. At the very least, the CFPB's refusal to testify about any exculpatory evidence amounts to a failure to present a knowledgeable witness.

B. The CFPB's Improper Objections

Defendants next argue that the CFPB improperly relied on privilege and work product objections to prevent the witness from answering questions about the factual bases of the CFPB's claims. The CFPB responds that its production of the memory aids accomplished the task the Court set out—to apprise Defendants of what they would be up against at trial—and that anything more amounted to the impermissible marshaling of evidence.

The questions to which the CFPB lodged work product objections are too numerous to recount. But here is a selection:

- What facts are you aware of that global Payments had actual knowledge of the allegation in Paragraph 299B of the complaint? (Dkt. [397-2] at 191:4-9.)
- What facts is the Bureau aware of that Global recklessly disregarded the conduct described in Paragraph 299 of the complaint? (Id. at 192:17-21.)
- Mr. Godard, on what facts does the CFPB rely to establish that Frontline's acts were unfair? And maybe the best place to start is, which acts are we talking about? (Dkt. [397-3] at 44:1-6.)
- Does the CFPB rely on any facts to demonstrate that Frontline's practices actually caused substantial consumer harm? (Id. at 23:5-9.)
- Does the CFPB contend that Pathfinder knew that UDPS and Credit Power were collecting debts illegally? (Dkt. [397-4] at 264:9-13.)

One crucial point is that Defendants took the CFPB's deposition in the following order: Global Payments, Frontline, Pathfinder, EMS, and Global Connect. The April 12 telephone conference occurred immediately after Global Payments' deposition, and thus the Court's instructions during that conference should have guided the parties at the later depositions.

During the telephone conference, Frontline's counsel noted that the CFPB had been asked "what facts does the Bureau rely on to establish that Global Payments knew that the debt collectors were collecting debt illegally,"

and that the CFPB had instructed the witness not to answer on the basis of work product. (Dkt. [397-5] at 36:1-6.) He then noted that the CFPB lodged the same objection to a similar question asking about Global Payments' alleged reckless disregard of the fact that the debt collectors were collecting debt illegally. (Id. at 36:7-13.) The Court then had the following exchange with the CFPB's counsel:

THE COURT: Mr. Engel, why would the witness . . . not have to answer a question for the facts that—on which you're relying to establish that there was actual knowledge on the part of Global Payments?"

MR. ENGEL: If a deposition notice had asked for that information the witness would have been prepared to provide it. But this witness was a fact witness who is not in a position to make a distinction between facts that support knowledge versus recklessness.

...

THE COURT: To me, to ask, if the claim is that the defendant either knew or recklessly disregarded information or facts, if that's the contention, then to ask, well, what facts show what they actually knew, it seems to me to be a question directed specifically at the claim. It then asks, well, any facts that support that they recklessly disregarded.

I realize what you're — I guess what you're saying is that's asking the witness to figure out which facts show which of those matters. But those are essential elements of those claims and so if

one were going to testify about the facts supporting the claim . . . the fact is that would be a fact that would be relevant.

I don't know that we can plow through every one of these questions but the point is that those are facts – I think what you do is when the question is asked, you look at what it goes to, and if it goes to an element of the claim, then that is a fair question. If it's asking the witness to analyze it beyond offering the facts then you're getting out of bounds and you're arguably getting over into work product or you're getting into questions that the witness is not qualified to answer and that are subject to legitimate objections.

But so long as the inquiries are into facts that are within the knowledge of the Bureau and that are within the scope of the notice, then I think they've got to be answered. And the notice did include the facts related to the claims against, and limited to the claims, against that defendant. And so I think the example that was just given would be one where I would expect the question to be answered.

(Id. at 37:7-41:15.) On the next day, despite the Court's instructions, when Frontline's counsel asked the very questions he used as examples at the telephone conference, the CFPB asserted the same objection and instructed the witness not to answer. (Dkt. [397-3] at 19:21-20:8.)

That blatant disregard for the Court's instruction is reflective of a larger problem. The parties have been litigating issues related to the CFPB's 30(b)(6) depositions for quite some time. The Court has consistently held that the CFPB

was obligated to sit for those depositions, and that it needed to produce a witness prepared to apprise the Defendants of the facts they would face at trial. But the CFPB has put up as much opposition as possible at every turn. And in doing so, it has recycled many of the same arguments over and over. The deposition transcripts show that the CFPB's approach comes in two forms. The first is to bury the Defendants in so much information that it cannot possibly identify, with any reasonable particularity, what supports the CFPB's claims. The second is to assert privilege objections to questions that the Court has repeatedly ordered to be answered. Neither form is proper, and together they demonstrate a willful disregard of the Court's instructions.

C. Conclusion

For the reasons above, the Court finds that the CFPB willfully violated the Court's repeated instructions to identify for Defendants the factual bases for its claims and that, in each deposition, it willfully failed to present a knowledgeable 30(b)(6) witness. In light of the CFPB's pattern of conduct in this case, the Court is not optimistic that reopening the depositions would be fruitful. That is especially true given the CFPB's continued use of privilege objections in response to questions that the Court expressly identified as

permissible. Thus, Defendants’ motions for Rule 37 sanctions [397, 407, 418] are all **GRANTED**. Counts VIII, IX, X, and XI are **STRICKEN**.

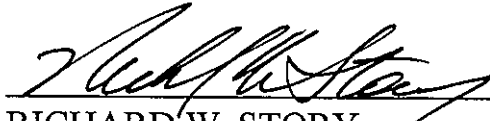
III. Frontline’s Motion for Reconsideration [409]

Frontline asks the Court to reconsider its September 1, 2015 denial of Frontline’s Motion to Dismiss. Because Count IX is now stricken, there is no need for the Court to reconsider its earlier ruling. Frontline’s motion is **DENIED as moot**.

Conclusion

As discussed above, Pathfinder’s Motion for Rule 11 Sanctions [352] is **DENIED**, but Defendants’ Motions for Rule 37 Sanctions [397, 407, 418] are all **GRANTED**. Accordingly, Counts VIII, IX, X, and XI of the Complaint are **STRICKEN**, and Frontline’s Motion for Reconsideration [409] is **DENIED as moot**. Having stricken all the claims against them, the following Defendants are hereby **DISMISSED** from this action: Frontline Processing Corp.; Global Payments, Inc.; Pathfinder Payment Solutions, Inc.; Electronic Merchant Systems, Inc.; and Global Connect, LLC.

SO ORDERED, this 25th day of August, 2017.



RICHARD W. STORY
UNITED STATES DISTRICT JUDGE

EXHIBIT 4



1700 G Street NW, Washington, D.C. 20552

February 1, 2023

Via Email

Claudia M. Barrett, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
CBarrett@gibsondunn.com

Re: Bureau of Consumer Financial Protection v. Citizens Bank, N.A. (D.R.I., Case No. 1:20-cv-00044-WES-LDA)

Dear Ms. Barrett,

Enclosed please find a Bureau supplemental privilege log, which supplements Row 11 of the Bureau's December 6, 2021 privilege log. *See* Dkt. No. 60-15.

The Bureau's supplemental privilege log for Row 11 logs, on a document-by-document basis, internal Bureau emails (and their attachments) that have Assistant Regional Director John Farrell and Field Manager Robert Gutierrez in the To, From, or CC fields. The internal Bureau emails being logged on a document-by-document basis in this supplemental privilege log only relate to the 2015 exam of Citizens' credit card account management practices.

Sincerely,

/s/ Rebecca Watson
Rebecca Watson
Senior Litigation Counsel

Enclosure

CC: Eric Mothander, CFPB (via email)
Renée Orleans, CFPB (via email)
Elizabeth P. Papez, Gibson, Dunn & Crutcher LLP (via email)
Jacob T. Spencer, Gibson, Dunn & Crutcher LLP (via email)
Philip Hammersley, Gibson, Dunn & Crutcher LLP (via email)
Zachary B. Copeland, Gibson, Dunn & Crutcher LLP (via email)
Brian A. Richman, Gibson, Dunn & Crutcher LLP (via email)
Helgi C. Walker, Gibson, Dunn & Crutcher LLP (via email)
Geoffrey W. Millsom, Adler Pollock & Sheehan P.C. (via email)
Daniel J. Procaccini, Adler Pollock & Sheehan P.C. (via email)

EXHIBIT 5

BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
1	T-028767-00044119	T-028767-00044120	T-028767-00044119	T-028767-00044120	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director		2/12/2016	RE: Citizens Bank - OSP's Memo about the ARC Memo		Deliberative and pre-decisional discussion among Supervision personnel regarding an Office of Supervision Policy (OSP) attorney memorandum relating to the Action Review Committee (ARC) memorandum. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.*	Deliberative Process Privilege; Attorney Client Privilege
2	T-028767-00044121	T-028767-00044121	T-028767-00044121	T-028767-00044130	Alice Hrdy, Principal Deputy Assistant Director, Supervision Policy	John Farrell, Assistant Regional Director		2/10/2016	Citizens credit card issue	T-028767-00044122; T-028767-00044123; T-028767-00044127	Deliberative and pre-decisional discussion among Supervision personnel regarding an OSP attorney memorandum relating to the ARC memorandum. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
3	T-028767-00044122	T-028767-00044122	T-028767-00044121	T-028767-00044130	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge; Agnes Bundy Scanlan, Regional Director	2/8/2016	Citizens Bank - OSP's Memo about the ARC Memo		Deliberative and pre-decisional discussion among Supervision personnel regarding a draft OSP attorney memorandum relating to the upcoming ARC decision, attached to the privileged Bureau email described in Row 2. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
4	T-028767-00044123	T-028767-00044126	T-028767-00044121	T-028767-00044130							Draft OSP attorney memorandum dated February 2, 2016 relating to the ARC memorandum, attached to the privileged Bureau email described in Row 3.	Attorney Client Privilege; Deliberative Process Privilege
5	T-028767-00044127	T-028767-00044130	T-028767-00044121	T-028767-00044130							Draft OSP attorney memorandum dated February 2, 2016 relating to the ARC memorandum, attached to the privileged Bureau email described in Row 3.	Attorney Client Privilege; Deliberative Process Privilege
6	T-028767-00044131	T-028767-00044131	T-028767-00044131	T-028767-00044140	Paul Sanford, Assistant Director, Office of Supervision Examinations; Timothy Siwy, Deputy Assistant Director, Office of Supervision Examinations	John Farrell, Assistant Regional Director	Agnes Bundy Scanlan, Regional Director; Robert Gutierrez, Field Manager	2/10/2016	Citizens credit card ARC - follow up	T-028767-00044132; T-028767-00044133; T-028767-00044137	Deliberative and pre-decisional discussion among Supervision personnel regarding a draft OSP attorney memorandum relating to the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
7	T-028767-00044141	T-028767-00044141	T-028767-00044141	T-028767-00044149	Robert Manager; Agnes Bundy Scanlan, Regional Director	John Farrell, Assistant Regional Director		2/9/2016	FW: Citizens Bank - OSP's Memo about the ARC Memo		Deliberative and pre-decisional discussion among Supervision personnel regarding a draft OSP attorney memorandum relating to the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
8	T-028767-00044142	T-028767-00044145	T-028767-00044141	T-028767-00044149							Draft OSP attorney memorandum dated February 2, 2016 relating to the ARC memorandum, attached to the privileged Bureau email described in Row 7.	Attorney Client Privilege; Deliberative Process Privilege
9	T-028767-00044146	T-028767-00044149	T-028767-00044141	T-028767-00044149	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director			RE: Citizens Bank - Draft ARC Memo - Exam ID 1666 For Your Review & Input		Draft OSP attorney memorandum dated February 2, 2016 relating to the ARC memorandum, attached to the privileged Bureau email described in Row 7. Deliberative and pre-decisional email chain with input from Assistant Directors concerning how to address findings presented in the draft/pre-decisional internal ARC memorandum. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
10	T-028767-00044180	T-028767-00044181	T-028767-00044180	T-028767-00044181				1/14/2016				Deliberative Process Privilege

* Investigation is the Enforcement matter that led to the filing of this lawsuit against Citizens.

* Exam is the Bureau’s 2015 supervisory exam of Citizens’ credit card account management practices.

BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
11	T-028767-00044192	T-028767-00044200	T-028767-00044191	T-028767-00044200	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Allison Baxter, Examiner	12/11/2015	FW: CFPB Credit Card PARR Letter – Citizens’ Response	T-028767-00044303	Draft internal Bureau ARC memo marked draft/pre-decisional and dated January 22, 2016, regarding the Exam*, attached to the privileged Bureau email described in Row 10. Deliberative and pre-decisional email from the Assistant Regional Director discussing Citizens’ responses to the PARR letter. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
12	T-028767-00044302	T-028767-00044302	T-028767-00044302	T-028767-00044352	Jeremy Iben, Examiner in Charge; Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Allison Baxter, Examiner	12/11/2015	FW: CFPB Credit Card PARR Letter – Citizens’ Response	T-028767-00044303	Citizens’ December 11, 2015 PARR response, attached to the privileged Bureau email described in Row 12. The Bureau is not asserting a privilege over this Citizens Bank (Citizens) document. Deliberative and pre-decisional discussion among Supervision and Enforcement personnel regarding the draft PARR letter, including attorney communication. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
13	T-028767-00044303	T-028767-00044352	T-028767-00044302	T-028767-00044352	Jeremy Iben, Examiner in Charge; Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Allison Baxter, Examiner	12/11/2015	FW: CFPB Credit Card PARR Letter – Citizens’ Response	T-028767-00044303	Citizens’ December 11, 2015 PARR response, attached to the privileged Bureau email described in Row 12. The Bureau is not asserting a privilege over this Citizens Bank (Citizens) document. Deliberative and pre-decisional discussion among Supervision and Enforcement personnel regarding the draft PARR letter, including attorney communication. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
14	T-028767-00044359	T-028767-00044361	T-028767-00044359	T-028767-00044361	Robert Gutierrez, Field Manager; Jeremy Iben, Examiner in Charge	John Farrell, Assistant Regional Director	Allison Baxter, Examiner	11/20/2015	Re: Citizens Bank (1666): Notes from Call; Please Follow-Up by Tuesday Morning	T-028767-00044366	Deliberative and pre-decisional discussion among Supervision and Enforcement personnel regarding the draft PARR letter, including attorney communication. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
15	T-028767-00044362	T-028767-00044364	T-028767-00044362	T-028767-00044364	Robert Gutierrez, Field Manager; Jeremy Iben, Examiner in Charge	John Farrell, Assistant Regional Director	Allison Baxter, Examiner	11/20/2015	Re: Citizens Bank (1666): Notes from Call; Please Follow-Up by Tuesday Morning	T-028767-00044366	Deliberative and pre-decisional discussion among Supervision and Enforcement personnel regarding the draft PARR letter, including attorney communication. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
16	T-028767-00044365	T-028767-00044365	T-028767-00044365	T-028767-00044367	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge	11/20/2015	RE: PARR Letter for the Citizens Bank – For your Review and Signature	T-028767-00044366	Deliberative and pre-decisional discussion among Supervision personnel regarding the draft PARR letter. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
17	T-028767-00044366	T-028767-00044367	T-028767-00044365	T-028767-00044367	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge	11/20/2015	RE: PARR Letter for the Citizens Bank – For your Review and Signature	T-028767-00044366	Deliberative and pre-decisional discussion among Supervision personnel regarding the draft PARR letter. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
18	T-028767-00044428	T-028767-00044430	T-028767-00044428	T-028767-00044449	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge	11/5/2015	FW: LD ADVICE: [REDACTED] Citizens Bank-EID 1666B- Due 11/12/15	T-028767-00044431	November 20, 2015 signed PARR letter, attached to the privileged Bureau email described in Row 16. The Bureau is not asserting a privilege over the November 20, 2015 PARR letter. Deliberative and pre-decisional discussion among Supervision personnel regarding a memorandum to Legal about a potential violation in the Exam, including attorney communication. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
19	T-028767-00044431	T-028767-00044449	T-028767-00044428	T-028767-00044449	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge	10/29/2015	RE: LD Advice: [REDACTED] EID 1666; Memo 1666A; DUE Nov. 5, 2015	T-028767-00044431	Draft OCC Consent Order, attached to the privileged Bureau email described in Row 18. The final OCC Consent Order was issued to Citizens on November 10, 2015.	Attorney Client Privilege; Deliberative Process Privilege
20	T-028767-00044560	T-028767-00044561	T-028767-00044560	T-028767-00044561	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge	10/29/2015	RE: LD Advice: [REDACTED] EID 1666; Memo 1666A; DUE Nov. 5, 2015	T-028767-00044561	Deliberative and pre-decisional discussion among Supervision personnel regarding legal issues about potential violations in the Exam, including OSP attorney communication. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege

* Investigation is the Enforcement matter that led to the filing of this lawsuit against Citizens.

* Exam is the Bureau’s 2015 supervisory exam of Citizens’ credit card account management practices.

BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
21	T-028767-00048015	T-028767-00048016	T-028767-00048015	T-028767-00048016	Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	3/29/2016	RE: Citizens Bank (EID # 1666): Draft Supervisory Letter with Consolidated HQ Comments/Edits		Deliberative and pre-decisional discussion among Supervision personnel regarding draft of Exam 1666 Supervisory Letter. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
22	T-028767-00048734	T-028767-00048736	T-028767-00048734	T-028767-00048736	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	2/25/2016	Re: ARC DECISION DUE COB 02/22/16 (Citizens eid.1666)		Deliberative and pre-decisional discussion among Supervision personnel regarding the ARC decision, including informing Citizens of the decision and earlier email chain from 2/22/16 with counsel about the decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
23	T-028767-00048737	T-028767-00048738	T-028767-00048737	T-028767-00048738	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	2/25/2016	FW: ARC DECISION DUE COB 02/22/16 (Citizens eid.1666)		Deliberative and pre-decisional discussion among Supervision personnel regarding the ARC decision, including informing Citizens of decision and earlier email chain from 2/22/16 with counsel about the decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
24	T-028767-00048913	T-028767-00048916	T-028767-00048913	T-028767-00048916	John Farrell, Assistant Regional Director; Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager		2/16/2016	FW: Citizens Bank (1666): 161,000 Number		Deliberative and pre-decisional discussion among Supervision personnel regarding the upcoming ARC decision, which includes email with legal analysis from a OSP attorney. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
25	T-028767-00048931	T-028767-00048934	T-028767-00048931	T-028767-00048934	Agnes Bundy Scallan, Regional Director; John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	2/13/2016	Citizens Bank - OSP's Memo about the ARC Memo	T-028767-00048935	Deliberative and pre-decisional discussion among Supervision personnel and attorney regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
26	T-028767-00048935	T-028767-00048943	T-028767-00048931	T-028767-00048943	John Farrell, Assistant Regional Director; Agnes Bundy Scallan, Regional Director; Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager			RE: Citizens Bank - OSP's Memo about the ARC Memo		Draft OSP attorney memorandum dated February 12, 2016 relating to the ARC memorandum attached to the privileged Bureau email described in Row 25.	Attorney Client Privilege; Deliberative Process Privilege
27	T-028767-00048946	T-028767-00048947	T-028767-00048946	T-028767-00048947	John Farrell, Assistant Regional Director; Agnes Bundy Scallan, Regional Director; Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager		2/12/2016	RE: Citizens Bank - OSP's Memo about the ARC Memo		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP attorney regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
28	T-028767-00049489	T-028767-00049489	T-028767-00049489	T-028767-00049573	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	2/2/2016	Fw: Citizens Bank (1666): ARC Meeting Issue Summary	T-028767-00049490; T-028767-00049501; T-028767-00049519; T-028767-00049569; T-028767-00049570	Deliberative and pre-decisional discussion among Supervision personnel regarding an OSP attorney memorandum regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege

* **Investigation** is the Enforcement matter that led to the filing of this lawsuit against Citizens.
 * **Exam** is the Bureau’s 2015 supervisory exam of Citizens’ credit card account management practices.

BCCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES_BEGIN	BATES_END	ATTACH_BEGIN	ATTACH_END	TO	FROM	CC	DATE_SENT	SUBJECT	ATTACH_BATES	DESCRIPTION	PRIVILEGES
29	T-028767-00049490	T-028767-00049500	T-028767-00049489	T-028767-00049573							Draft OSP attorney memorandum dated February 3, 2016 relating to the ARC memorandum, attached to the privileged Bureau email described in Row 28.	Attorney Client Privilege; Deliberative Process Privilege
30	T-028767-00049501	T-028767-00049518	T-028767-00049489	T-028767-00049573							Citizens document embedded in the draft memorandum described in Row 29, attached to the privileged Bureau email described in Row 28. The Bureau is not asserting a privilege over this Citizens document.	
31	T-028767-00049519	T-028767-00049568	T-028767-00049489	T-028767-00049573							Citizens document embedded in the draft memorandum described in Row 29, attached to the privileged Bureau email described in Row 28. The Bureau is not asserting a privilege over this Citizens document.	
32	T-028767-00049569	T-028767-00049569	T-028767-00049489	T-028767-00049573							Citizens document embedded in the draft memorandum described in Row 29, attached to the privileged Bureau email described in Row 28. The Bureau is not asserting a privilege over this Citizens document.	
33	T-028767-00049570	T-028767-00049573	T-028767-00049489	T-028767-00049573							Deliberative and pre-decisional discussion among Supervision personnel regarding an issue in the Exam, embedded in the draft memorandum described in Row 29, attached to the privileged Bureau email described in Row 28. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
34	T-028767-00049581	T-028767-00049581	T-028767-00049581	T-028767-00049581	John Farrell, Assistant Regional Director; Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	2/1/2016	Fw: Citizens Bank (1666): ARC Meeting		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP attorney regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
35	T-028767-00049598	T-028767-00049598	T-028767-00049598	T-028767-00049598	Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager		1/29/2016	FW: ARC meeting scheduled for 2/3		Deliberative and pre-decisional discussion among Supervision personnel regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
36	T-028767-00049600	T-028767-00049600	T-028767-00049600	T-028767-00049600	Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	1/29/2016	ARC meeting scheduled for 2/3		Deliberative and pre-decisional discussion among Supervision personnel regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
37	T-028767-00049676	T-028767-00049676	T-028767-00049676	T-028767-00049686	Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	1/21/2016	RE: ARC memo - Latest Draft	T-028767-00049677	Forwarding draft ARC memorandum recommendation and email relating to the Exam. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
38	T-028767-00049677	T-028767-00049686	T-028767-00049676	T-028767-00049686							Draft ARC memorandum recommendation relating to the Exam, attached to the privileged Bureau email described in Row 37.	Attorney Client Privilege; Deliberative Process Privilege
39	T-028767-00049716	T-028767-00049717	T-028767-00049716	T-028767-00049717	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager		1/14/2016	RE: Citizens Bank - Draft ARC Memo - Exam ID 1666 For Your Review & Input		Deliberative and pre-decisional discussion among Supervision personnel and attorney regarding the draft ARC memorandum. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege

* **Investigation** is the Enforcement matter that led to the filing of this lawsuit against Citizens.
 * **Exam** is the Bureau’s 2015 supervisory exam of Citizens’ credit card account management practices.

BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
40	T-028767-00049721	T-028767-00049722	T-028767-00049721	T-028767-00049722	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager		1/14/2016	RE: Citizens Bank - Draft ARC Memo - Exam ID 1666 For Your Review & Input		Deliberative and pre-decisional discussion among Supervision personnel and OSP attorney regarding the draft ARC memorandum. The final ARC decision on February 22, 2016 led to Enforcement opening the investigation.	Attorney Client Privilege; Deliberative Process Privilege
41	T-028767-00049895	T-028767-00049895	T-028767-00049895	T-028767-00049904	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Brian Crossland, Field Manager	1/5/2016	DRAFT ARC MEMO for Citizens Bank ID 1666	T-028767-00049896	Deliberative and pre-decisional discussion among Supervision personnel regarding the draft ARC memorandum. The final ARC decision on February 22, 2016 led to Enforcement opening the investigation.	Deliberative Process Privilege
42	T-028767-00049896	T-028767-00049904	T-028767-00049895	T-028767-00049904	Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director				Draft Supervision ARC memo		Draft ARC memorandum recommendation relating to the Exam, attached to the privileged Bureau email described in Row 41.	Attorney Client Privilege; Deliberative Process Privilege
43	T-028767-00050548	T-028767-00050550	T-028767-00050548	T-028767-00050550	Jeremy Iben, Examiner in Charge; John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge		11/20/2015	Re: Citizens Bank (1666): Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP and Enforcement counsel regarding Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
44	T-028767-00050551	T-028767-00050553	T-028767-00050551	T-028767-00050553	John Farrell, Assistant Regional Director; Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager		11/20/2015	RE: Citizens Bank (1666): Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP and Enforcement counsel regarding Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
45	T-028767-00050559	T-028767-00050561	T-028767-00050559	T-028767-00050561	John Farrell, Assistant Regional Director; Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager		11/20/2015	RE: Citizens Bank (1666): Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP and Enforcement counsel regarding Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
46	T-028767-00050562	T-028767-00050564	T-028767-00050562	T-028767-00050564	John Farrell, Assistant Regional Director; Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge		11/20/2015	Re: Citizens Bank (1666): Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP and Enforcement counsel regarding Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
47	T-028767-00050565	T-028767-00050567	T-028767-00050565	T-028767-00050567	Jeremy Iben, Examiner in Charge; John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager		11/20/2015	RE: Citizens Bank (1666): Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP and Enforcement counsel regarding Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
48	T-028767-00050568	T-028767-00050569	T-028767-00050568	T-028767-00050569	Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge		11/20/2015	Re: Citizens Bank (1666): Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP and Enforcement counsel regarding Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege

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ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
49	T-028767-00050581	T-028767-00050581	T-028767-00050581	T-028767-00050583	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	11/20/2015	PARR Letter for the Citizens Bank _ For your Review and Signature	T-028767-00050582	Deliberative and pre-decisional discussion among Supervision personnel regarding the draft PARR letter. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
50	T-028767-00050582	T-028767-00050583	T-028767-00050581	T-028767-00050583	Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director					Draft PARR letter. Final PARR letter was issued on November 20, 2015, attached to the privileged Bureau email described in Row 49.	
51	T-028767-00050652	T-028767-00050653	T-028767-00050652	T-028767-00050653	Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge		11/12/2015	Re: Citizens Bank- EID 1666B - Legal response		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP and Enforcement counsel regarding legal advice received about Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
52	T-028767-00050753	T-028767-00050754	T-028767-00050753	T-028767-00050773	Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge		11/4/2015	RE: Response to April	T-028767-00050755	Deliberative and pre-decisional discussion among Supervision personnel regarding Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
53	T-028767-00050784	T-028767-00050784	T-028767-00050784	T-028767-00050876	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge; Brian Grady, Examiner		Fw: LD ADVICE; [REDACTED]	T-028767-00050785; T-028767-00050796; T-028767-00050871	Deliberative and pre-decisional discussion among Supervision personnel regarding OSP attorney draft memorandum seeking legal advice regarding Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
54	T-028767-00050876	T-028767-00050876	T-028767-00050784	T-028767-00050876	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager					OSP attorney draft memorandum seeking legal advice regarding Exam findings, attached to the privileged Bureau email described in Row 53. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
55	T-028767-00051119	T-028767-00051121	T-028767-00051119	T-028767-00051121	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager		11/3/2015	FW: Citizens Bank (1666B): Credit Counseling		Deliberative and pre-decisional discussion among Supervision personnel regarding Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
56	T-028767-00051276	T-028767-00051277	T-028767-00051276	T-028767-00051277	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Allison Baxter, Examiner	10/29/2015	FW: LD Advice; [REDACTED]; EID 1666; Memo 1666A; DUE Nov. 5, 2015		Deliberative and pre-decisional discussion among Supervision personnel and with counsel regarding findings in Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
57	T-028767-00051278	T-028767-00051278	T-028767-00051278	T-028767-00051286	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Derrick Rheume, Continuous Supervision Examiner in Charge; Jeremy	10/29/2015	FW: Updated Scope	T-028767-00051279; T-028767-00051286	Deliberative and pre-decisional discussion among Supervision personnel regarding the scope of Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege

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58	T-028767-00051279	T-028767-00051285	T-028767-00051278	T-028767-00051286			Iben, Examiner in Charge				Draft scope summary of Exam, attached to the privileged Bureau email described in Row 57.	Deliberative Process Privilege
59	T-028767-00051287	T-028767-00051288	T-028767-00051287	T-028767-00051295	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	10/29/2015	FW: Updated Scope -Citizens Credit Card Exam	T-028767-00051289	Deliberative and pre-decisional discussion among Supervision personnel regarding the scope of Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
60	T-028767-00051289	T-028767-00051295	T-028767-00051287	T-028767-00051295						T-028767-00051297; T-028767-00051306; T-028767-00051308; T-028767-00051309; T-028767-00051311; T-028767-00051320; T-028767-00051322; T-028767-00051324; T-028767-00051328; T-028767-00051329; T-028767-00051333; T-028767-00051334	Draft scope summary of Exam, attached to the privileged Bureau email described in Row 59.	Deliberative Process Privilege
61	T-028767-00051296	T-028767-00051296	T-028767-00051296	T-028767-00051334	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	10/29/2015	FW: LD Advice: [REDACTED]; EID 1666; Memo 1666A; DUE Nov. 5, 2015		Deliberative and pre-decisional discussion among Supervision personnel regarding draft OSP attorney memorandum seeking legal advice about Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
62	T-028767-00051297	T-028767-00051305	T-028767-00051296	T-028767-00051334							Draft OSP attorney memorandum seeking legal advice regarding Exam findings, attached to the privileged Bureau email described in Row 61.	Attorney Client Privilege; Deliberative Process Privilege
63	T-028767-00051306	T-028767-00051307	T-028767-00051296	T-028767-00051334							Internal complaint spreadsheet, embedded in the draft memorandum described in Row 62, attached to the privileged Bureau email described in Row 61.	Deliberative Process Privilege
64	T-028767-00051308	T-028767-00051308	T-028767-00051296	T-028767-00051334							Bureau document request and response from Citizens, embedded in the draft memorandum described in Row 62, attached to the privileged Bureau email described in Row 61. The Bureau is not asserting a privilege over this Citizens document.	Deliberative Process Privilege
65	T-028767-00051309	T-028767-00051310	T-028767-00051296	T-028767-00051334							Citizens document, embedded in the draft memorandum described in Row 62, attached to the privileged Bureau email described in Row 61. The Bureau is not asserting a privilege over this Citizens document.	Deliberative Process Privilege
66	T-028767-00051311	T-028767-00051319	T-028767-00051296	T-028767-00051334							Citizens document, embedded in the draft memorandum described in Row 62, attached to the privileged Bureau email described in Row 61. The Bureau is not asserting a privilege over this Citizens document.	Deliberative Process Privilege

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67	T-028767-00051320	T-028767-00051321	T-028767-00051296	T-028767-00051334							Citizens document, embedded in the draft memorandum described in Row 62, attached to the privileged Bureau email described in Row 61. The Bureau is not asserting a privilege over this Citizens document.	
68	T-028767-00051322	T-028767-00051323	T-028767-00051296	T-028767-00051334							Citizens document, embedded in the draft memorandum described in Row 62, attached to the privileged Bureau email described in Row 61. The Bureau is not asserting a privilege over this Citizens document.	
69	T-028767-00051324	T-028767-00051327	T-028767-00051296	T-028767-00051334							Citizens document, embedded in the draft memorandum described in Row 62, attached to the privileged Bureau email described in Row 61. The Bureau is not asserting a privilege over this Citizens document.	
70	T-028767-00051328	T-028767-00051328	T-028767-00051296	T-028767-00051334							Citizens document, embedded in the draft memorandum described in Row 62, attached to the privileged Bureau email described in Row 61. The Bureau is not asserting a privilege over this Citizens document.	
71	T-028767-00051329	T-028767-00051332	T-028767-00051296	T-028767-00051334							Citizens document, embedded in the draft memorandum described in Row 62, attached to the privileged Bureau email described in Row 61. The Bureau is not asserting a privilege over this Citizens document.	
72	T-028767-00051335	T-028767-00051335	T-028767-00051335	T-028767-00051342	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager		10/28/2015	FW: Updated Scope	T-028767-00051336	Deliberative and pre-decisional discussion among Supervision personnel regarding the scope of Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
73	T-028767-00051336	T-028767-00051342	T-028767-00051335	T-028767-00051342							Draft scope summary of Exam, attached to the privileged Bureau email described in Row 72. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
74	T-028767-00051579	T-028767-00051579	T-028767-00051579	T-028767-00051581	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	9/29/2015	Credit Counseling Issue @ Citizens Bank	T-028767-00051580	Deliberative and pre-decisional discussion among Supervision personnel regarding an Exam finding. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
75	T-028767-00065140	T-028767-00065140	T-028767-00065140	T-028767-00065232	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge; Brian Grady, Examiner	11/4/2015	Fw: LD ADVICE: [REDACTED] Citizens Bank-EID 1666B- Due 11/12/15	T-028767-00065141; T-028767-00065152; T-028767-00065227	Deliberative and pre-decisional discussion among Supervision personnel regarding OSP memorandum to Legal about a potential violation in the Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
76	T-028767-00065141	T-028767-00065151	T-028767-00065140	T-028767-00065232							OCC letter to Citizens (9/23/2014), attached to the privileged Bureau email described in Row 75. The Bureau is not asserting a privilege over this document.	
77	T-028767-00065152	T-028767-00065226	T-028767-00065140	T-028767-00065232							Citizens document, attached to the privileged Bureau email in Row 75. The Bureau is not asserting a privilege over this document.	

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78	T-028767-00065227	T-028767-00065232	T-028767-00065140	T-028767-00065232	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Derick Rheame, Continuous Supervision Examiner in Charge; Jeremy Iben, Examiner in Charge	10/29/2015	FW: Updated Scope	T-028767-00088899; T-028767-00088906	Draft OSP memorandum to Legal about a potential violation in the Exam, attached to the privileged Bureau email described in Row 75. Deliberative and pre-decisional discussion among Supervision staff regarding the Exam scope. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
79	T-028767-00088897	T-028767-00088898	T-028767-00088897	T-028767-00088906	Jeremy Iben, Regional Director	Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director; Brian Crossland, Field Manager; Michael Mui, Analyst; Adrian Montagner, Regional Supervisor	Jeremy Iben, Examiner in Charge; Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director; Brian Crossland, Field Manager; Michael Mui, Analyst; Adrian Montagner, Regional Supervisor				Deliberative Process Privilege	
80	T-028767-00088899	T-028767-00088905	T-028767-00088897	T-028767-00088906	Nicole Levy, Examiner;	Nicole Levy, Examiner	Jeremy Iben, Examiner in Charge; Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director; Brian Crossland, Field Manager; Michael Mui, Analyst; Adrian Montagner, Regional Supervisor				Scope summary of Exam, attached to the privileged Bureau email described in Row 79.	Deliberative Process Privilege
81	T-028767-00092764	T-028767-00092765	T-028767-00092764	T-028767-00092782	Nicole Levy, Examiner; Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director; Jamie Jung, Field Manager	Nicole Levy, Examiner	Marlene Mannix, Assistant Regional Director	8/14/2015	Midpoint Vetting-- Citizen's Bank (EID)	T-028767-00092766; T-028767-00092767; T-028767-00092769; T-028767-00092777	Deliberative and pre-decisional discussion among Supervision personnel regarding the Exam midpoint. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
82	T-028767-00092766	T-028767-00092766	T-028767-00092764	T-028767-00092782	Nicole Levy, Examiner; Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director; Michael Mui, Analyst	Jeremy Iben, Examiner in Charge		9/17/2015	Mid-point Reference Docs		Deliberative and pre-decisional discussion among Supervision personnel regarding the Exam midpoint. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
83	T-028767-00092767	T-028767-00092768	T-028767-00092764	T-028767-00092782	Jeremy Iben, Regional Director; Michael Mui, Analyst	Jeremy Iben, Examiner in Charge					Draft cover letter for future Exam Supervisory Letter to Citizens, attached to the privileged Bureau email described in Row 82.	Deliberative Process Privilege
84	T-028767-00092769	T-028767-00092776	T-028767-00092764	T-028767-00092782							Draft Exam Supervisory Letter to Citizens, attached to the privileged Bureau email described in Row 82.	Deliberative Process Privilege

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85	T-028767-00092777	T-028767-00092782	T-028767-00092764	T-028767-00092782	John Farrell, Assistant Regional Director; Michael Mui, Analyst; Nicole Levy, Examiner; Brian Crossland, Field Manager	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	10/27/2015	Citizens Bank Exam - Credit Card Exam - ID 1666 - End of Exam Vetting Meeting - To be scheduled		Internal Bureau memorandum from Examiner in Charge concerning agenda and talking points for upcoming mid-point discussion for the Exam, attached the privileged Bureau email described in Row 82.	Deliberative Process Privilege
86	T-028767-00096916	T-028767-00096917	T-028767-00096916	T-028767-00096917	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	10/29/2015	FW: Updated Scope -Citizens Credit Card Exam	T-028767-00096962	Deliberative and pre-decisional discussion among Supervision personnel regarding the Exam scope. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
87	T-028767-00096960	T-028767-00096961	T-028767-00096960	T-028767-00096968	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	10/29/2015	RE: LD Advice: [REDACTED]; EID 1666; Memo 1666A; DUE Nov. 5, 2015		Deliberative and pre-decisional discussion among Supervision personnel regarding the Exam scope. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
88	T-028767-00096962	T-028767-00096968	T-028767-00096960	T-028767-00096968	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	10/29/2015	FW: LD Advice: [REDACTED]; EID 1666; Memo 1666A; DUE Nov. 5, 2015		Exam scope summary, attached to the privileged Bureau email described in Row 87.	Deliberative Process Privilege
89	T-028767-00096981	T-028767-00096982	T-028767-00096981	T-028767-00096982	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	10/29/2015	FW: LD Advice: [REDACTED]; EID 1666; Memo 1666A; DUE Nov. 5, 2015		Deliberative and pre-decisional discussion among Supervision personnel regarding legal issues about potential violations in the Exam, including OSP attorney communication. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
90	T-028767-00097166	T-028767-00097167	T-028767-00097166	T-028767-00097205	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	10/29/2015	FW: LD Advice: [REDACTED]; EID 1666; Memo 1666A; DUE Nov. 5, 2015		Deliberative and pre-decisional discussion among Supervision personnel regarding legal issues about potential violations in the Exam, including OSP attorney communication. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege

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91	T-028767-00097168	T-028767-00097176	T-028767-00097166	T-028767-00097205							Draft OSP attorney memorandum seeking legal advice regarding Exam findings, attached to the privileged Bureau email described in Row 90.	Attorney Client Privilege; Deliberative Process Privilege
92	T-028767-00097177	T-028767-00097178	T-028767-00097166	T-028767-00097205							Internal complaint spreadsheet, embedded in the draft memorandum described in Row 91, attached to the privileged Bureau email described in Row 90.	Attorney Client Privilege; Deliberative Process Privilege
93	T-028767-00097179	T-028767-00097179	T-028767-00097166	T-028767-00097205							Document request and response from Citizens, embedded in the draft memorandum described in Row 91, attached to the privileged Bureau email described in Row 90. The Bureau is not asserting a privilege over this Citizens Bank document.	
94	T-028767-00097180	T-028767-00097181	T-028767-00097166	T-028767-00097205							Citizens document, embedded in the draft memorandum described in Row 91, attached to the privileged Bureau email described in Row 90. The Bureau is not asserting a privilege over this Citizens document.	
95	T-028767-00097182	T-028767-00097190	T-028767-00097166	T-028767-00097205							Citizens document, embedded in the draft memorandum described in Row 91, attached to the privileged Bureau email described in Row 90. The Bureau is not asserting a privilege over this Citizens document.	
96	T-028767-00097191	T-028767-00097192	T-028767-00097166	T-028767-00097205							Citizens document, embedded in the draft memorandum described in Row 91, attached to the privileged Bureau email described in Row 90. The Bureau is not asserting a privilege over this Citizens document.	
97	T-028767-00097193	T-028767-00097194	T-028767-00097166	T-028767-00097205							Citizens document, embedded in the draft memorandum described in Row 91, attached to the privileged Bureau email described in Row 90. The Bureau is not asserting a privilege over this Citizens document.	
98	T-028767-00097195	T-028767-00097198	T-028767-00097166	T-028767-00097205							Citizens response to a document request, embedded in the draft memorandum described in Row 91, attached to the privileged Bureau email described in Row 90. The Bureau is not asserting a privilege over this Citizens document.	
99	T-028767-00097199	T-028767-00097199	T-028767-00097166	T-028767-00097205							Citizens document, embedded in the draft memorandum described in Row 91, attached to the privileged Bureau email described in Row 90. The Bureau is not asserting a privilege over this Citizens document.	
100	T-028767-00097200	T-028767-00097203	T-028767-00097166	T-028767-00097205							Deliberative and pre-decisional discussion among Supervision personnel regarding the draft PARR letter. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
101	T-028767-00097508	T-028767-00097508	T-028767-00097508	T-028767-00097510	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge	11/20/2015	RE: PARR Letter for the Citizens Bank. For your Review and Signature	T-028767-00097509	November 20, 2015 signed PARR letter, attached to the privileged Bureau email described in Row 101. The Bureau is not asserting a privilege over the November 20, 2015 PARR response.	Deliberative Process Privilege
102	T-028767-00097509	T-028767-00097510	T-028767-00097508	T-028767-00097510								

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 * **Exam** is the Bureau’s 2015 supervisory exam of Citizens’ credit card account management practices.

BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
103	T-028767-00097524	T-028767-00097526	T-028767-00097524	T-028767-00097526	Jeremy Iben, Examiner in Charge; John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager		11/20/2015	RE: Citizens Bank (1666): Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional discussion among Supervision personnel and OSP and Enforcement counsel regarding the draft PARR letter. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
104	T-028767-00097527	T-028767-00097529	T-028767-00097527	T-028767-00097529	Robert Gutierrez, Field Manager; Jeremy Iben, Examiner in Charge	John Farrell, Assistant Regional Director		11/20/2015	Re: Citizens Bank (1666): Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional discussion among Supervision personnel and OSP and Enforcement counsel regarding the draft PARR letter. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
105	T-028767-00097530	T-028767-00097533	T-028767-00097530	T-028767-00097533	Jeremy Iben, Examiner in Charge; Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director		11/20/2015	Re: Citizens Bank (1666): Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional discussion among Supervision personnel and OSP and Enforcement counsel regarding the draft PARR letter. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
106	T-028767-00097534	T-028767-00097537	T-028767-00097534	T-028767-00097537	John Farrell, Assistant Regional Director; Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager		11/20/2015	RE: Citizens Bank (1666): Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional discussion among Supervision personnel and OSP and Enforcement counsel regarding the draft PARR letter. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
107	T-028767-00097541	T-028767-00097543	T-028767-00097541	T-028767-00097543	Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager		11/20/2015	RE: Citizens Bank (1666): Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional discussion among Supervision personnel and OSP and Enforcement counsel regarding the draft PARR letter. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
108	T-028767-00097852	T-028767-00097853	T-028767-00097852	T-028767-00097853	Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	1/21/2016	RE: ARC memo - Latest Draft	T-028767-00097854	Deliberative and pre-decisional discussion among Supervision personnel regarding draft ARC memorandum recommendation of the Exam. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
109	T-028767-00097854	T-028767-00097853	T-028767-00097852	T-028767-00097853	Robert Gutierrez, Field Manager; Jeremy Iben, Examiner in Charge	John Farrell, Assistant Regional Director			Re: ARC meeting scheduled for 2/3		Draft ARC memorandum recommendation relating to the Exam, attached to the privileged Bureau email described in Row 108.	Attorney Client Privilege; Deliberative Process Privilege
110	T-028767-00097892	T-028767-00097893	T-028767-00097892	T-028767-00097893	Robert Gutierrez, Field Manager; Jeremy Iben, Examiner in Charge	John Farrell, Assistant Regional Director		1/29/2016	Re: ARC meeting scheduled for 2/3		Deliberative and pre-decisional discussion among Supervision personnel regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
111	T-028767-00097894	T-028767-00097895	T-028767-00097894	T-028767-00097895	CFPB_ARC_Request	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director; Jeremy Iben, Examiner in Charge	1/29/2016	Re: ARC meeting scheduled for 2/3		Deliberative and pre-decisional discussion among Supervision personnel regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege

* Investigation is the Enforcement matter that led to the filing of this lawsuit against Citizens.

* Exam is the Bureau’s 2015 supervisory exam of Citizens’ credit card account management practices.

BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
112	T-028767-00097898	T-028767-00097899	T-028767-00097898	T-028767-00097899	CFFP_ARC_Request	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director; Jeremy Iben, Examiner in Charge	1/29/2016	RE: ARC meeting scheduled for 2/3		Deliberative and pre-decisional discussion among Supervision personnel regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
113	T-028767-00097906	T-028767-00097906	T-028767-00097906	T-028767-00097906	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	2/1/2016	Fw: Citizens Bank (1666): ARC Meeting		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP attorney regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
114	T-028767-00098124	T-028767-00098125	T-028767-00098124	T-028767-00098125	John Farrell, Assistant Regional Director; Agnes Bundy Scanlan, Regional Director; Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager		2/12/2016	RE: Citizens Bank - OSP's Memo about the ARC Memo		Deliberative and pre-decisional discussion among Supervision personnel regarding an OSP attorney memorandum relating to the ARC memorandum. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
115	T-028767-00098258	T-028767-00098259	T-028767-00098258	T-028767-00098343	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	2/2/2016	Fw: Citizens Bank (1666): ARC Meeting Issue Summary	T-028767-00098260; T-028767-00098271; T-028767-00098289; T-028767-00098339; T-028767-00098340	Deliberative and pre-decisional discussion among Supervision personnel and OSP attorney regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
116	T-028767-00098260	T-028767-00098270	T-028767-00098258	T-028767-00098343							Draft OSP attorney memorandum dated February 3, 2016 relating to the ARC memorandum, attached to the privileged Bureau email described in Row 115. Citizens document, embedded in the draft memorandum described in Row 116, attached to the privileged Bureau email described in Row 115. The Bureau is not asserting a privilege over this Citizens document.	Attorney Client Privilege; Deliberative Process Privilege
117	T-028767-00098271	T-028767-00098288	T-028767-00098258	T-028767-00098343							Citizens document, embedded in the draft memorandum described in Row 116, attached to the privileged Bureau email described in Row 115. The Bureau is not asserting a privilege over this Citizens document.	
118	T-028767-00098289	T-028767-00098338	T-028767-00098258	T-028767-00098343							Citizens document, embedded in the draft memorandum described in Row 116, attached to the privileged Bureau email described in Row 115. The Bureau is not asserting a privilege over this Citizens document.	
119	T-028767-00098339	T-028767-00098339	T-028767-00098258	T-028767-00098343							Citizens document, embedded in the draft memorandum described in Row 116, attached to the privileged Bureau email described in Row 115. The Bureau is not asserting a privilege over this Citizens document.	
120	T-028767-00098340	T-028767-00098343	T-028767-00098258	T-028767-00098343							Deliberative and pre-decisional discussion among Supervision personnel regarding an issue in the Exam, embedded in the draft memorandum described in Row 116, attached to the privileged Bureau email described in Row 115. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings	Deliberative Process Privilege

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BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
											detailed in the Supervisory Letter issued on April 22, 2016.	
121	T-028767-00098350	T-028767-00098355	T-028767-00098350	T-028767-00098364	Agnes Bundy Scanlan, Regional Director; John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	2/13/2016	Citizens Bank - OSP's Memo about the ARC Memo	T-028767-00098356	Deliberative and pre-decisional discussion among Supervision personnel and attorney regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
122	T-028767-00098356	T-028767-00098364	T-028767-00098350	T-028767-00098364	John Farrell, Assistant Regional Director; Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager					Draft OSP attorney memorandum dated February 12, 2016 relating to the ARC memorandum, attached to the privileged Bureau email described in Row 121.	Attorney Client Privilege; Deliberative Process Privilege
123	T-028767-00098371	T-028767-00098376	T-028767-00098371	T-028767-00098376	John Farrell, Assistant Regional Director; Robert Gutierrez, Field Manager	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	2/16/2016	FW: Citizens Bank (1666): 161,000 Number		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP attorney regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
124	T-028767-00098416	T-028767-00098418	T-028767-00098416	T-028767-00098418	John Farrell, Assistant Regional Director; Robert Gutierrez, Field Manager	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	2/25/2016	FW: ARC DECISION DUE COB 02/22/16 (Citizens eid.1666)		Deliberative and pre-decisional discussion among Supervision personnel regarding the ARC decision, including informing Citizens of the decision and earlier email chain from 2/22/16 with counsel about the decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
125	T-028767-00098505	T-028767-00098507	T-028767-00098505	T-028767-00098507	John Farrell, Assistant Regional Director; Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge	2/25/2016	RE: ARC DECISION DUE COB 02/22/16 (Citizens eid.1666)		Deliberative and pre-decisional discussion among Supervision personnel regarding the ARC decision, including informing Citizens of the decision and earlier email chain from 2/22/16 with counsel about the decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
126	T-028767-00098508	T-028767-00098510	T-028767-00098508	T-028767-00098510	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	2/25/2016	Re: ARC DECISION DUE COB 02/22/16 (Citizens eid.1666)		Deliberative and pre-decisional discussion among Supervision personnel regarding the ARC decision, including informing Citizens of the decision and earlier email chain from 2/22/16 with counsel about the decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
127	T-028767-00098511	T-028767-00098512	T-028767-00098511	T-028767-00098512	Nicole Levy, Examiner; Brian Crossland, Field Manager	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge; John Farrell, Assistant Regional Director	2/29/2016	RE: Sup Letter Examples - Citizens Bank		Deliberative and pre-decisional discussion among Supervision personnel regarding the supervisory letter relating to the Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
128	T-028767-00098523	T-028767-00098526	T-028767-00098523	T-028767-00098526	Nicole Levy, Examiner; Jeremy Iben, Examiner in Charge; Brian Crossland, Field Manager	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	2/29/2016	RE: Sup Letter Examples - Citizens Bank		Deliberative and pre-decisional discussion among Supervision personnel regarding draft supervisory letter relating to the Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege

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BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
129	T-028767-00098527	T-028767-00098530	T-028767-00098527	T-028767-00098530	Robert Gutierrez, Field Manager; Nicole Levy, Examiner; Jeremy Iben, Examiner in Charge; Brian Crossland, Field Manager	John Farrell, Assistant Regional Director		2/29/2016	RE: Sup Letter Examples - Citizens Bank		Deliberative and pre-decisional discussion among Supervision personnel regarding draft supervisory letter relating to the Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
130	T-028767-00098531	T-028767-00098535	T-028767-00098531	T-028767-00098535	John Farrell, Assistant Regional Director; Nicole Levy, Examiner; Jeremy Iben, Examiner in Charge; Brian Crossland, Field Manager	Robert Gutierrez, Field Manager		2/29/2016	RE: Sup Letter Examples - Citizens Bank		Deliberative and pre-decisional discussion among Supervision personnel regarding draft supervisory letter relating to the Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
131	T-028767-00098657	T-028767-00098661	T-028767-00098657	T-028767-00098661	Agnes Bundy Scanlan, Regional Director; John Farrell, Assistant Regional Director; Brian Crossland, Field Manager; Andrew Rizkalla, Assistant Regional Director	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge	3/10/2016	FW: Citizens Bank - Credit Card Exam Update - EID#1666 -Supplemental PARR Letter Response - ARC DECISION 02/22/16		Deliberative and pre-decisional discussion among Supervision personnel regarding Citizens’ supplemental PARR response. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
132	T-028767-00098699	T-028767-00098700	T-028767-00098699	T-028767-00098700	Nicole Levy, Examiner; Brian Crossland, Field Manager	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge; John Farrell, Assistant Regional Director; Michael Mui, Analyst	3/15/2016	RE: Supervisory Letter - Citizens Bank Exam ID 1666 - Ready for Your Review		Deliberative and pre-decisional discussion among Supervision personnel regarding draft supervisory letter relating to the Exam. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
133	T-028767-00098722	T-028767-00098723	T-028767-00098722	T-028767-00098723	Nicole Levy, Examiner; Brian Crossland, Field Manager	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge; John Farrell, Assistant Regional Director; Michael Mui, Analyst	3/15/2016	RE: Supervisory Letter - Citizens Bank Exam ID 1666 - Ready for Your Review		Deliberative and pre-decisional discussion among Supervision personnel regarding draft supervisory letter relating to the Exam. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege

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ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
134	T-028767-00098755	T-028767-00098757	T-028767-00098755	T-028767-00098771	Nicole Levy, Examiner; Brian Crossland, Field Manager	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge; John Farrell, Assistant Regional Director; Michael Mui, Analyst	3/15/2016	RE: Supervisory Letter - Citizens Bank Exam ID 1666 - Ready for Your Review	T-028767-00098758	Deliberative and pre-decisional discussion among Supervision personnel regarding draft supervisory letter relating to the Exam. The Exam resulted in findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
135	T-028767-00098758	T-028767-00098771	T-028767-00098755	T-028767-00098771							Draft supervisory letter relating to the Exam, attached to the privileged Bureau email described in Row 134.	Deliberative Process Privilege
136	T-028767-00098839	T-028767-00098841	T-028767-00098839	T-028767-00098841	Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	3/29/2016	RE: Citizens Bank (EID # 1666): Draft Supervisory Letter with Consolidated HQ Comments/Edits		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP attorney regarding draft supervisory letter relating to the Exam, including comments from Enforcement attorney in the email string. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
137	T-028767-00098879	T-028767-00098881	T-028767-00098879	T-028767-00098881	Nicole Levy, Examiner; Brian Crossland, Field Manager	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge; John Farrell, Assistant Regional Director; Michael Mui, Analyst	3/31/2016	Re: For Your Review - Citizens Bank (EID # 1666): Draft Supervisory Letter incorporating Consolidated HQ Comments/Edits		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP attorney regarding draft supervisory letter relating to the Exam, including comments from Enforcement attorney in the email string. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
138	T-028767-00098901	T-028767-00098903	T-028767-00098901	T-028767-00098931	Nicole Levy, Examiner; Brian Crossland, Field Manager	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge; John Farrell, Assistant Regional Director; Michael Mui, Analyst	3/30/2016	For Your Review - Citizens Bank (EID # 1666): Draft Supervisory Letter incorporating Consolidated HQ Comments/Edits	T-028767-00098904; T-028767-00098918	Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP attorney regarding draft supervisory letter relating to the Exam, including comments from Enforcement attorney in the email string. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
139	T-028767-00098904	T-028767-00098917	T-028767-00098901	T-028767-00098931							Draft supervisory letter relating to the Exam, attached to the privileged Bureau email described in Row 138.	Attorney Client Privilege; Deliberative Process Privilege
140	T-028767-00098918	T-028767-00098931	T-028767-00098901	T-028767-00098931							Draft supervisory letter relating to the Exam, attached to the privileged Bureau email described in Row 138.	Attorney Client Privilege; Deliberative Process Privilege
141	T-028767-00098955	T-028767-00098957	T-028767-00098955	T-028767-00098971	Nicole Levy, Examiner; Brian Crossland, Field Manager	Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge; John Farrell, Assistant Regional Director; Michael Mui, Analyst; Allison Baxter, Examiner	3/31/2016	RE: For Your Review - Citizens Bank (EID # 1666): Final Draft Supervisory Letter incorporating Consolidated HQ Comments/Edits	T-028767-00098958	Deliberative and pre-decisional discussion among Supervision personnel regarding draft supervisory letter relating to the Exam, including comments from Enforcement attorney in the email string. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
142	T-028767-00098958	T-028767-00098971	T-028767-00098955	T-028767-00098971							Draft supervisory letter relating to the Exam, attached to the privileged Bureau email described in Row 141.	Attorney Client Privilege; Deliberative Process Privilege

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BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
143	T-028767-00099532	T-028767-00099535	T-028767-00099532	T-028767-00099535	John Ogilby, Analyst; Jeremy Iben, Examiner in Charge	Robert Gutierrez, Field Manager	DL_CFPB_NE AT; John Farrell, Assistant Regional Director	5/9/2016	RE: ARC related data request		Deliberative and pre-decisional discussion among Supervision personnel regarding a follow-up question about the ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
144	T-028767-00099736	T-028767-00099739	T-028767-00099736	T-028767-00099739	Nicole Levy, Examiner; Robert Gutierrez, Field Manager; Brian Crossland, Field Manager	Jeremy Iben, Examiner in Charge	John Farrell, Assistant Regional Director	2/29/2016	RE: Sup Letter. Examples - Citizens Bank		Deliberative and pre-decisional discussion among Supervision personnel regarding draft supervisory letter relating to the Exam. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
145	T-028767-00100059	T-028767-00100061	T-028767-00100059	T-028767-00100080	Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge		11/4/2015	RE: Response to April	T-028767-00100062	Deliberative and pre-decisional discussion among Supervision personnel regarding Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
146	T-028767-00100062	T-028767-00100080	T-028767-00100059	T-028767-00100080	Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge					Draft OCC Consent Order, attached to the privileged Bureau email described in Row 145. The final OCC Consent Order was issued to Citizens on November 10, 2015.	Attorney Client Privilege; Deliberative Process Privilege
147	T-028767-00100094	T-028767-00100095	T-028767-00100094	T-028767-00100095	Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge		11/12/2015	Re: Citizens Bank-EID 1666B - Legal response		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP and Enforcement counsel regarding legal advice received about Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
148	T-028767-00100144	T-028767-00100146	T-028767-00100144	T-028767-00100160	John Farrell, Assistant Regional Director; Nicole Levy, Examiner; Robert Gutierrez, Field Manager; Brian Crossland, Field Manager; Michael Mui, Analyst; Adrian Montagner, Regional Supervisor; Nicole Levy, Analyst; Marlene Mannix, Assistant Regional Director; John Ogilby, Analyst;	Jeremy Iben, Examiner in Charge		11/6/2015	RE: Final Vetting Session: Citizen's Bank (1666) Credit Card	T-028767-00100147	Deliberative and pre-decisional discussion among Supervision personnel regarding draft supervisory letter relating to the Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege

* **Investigation** is the Enforcement matter that led to the filing of this lawsuit against Citizens.
 * **Exam** is the Bureau’s 2015 supervisory exam of Citizens’ credit card account management practices.

BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
149	T-028767-00100147	T-028767-00100160	T-028767-00100144	T-028767-00100160	Andrew Rizkalla, Assistant Regional Director; Allison Baxter, Examiner						Draft supervisory letter relating to the Exam, attached to the privileged Bureau email described in Row 148.	Deliberative Process Privilege
150	T-028767-00100172	T-028767-00100174	T-028767-00100172	T-028767-00100174	Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge		11/20/2015	Re: Citizens Bank (1666); Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP and Enforcement counsel regarding the draft PARR letter. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016	Attorney Client Privilege; Deliberative Process Privilege
151	T-028767-00100175	T-028767-00100178	T-028767-00100175	T-028767-00100178	John Farrell, Assistant Regional Director; Robert Gutierrez, Field Manager	Jeremy Iben, Examiner in Charge		11/20/2015	Re: Citizens Bank (1666); Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP and Enforcement counsel regarding the draft PARR letter. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016	Attorney Client Privilege; Deliberative Process Privilege
152	T-028767-00100179	T-028767-00100182	T-028767-00100179	T-028767-00100182	Robert Gutierrez, Field Manager; John Farrell, Assistant Regional Director	Jeremy Iben, Examiner in Charge		11/20/2015	Re: Citizens Bank (1666); Notes from Call; Please Follow-Up by Tuesday Morning		Deliberative and pre-decisional email chain discussion among Supervision personnel and OSP and Enforcement counsel regarding the draft PARR letter. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016	Attorney Client Privilege; Deliberative Process Privilege
153	T-028767-00100425	T-028767-00100427	T-028767-00100425	T-028767-00100427	Nicole Levy, Examiner; Robert Gutierrez, Field Manager; Brian Crossland, Field Manager	John Farrell, Assistant Regional Director	John Farrell, Assistant Regional Director	2/29/2016	RE: Sup Letter Examples - Citizens Bank		Deliberative and pre-decisional discussion among Supervision personnel regarding draft supervisory letter relating to the Exam. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
154	T-028767-00106815	T-028767-00106815	T-028767-00106815	T-028767-00106815	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Clayton Coon, Senior Counsel, OSP; Christopher Young, Deputy Assistant Director for Supervision Policy	9/21/2015	Re: Attorney Client Privilege Question		Deliberative and pre-decisional discussion among Supervision personnel and OSP attorneys regarding a question posed by Citizens during the Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
155	T-028767-00106821	T-028767-00106822	T-028767-00106821	T-028767-00106822	Clayton Coon, Senior Counsel, OSP; John Farrell, Assistant Regional Director; Robert Gutierrez, Field Manager	Christopher Young, Deputy Assistant Director for Supervision Policy		9/22/2015	RE: Attorney Client Privilege Question		Deliberative and pre-decisional discussion among Supervision personnel and OSP attorneys regarding a question posed by Citizens during the Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege

* **Investigation** is the Enforcement matter that led to the filing of this lawsuit against Citizens.

* **Exam** is the Bureau’s 2015 supervisory exam of Citizens’ credit card account management practices.

BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
156	T-028767-00121881	T-028767-00121882	T-028767-00121881	T-028767-00121882	Christopher Young, Deputy Assistant Director for Supervision Policy; Clayton Coon, Senior Counsel, OSP; John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager		9/22/2015	RE: Attorney Client Privilege Question		Deliberative and pre-decisional discussion among Supervision personnel and OSP attorneys regarding a question posed by Citizens during the Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
157	T-028767-00121883	T-028767-00121883	T-028767-00121883	T-028767-00121883	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager		9/21/2015	Attorney Client Privilege Question		Deliberative and pre-decisional discussion among Supervision personnel regarding a question posed by Citizens during the Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
158	T-028767-00123474	T-028767-00123475	T-028767-00123474	T-028767-00123483	Robert Gutierrez, Field Manager; Agnes Bundy Scanlan, Regional Director	John Farrell, Assistant Regional Director		2/9/2016	FW: Citizens Bank - OSP's Memo about the ARC Memo	T-028767-00123476; T-028767-00123480	Deliberative and pre-decisional discussion among Supervision personnel regarding a draft OSP attorney memorandum relating to the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
159	T-028767-00123476	T-028767-00123479	T-028767-00123474	T-028767-00123483	Paul Sanford, Assistant Director, Office of Supervision Examinations; Timothy Siwy, Assistant Director, Office of Supervision Examination						Draft OSP attorney memorandum dated February 2, 2016 relating to the ARC memorandum, attached to the privileged Bureau email described in Row 158.	Attorney Client Privilege; Deliberative Process Privilege
160	T-028767-00123480	T-028767-00123483	T-028767-00123474	T-028767-00123483	John Farrell, Assistant Regional Director						Draft OSP attorney memorandum dated February 2, 2016 relating to the ARC memorandum, attached to the privileged Bureau email described in Row 158.	Attorney Client Privilege; Deliberative Process Privilege
161	T-028767-00123801	T-028767-00123801	T-028767-00123801	T-028767-00123810	Agnes Bundy Scanlan, Regional Director; Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director		2/10/2016	Citizens credit card ARC - follow up	T-028767-00123802; T-028767-00123803; T-028767-00123807	Deliberative and pre-decisional discussion among Supervision personnel regarding a draft OSP attorney memorandum relating to the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
162	T-028767-00123802	T-028767-00123802	T-028767-00123801	T-028767-00123810	John Farrell, Assistant Regional Director			2/8/2016	Citizens Bank - OSP's Memo about the ARC Memo		Deliberative and pre-decisional discussion among Supervision personnel regarding a draft OSP attorney memorandum relating to the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege
163	T-028767-00123803	T-028767-00123806	T-028767-00123801	T-028767-00123810	Robert Gutierrez, Field Manager						Draft OSP attorney memorandum dated February 2, 2016 relating to the ARC memorandum, attached to the privileged Bureau email described in Row 162.	Attorney Client Privilege; Deliberative Process Privilege
164	T-028767-00123807	T-028767-00123810	T-028767-00123801	T-028767-00123810	John Farrell, Assistant Regional Director						Draft OSP attorney memorandum dated February 2, 2016 relating to the ARC memorandum, attached to the privileged Bureau email described in Row 162.	Attorney Client Privilege; Deliberative Process Privilege
165	T-028767-00123828	T-028767-00123829	T-028767-00123828	T-028767-00123829	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director		2/12/2016	RE: Citizens Bank - OSP's Memo about the ARC Memo		Deliberative and pre-decisional discussion among Supervision personnel and OSP attorney regarding the upcoming ARC decision. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Attorney Client Privilege; Deliberative Process Privilege

* Investigation is the Enforcement matter that led to the filing of this lawsuit against Citizens.

* Exam is the Bureau’s 2015 supervisory exam of Citizens’ credit card account management practices.

BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
166	T-028767-00129240	T-028767-00129243	T-028767-00129240	T-028767-00129262	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director		11/5/2015	FW: LD ADVICE: [REDACTED] - Citizens Bank-EID 1666B- Due 11/12/15	T-028767-00129244	Deliberative and pre-decisional discussion among Supervision personnel regarding OSP memorandum to Legal about a potential violation in the Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
167	T-028767-00129244	T-028767-00129262	T-028767-00129240	T-028767-00129262	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director					Draft OCC Consent Order, attached to the privileged Bureau email described in Row 166. The final OCC Consent Order was issued to Citizens on November 10, 2015.	Attorney Client Privilege; Deliberative Process Privilege
168	T-028767-00130116	T-028767-00130116	T-028767-00130116	T-028767-00130166	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Allison Baxter, Examiner	12/11/2015	FW: CFPB Credit Card PARR Letter - Citizens' Response	T-028767-00130117	Deliberative and pre-decisional email from the Assistant Regional Director discussing Citizens' responses to the PARR letter. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
169	T-028767-00130117	T-028767-00130166	T-028767-00130116	T-028767-00130166	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director					Citizens' December 11, 2015 PARR response, attached to the privileged Bureau email described in Row 168. The Bureau is not asserting a privilege over this Citizen document.	Deliberative Process Privilege
170	T-028767-00130614	T-028767-00130614	T-028767-00130614	T-028767-00130623	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Brian Crossland, Field Manager	1/6/2016	RE: DRAFT ARC MEMO for Citizens Bank ID 1666	T-028767-00130615	Deliberative and pre-decisional discussion among Supervision regarding draft ARC memorandum recommendation of the Exam. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
171	T-028767-00130615	T-028767-00130623	T-028767-00130614	T-028767-00130623	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director					Draft ARC memorandum recommendation relating to the Exam, attached to the privileged Bureau email described in Row 170.	Attorney Client Privilege; Deliberative Process Privilege
172	T-028767-00130624	T-028767-00130625	T-028767-00130624	T-028767-00130625	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director	Brian Crossland, Field Manager	1/6/2016	RE: DRAFT ARC MEMO for Citizens Bank ID 1666		Deliberative and pre-decisional discussion among Supervision regarding draft ARC memorandum recommendation of the Exam. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
173	T-028767-00130780	T-028767-00130781	T-028767-00130780	T-028767-00130781	Robert Gutierrez, Field Manager	John Farrell, Assistant Regional Director		1/14/2016	RE: Citizens Bank - Draft ARC Memo - Exam ID 1666 For Your Review & Input		Deliberative and pre-decisional discussion among Supervision regarding draft ARC memorandum recommendation of the Exam. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
174	T-028767-00131293	T-028767-00131295	T-028767-00131293	T-028767-00131295	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager		1/14/2016	RE: Citizens Bank - Draft ARC Memo - Exam ID 1666 For Your Review & Input		Deliberative and pre-decisional discussion among Supervision regarding draft ARC memorandum recommendation of the Exam. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
175	T-028767-00131303	T-028767-00131305	T-028767-00131303	T-028767-00131305	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager		1/14/2016	RE: Citizens Bank - Draft ARC Memo - Exam ID 1666 For Your Review & Input		Deliberative and pre-decisional discussion among Supervision regarding draft ARC memorandum recommendation of the Exam. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege
176	T-028767-00132316	T-028767-00132316	T-028767-00132316	T-028767-00132323	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager		10/28/2015	FW: Updated Scope	T-028767-00132317	Deliberative and pre-decisional discussion among Supervision personnel regarding the Exam scope. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
177	T-028767-00132317	T-028767-00132323	T-028767-00132316	T-028767-00132323	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager					Exam scope summary, attached to the privileged Bureau email described in Row 176.	Deliberative Process Privilege

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BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
178	T-028767-00132405	T-028767-00132406	T-028767-00132405	T-028767-00132406	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Allison Baxter, Examiner	10/29/2015	FW: LD Advice: [REDACTED]; EID 1666; Memo 1666A; DUE Nov. 5, 2015		Deliberative and pre-decisional discussion among Supervision personnel regarding OSP memorandum to Legal about a potential violation in the Exam. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Attorney Client Privilege; Deliberative Process Privilege
179	T-028767-00132446	T-028767-00132448	T-028767-00132446	T-028767-00132448	John Farrell, Assistant Regional Director Agnes Bundy Scanlan, Regional Director; John Farrell, Assistant Regional Director; Brian Crossland, Field Manager	Robert Gutierrez, Field Manager		11/3/2015	FW: Citizens Bank (1666): Credit Counseling		Deliberative and pre-decisional discussion among Supervision personnel regarding Exam findings. The Exam resulted in the findings presented in the PARR letter issued on November 20, 2015, and the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
180	T-028767-00133114	T-028767-00133118	T-028767-00133114	T-028767-00133118	Agnes Bundy Scanlan, Regional Director; John Farrell, Assistant Regional Director; Brian Crossland, Field Manager	Robert Gutierrez, Field Manager		3/10/2016	FW: Citizens Bank - Credit Card Exam Update - EID#1666 -Supplemental PARR Letter Response - ARC DECISION 02/22/16		Deliberative and pre-decisional discussion among Supervision personnel regarding Citizens’ supplemental PARR response. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
181	T-028767-00133140	T-028767-00133144	T-028767-00133140	T-028767-00133144	Agnes Bundy Scanlan, Regional Director; Brian Crossland, Field Manager; Andrew Rizkalla, Assistant Regional Director; John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager		3/10/2016	RE: Citizens Bank - Credit Card Exam Update - EID#1666 -Supplemental PARR Letter Response - ARC DECISION 02/22/16		Deliberative and pre-decisional discussion among Supervision personnel regarding Citizens’ supplemental PARR response. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege
182	T-028767-00133146	T-028767-00133151	T-028767-00133146	T-028767-00133151	Agnes Bundy Scanlan, Regional Director; Brian Crossland, Field Manager; Andrew Rizkalla, Assistant Regional Director; John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager		3/10/2016	RE: Citizens Bank - Credit Card Exam Update - EID#1666 -Supplemental PARR Letter Response - ARC DECISION 02/22/16		Deliberative and pre-decisional discussion among Supervision personnel regarding Citizens’ supplemental PARR response. The Exam resulted in the findings detailed in the Supervisory Letter issued on April 22, 2016.	Deliberative Process Privilege

* **Investigation** is the Enforcement matter that led to the filing of this lawsuit against Citizens.
 * **Exam** is the Bureau’s 2015 supervisory exam of Citizens’ credit card account management practices.

BCFP v. Citizens, No. 20-44 (D.R.I.) – Supplemental Privilege Log (Supplementing Row 11 of the Bureau’s December 6, 2021 Log, Dkt. No. 60-15)

ROW	BATES-BEGIN	BATES-END	ATTACH-BEGIN	ATTACH-END	TO	FROM	CC	DATE-SENT	SUBJECT	ATTACH-BATES	DESCRIPTION	PRIVILEGES
183	T-028767-00135788	T-028767-00135789	T-028767-00135788	T-028767-00135789	John Farrell, Assistant Regional Director	Robert Gutierrez, Field Manager	Brian Crossland, Field Manager	1/6/2016	Re: DRAFT ARC MEMO for Citizens Bank ID 1666		Deliberative and pre-decisional discussion among Supervision regarding draft ARC memorandum recommendation of the Exam. The final ARC decision on February 22, 2016 led to Enforcement opening the Investigation.	Deliberative Process Privilege

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EXHIBIT 6

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF RHODE ISLAND**

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

CITIZENS BANK, N.A.,

Defendant.

Case No. 1:20-cv-00044-WES-LDA

Judge William E. Smith

Magistrate Judge Lincoln D. Almond

**AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION OF THE
BUREAU OF CONSUMER FINANCIAL PROTECTION**

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Defendant Citizens Bank, N.A. (“Citizens”), by and through its counsel, will take the deposition upon oral examination of the Bureau of Consumer Financial Protection (the “Bureau”), through one or more directors, or other persons who consent to testify on its behalf with respect to the deposition topics listed in Exhibit A.

Deponent	Date	Time	Location
Bureau of Consumer Financial Protection	October 24, 2022	9:00 a.m.	Washington, DC

Pursuant to Rule 30(b)(6) the Bureau must designate one or more knowledgeable persons to testify regarding each of the topics listed in Exhibit A.

The deposition will take place on October 24, 2022, beginning at 9:00 a.m. EDT at Gibson, Dunn & Crutcher, LLP, 1050 Connecticut Ave., NW, Washington, DC 20036, or at such other location as may be mutually agreed upon by counsel. The deposition will be conducted before a notary public or other officer duly authorized by law to administer oaths, and will be recorded by video, audio and stenographic means, and will continue from day to day until completed. The

deposition will be taken for purposes of discovery, for use at trial in this matter, and for any other purpose permitted under the Federal Rules of Civil Procedure or the Local Rules of this Court.

Dated: September 13, 2022

Defendant,
CITIZENS BANK, N.A.,
By its Attorneys,

/s/ Geoffrey W. Millsom

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/s/ Helgi C. Walker

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EXHIBIT A

A. DEFINITIONS

Unless otherwise defined, all words and phrases used herein shall be accorded their usual meaning and shall be interpreted in their common, ordinary sense. If it does not understand the meaning of any term used herein, the Bureau of Consumer Financial Protection should promptly seek clarification through the undersigned. As used in the Topics for Examination (“Topics”), the terms listed below shall be defined as follows and are capitalized solely for convenience; the definitions shall apply regardless of capitalization:

1. The term “ACTION” shall mean the action pending in the United States District Court for the District of Rhode Island, captioned *Bureau of Consumer Financial Protection v. Citizens Bank, N.A.*, Civil Action No. 20-cv-00044-WES-LDA.

2. The term “COMPLAINT” shall mean the Complaint that Plaintiff filed in this action on January 30, 2020 (Dkt. 1), and any amendments thereto.

3. The terms “PLAINTIFF,” “YOU,” and “YOUR” shall mean the Bureau of Consumer Financial Protection and any DIRECTOR, employee, officer, agent, parent, subsidiary, predecessor, affiliate, or successor entity and any division, area, or department of the foregoing.

4. The term “DIRECTOR” shall mean Director Rohit Chopra and any and all of his predecessors or successors in office as Director of the Bureau of Consumer Financial Protection, including special advisors, acting Directors, and purported Director Leandra English, as well as any deputy director, assistant director, or other person exercising authority delegated from the Director of the Bureau of Consumer Financial Protection.

5. The terms “DEFENDANT” and “CITIZENS” shall mean Citizens Bank, N.A., its parents, subsidiaries and affiliates, all present and former officers, representatives, employees, and

agents, including attorneys, and all other persons that act or purport to act on its behalf or under its direction or control.

6. The term “COMMUNICATION” shall mean any conveyance or transmittal of information, whether electronic, oral, or written, and including, but not limited to, conversations, meetings, telephone calls, correspondence, letters, notes, memoranda, e-mails, text messages, instant messages, or any other media that may be used to exchange or transmit information.

7. The terms “DOCUMENT” and “DOCUMENTS” shall mean each and every document and tangible thing within the meaning of the Federal Rules of Civil Procedure, including, without limitation, each and every written, typed, printed, computer-produced, photographic or other graphic matter of any kind, sound, mechanical, photographic, magnetic, electric or electronic recording or record of any kind, and any and all other means of preserving thought or expression or tangible thing from which information can be obtained, of whatever nature, whether an original or a copy, whether a draft or final version, however produced or reproduced and whether sent or received or neither. The term includes, but is not limited to, all COMMUNICATIONS (as defined herein), correspondence, memoranda, telegrams, telexes, facsimiles, transcripts, testimony, handwritten notes, calendars, books and diaries and entries therein, minutes of meetings, voice recordings, computer print-outs, computer files (including hard drives), e-mails (including PST files), computer disks, social media posts, texts, instant messages, photographs, tapes and records of all types, and any other writing, data form, compilation, other recording or mechanical reproduction from which information can be obtained or translated, if necessary, into a reasonably useable form.

8. The terms “INCLUDES” and “INCLUDING” shall mean “including but not limited to” or “including without limitation.”

9. “PERSON” and “PERSONS” mean any natural person, corporation, partnership, association, trust, joint venture, firm, or other business enterprise or legal entity, and shall include each and every natural person or entity.

10. The term “RELATING TO” shall mean, directly or indirectly, in whole or in part, mentioning, describing, pertaining to, concerning, embodying, constituting, supporting, corroborating, proving, evidencing, showing, refuting, disputing, rebutting, contradicting, controverting, being connected with, or reflecting upon the subject matter of the specific request.

11. The term “CREDIT CARD SERVICES” shall mean any practices engaged in by a business or commercial entity RELATING TO the issuance, provision, or maintenance of consumer credit cards.

12. The term “CONSUMER COMPLAINT” shall mean any DOCUMENTS, COMMUNICATIONS, or other materials that YOU have received by any means, including physical mail, electronic mail, or submission to YOUR website, from any PERSON regarding alleged misconduct, malfeasance, unfair or improper business practices, or violations of the law committed by a bank or other financial institution, including but not limited to those accessible at the following URL: <https://www.consumerfinance.gov/data-research/consumer-complaints>.

13. “Any,” “Each,” and “All” shall each be deemed to include and encompass the words “any,” “each,” and “all.”

14. “And” and “Or” shall each be deemed to include and encompass the words “and” and “or.”

15. With regard to the terms defined herein, all terms used in the singular shall include the plural, and all terms used in the plural shall include the singular.

16. The use of a verb in any tense, mood, or voice shall be construed as the use of the verb in all tenses, moods, or voices, as necessary to bring within the scope of the Request or Interrogatory all responses that might otherwise be construed to be outside of their scope.

17. Terms not specifically defined shall be given their ordinary meaning. If YOU are unable to understand the meaning of any term, YOU should immediately seek clarification through YOUR counsel.

B. INSTRUCTIONS

1. Pursuant to Federal Rule of Civil Procedure 30(b)(6), YOU shall designate and produce an individual representative or representatives, as may be required, who are knowledgeable and prepared to testify fully on YOUR behalf concerning the Topics (each a “Representative”; collectively, the “Representatives”). YOU shall provide written notice **at least ten (10) business days** before the deposition of the name(s) and employment position(s) of the Representative(s) designated to testify on YOUR behalf.

2. Each of YOUR designations of YOUR Representatives shall constitute a representation by YOU that the Representative has sufficient knowledge and authority to speak on YOUR behalf on the Topics. At the deposition, if the Representative is unable to respond to questions on the Topics for which he or she has been designated, YOU must promptly provide a substitute knowledgeable witness, even if YOUR initial designation of that Representative was made in good faith.

3. The testimony elicited during the deposition constitutes YOUR knowledge, not just the individual Representative’s knowledge. YOU must conduct a thorough investigation in response to this deposition notice and prepare YOUR Representative(s) to testify regarding the Topics with information “known or reasonably available to the organization,” pursuant to Federal Rule of Civil Procedure 30(b)(6). Accordingly, if a Representative does not have prior knowledge

about the Topics, YOU must nonetheless prepare the Representative to give knowledgeable, binding answers on those matters. “Reasonably available” information includes all documents or communications that YOU have the authority, legal right, or practical ability to obtain.

4. Any reference to an organization, including a corporation, includes its current and former officers, directors, employees, agents, and other representatives.

5. The use of the feminine, masculine or neutral genders shall include all genders.

6. References to employees, officers, directors or agents shall include both current and former employees, officers, directors, and agents.

7. The use of the term “the” shall not be construed to limit the scope of any Topic.

8. Unless otherwise indicated, the Topics cover the time period of January 1, 2010 through the present.

C. TOPICS FOR EXAMINATION

1. The alleged conduct YOU challenge in this ACTION, including the PERSONS, processes, information, and facts supporting CITIZENS’ alleged: (a) policy of permitting its employees to require consumers to return fraud affidavits; (b) failure to send each consumer a written acknowledgement of his or her billing error notice within 30 days of CITIZENS’ receipt of the notice; (c) failure to consistently refund all charges when it resolves a billing error notice or claim on unauthorized use in a consumer’s favor; and (d) failure to provide referrals to credit counseling organizations when consumers call a specific toll-free number at the BANK to obtain such referrals.

2. The PERSONS, processes, and facts YOU rely upon to bring and maintain YOUR claim(s) for civil monetary penalties from CITIZENS in this ACTION, specifically, the factors, evidence, comparators, and other information YOU consult, review, or otherwise consider in making YOUR claim(s) and demand(s) for civil monetary penalties, including with respect to

applying the statutory penalty amounts and mitigating factors, 12 U.S.C. § 5565(c)(2)-(3), in specific amounts or amounts yet to be determined, against CITIZENS.

3. The PERSONS, processes, information, and findings involved in the Supervisory Exam of CITIZENS that preceded YOUR referral of this ACTION to Bureau Enforcement and Enforcement's filing of this ACTION.

4. The scope, timing, and number of Supervisory Exams YOU conducted of CREDIT CARD SERVICES for the period January 1, 2010 to February 29, 2016.

5. The PERSONS, processes, information, and findings involved in any supervisory reviews, roll-up ratings, or Matters Requiring Attention that address or concern conduct that YOU allege or otherwise deem relevant to resolving the claims in YOUR COMPLAINT.

6. When and how YOU became aware of the alleged conduct by CITIZENS YOU challenge in this ACTION.

7. YOUR supervision, investigation, or knowledge of any acts, practices, or conduct by CITIZENS that relates to YOUR claims in this action.

8. CITIZENS' disclosure of any conduct that YOU considered in relation to YOUR claims in this ACTION.

9. The PERSONS, processes, information, and facts involved in any alleged ongoing violations of consumer financial protection laws by Citizens that YOU allege or otherwise deem relevant in this ACTION.

10. The PERSONS, processes, information, and facts supporting any allegation or claim by YOU that CITIZENS currently: (a) permits its employees to require consumers to return fraud affidavits; (b) fails to send each consumer a written acknowledgement of his or her billing error notice within 30 days of CITIZENS' receipt of the notice; (c) fails to consistently refund all

charges when it resolves a billing error notice or claim on unauthorized use in a consumer's favor; or (d) fails to provide referrals to credit counseling organizations when consumers call a specific toll-free number at the BANK to obtain such referrals.

11. Any CONSUMER COMPLAINTS relating to CITIZENS' CREDIT CARD SERVICES for the period January 1, 2010 to February 29, 2016.

12. CITIZENS' cooperation with YOUR administrative investigation of the conduct YOU alleged in this ACTION.

13. The PERSONS, processes, information and facts involved in YOUR supervision, review, assessment, knowledge or understanding of CITIZENS' voluntary payments to customers potentially affected by the conduct YOU allege in this ACTION.

14. YOUR efforts to preserve the emails or files relevant to the claims alleged in this ACTION, including the date YOU first anticipated litigation.

EXHIBIT 7

GIBSON DUNN

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October 14, 2022

VIA E-MAIL

Rebecca G. Watson
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552
(202) 435-7895
Rebecca.Watson@cfpb.gov

Re: No. 20-cv-00044, *BCFP v. Citizens Bank, N.A., D.R.I.*

Dear Ms. Watson:

This letter summarizes our meet and confer call on October 13, 2022, regarding Citizens' September 13 Rule 30(b)(6) deposition notice to the Bureau. *See* Sept. 13, 2022 Email from J. Spencer to R. Watson. Please let us know by close of business on Monday, October 17, 2022, if you believe this letter does not accurately reflect our discussion.

As an initial matter, Citizens was shocked to hear for the first time yesterday that the Bureau views any Rule 30(b)(6) deposition as objectionable and wants Citizens to withdraw its Rule 30(b)(6) deposition notice in its entirety in order to avoid further discovery delays and motions practice. Citizens advised the Bureau of its intent to take a Rule 30(b)(6) deposition over a year ago. *See* July 20, 2021 Notice of Deposition of Bureau of Consumer Financial Protection. And it graciously allowed the Bureau to complete its months-long privilege log and other discovery supplements in response to the Court's June 7, 2022 order before serving its notice and offering to negotiate dates. That notice has been in circulation for weeks, and in the interim the parties submitted a schedule with an agreed discovery cutoff in February. The Bureau's new, wholesale objection to Rule 30(b) testimony is a transparent attempt to sandbag the schedule and improperly obstruct Citizens' discovery rights.

It is also wholly improper as a matter of law. Under Federal Rule of Civil Procedure 30(a)(1), Citizens is entitled to "depose any person, including any party without leave of court except as provided in Rule 30(a)(2)." That subsection in turn provides that where, as here, a party refuses to stipulate to a deposition, the "Court *must* grant leave to the extent consistent with Rule 26(b)(1) and (2)." And Rule 30(b)(6) expressly permits a party to "name as the deponent . . . a governmental agency." The Bureau's opposition to any Rule 30(b)(6) testimony flies in the face of the plain language of these rules and the permissive nature of discovery they embody. Accordingly, during our call, we asked the Bureau to provide any authority that would support such an approach. You did not cite any authority on the call. And the objections you did reference—including and particularly your unilateral view that Rule 30(b)(6) testimony would not



be a “good use” of time—are facially insufficient grounds for refusing deposition discovery. Accordingly, and consistent with Rules 26, 30, and 37, Citizens is willing to work with the Bureau to clarify and, where appropriate, narrow the scope of the Topics in the deposition notice. But it objects to your untimely and improper request to withdraw the notice in its entirety to avoid your belated threat of further litigation designed to delay the case and prejudice Citizens’ discovery rights.

During the call you also suggested that the Bureau’s written objections to the noticed topics would entitle the Bureau to instruct any Rule 30(b)(6) witness not to answer questions based on objections other than privilege. This position likewise has no support in the rules. The Bureau must produce a witness for seven hours of testimony on Citizens’ timely notice, and may make a record of objections to the form and scope of the examination during the deposition, but may instruct a witness not to answer only questions that would require the witness to divulge privileged information. Citizens thus reserves all rights to move to compel the testimony in Citizens’ September 13, 2022 deposition notice.

Citizens’ proposals for narrowing the topics in its Rule 30(b)(6) deposition notice

As we indicated during our discussion, Citizens carefully considered your October 7, 2022 responses and objections to the existing Rule 30(b)(6) deposition notice and, in good faith, came up with proposals for narrowing the deposition topics contained in that notice in an attempt to address the Bureau’s concerns. Rather than engage those proposals for narrowing the deposition topics as the amended Rule 30 requires, you asserted that to the extent any topics are proper, they can be addressed through written discovery as opposed to a deposition. As we explained, Citizens is not required to accept the Bureau’s preference for written discovery in lieu of a deposition. Accordingly, Citizens memorializes below the current text of the noticed Rule 30(b) topics, and Citizens’ proposals for narrowing or clarifying those topics in response to the objections the Bureau served but did not negotiate in good faith as topics for deposition (rather than written) discovery. Please confirm by Monday October 17 if the Bureau will agree to prepare a witness to testify as to any the following topics:

- **Topic 1:** The alleged conduct YOU challenge in this ACTION, including the PERSONS, processes, information, and facts supporting CITIZENS’ alleged: (a) policy of permitting its employees to require consumers to return fraud affidavits; (b) failure to send each consumer a written acknowledgement of his or her billing error notice within 30 days of CITIZENS’ receipt of the notice; (c) failure to consistently refund all charges when it resolves a billing error notice or claim on unauthorized use in a consumer’s favor; and (d) failure to provide referrals to credit counseling organizations when consumers call a specific toll-free number at the BANK to obtain such referrals.
 - **Proposal:** Citizens emphasizes that it expects the Bureau only to “reasonably prepare”¹ a witness who can testify to the facts alleged in the complaint, as outlined in this topic. Citizens does not expect, nor does Citizens think it would be reasonable, for the Bureau to prepare someone to testify knowledgeably about the

¹ Indeed, throughout the meet and confer, we explained that the deposition will be governed by the Rules that require reasonable preparation, not exhaustive knowledge or a memory test.



facts of any specific consumer who was allegedly affected by the conduct at issue in this case. To the extent the Bureau believes that some information covered by this topic is privileged, it has the right to object on that basis at the deposition.

- **Topic 2:** The PERSONS, processes, and facts YOU rely upon to bring and maintain YOUR claim(s) for civil monetary penalties from CITIZENS in this ACTION, specifically, the factors, evidence, comparators, and other information YOU consult, review, or otherwise consider in making YOUR claim(s) and demand(s) for civil monetary penalties, including with respect to applying the statutory penalty amounts and mitigating factors, 12 U.S.C. § 5565(c)(2)-(3), in specific amounts or amounts yet to be determined, against CITIZENS.
 - **Proposal:** With this topic, Citizens wishes to learn about the persons involved, and the factual basis for, any civil monetary penalties the Bureau intends to seek in this case. To that end, Citizens is willing to omit the word “information.” Although you have referred Citizens to your May 13, 2021 Settlement Statement for some of this information, that statement is presently inadmissible under Federal Rule of Evidence 408. And while we appreciate your offer to produce the Settlement Statement in response to written discovery, Citizens nonetheless intends to pursue testimony on this information.
- **Topic 3:** The PERSONS, processes, information, and findings involved in the Supervisory Exam of CITIZENS that preceded YOUR referral of this ACTION to Bureau Enforcement and Enforcement’s filing of this ACTION.
 - **Proposal:** With this topic, Citizens wishes to learn about who was involved in the Supervisory Exam, as well as about each person’s role, processes, instructions, and findings. One purpose of this topic is to identify other potential deponents. Citizens is willing to omit the word “information.”
- **Topic 4:** The scope, timing, and number of Supervisory Exams YOU conducted of CREDIT CARD SERVICES for the period January 1, 2010 to February 29, 2016.
 - **Proposal:** Citizens is willing to narrow this topic to only the Supervisory Highlights referenced in your response and objection to this topic, as well as the fact of whether the Bureau conducted any exams presenting similar issues to the conduct alleged in the complaint.
- **Topic 5:** The PERSONS, processes, information, and findings involved in any supervisory reviews, roll-up ratings, or Matters Requiring Attention that address or concern conduct that YOU allege or otherwise deem relevant to resolving the claims in YOUR COMPLAINT.
 - **Proposal:** Citizens clarifies that this topic is limited to Citizens and does not encompass any other institutions. Citizens is also willing to omit the word “information” and the phrase “or other deem relevant to resolving the claims in YOUR COMPLAINT” from this topic.



- **Topic 6:** When and how YOU became aware of the alleged conduct by CITIZENS YOU challenge in this ACTION.
 - **Proposal:** Citizens is willing to narrow this topic to questions only about the period before Feb. 23, 2014. This topic is already narrow and appropriately scoped. Citizens would ask factual questions regarding, for instance, whether the Bureau during the relevant period was examining any other institutions for conduct similar to that alleged here.
- **Topic 7:** YOUR supervision, investigation, or knowledge of any acts, practices, or conduct by CITIZENS that relates to YOUR claims in this action.
 - **Proposal:** Citizens is willing to narrow this topic to the Bureau’s formal inquiries, exams, and investigations of Citizens between January 2010 and February 2014.
- **Topic 8:** CITIZENS’ disclosure of any conduct that YOU considered in relation to YOUR claims in this ACTION.
 - **Proposal:** Citizens clarifies that it is seeking to inquire only as to the *facts* of Citizens’ disclosures—not any mental impressions or attorney opinions relating to those facts.
- **Topic 9:** The PERSONS, processes, information, and facts involved in any alleged ongoing violations of consumer financial protection laws by Citizens that YOU allege or otherwise deem relevant in this ACTION.
 - **Proposal:** Because you seek a prospective injunction enjoining Citizens from violating any federal consumer financial laws, *see* Compl. ¶ 63(a), this topic is intended to determine if the Bureau has any *evidence* to support its injunction request. Citizens is willing to omit the word “information.”
- **Topic 10:** The PERSONS, processes, information, and facts supporting any allegation or claim by YOU that CITIZENS currently: (a) permits its employees to require consumers to return fraud affidavits; (b) fails to send each consumer a written acknowledgement of his or her billing error notice within 30 days of CITIZENS’ receipt of the notice; (c) fails to consistently refund all charges when it resolves a billing error notice or claim on unauthorized use in a consumer’s favor; or (d) fails to provide referrals to credit counseling organizations when consumers call a specific toll-free number at the BANK to obtain such referrals.
 - **Proposal:** Like topic 9, because you seek a prospective injunction enjoining Citizens from violating any federal consumer financial laws, *see* Compl. ¶ 63(a), topic 10 is intended to determine if the Bureau has any *evidence* to support its injunction request. Citizens is willing to omit the word “information.”
- **Topic 11:** Any CONSUMER COMPLAINTS relating to CITIZENS’ CREDIT CARD SERVICES for the period January 1, 2010 to February 29, 2016.

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- **Proposal:** The Bureau produced several hundred consumer complaints about Citizens’ conduct spanning a number of years. Citizens wishes to inquire generally about the complaints, and does not expect a witness to memorize the details of each complaint, but, Citizens is entitled to depose the Bureau about documents that the Bureau has produced.
- **Topic 12:** CITIZENS’ cooperation with YOUR administrative investigation of the conduct YOU alleged in this ACTION.
 - **Proposal:** Citizens clarifies that it is seeking to inquire only as to the *facts* of Citizens’ cooperation with the Bureau—not any mental impressions or attorney opinions relating to those facts.
- **Topic 13:** The PERSONS, processes, information and facts involved in YOUR supervision, review, assessment, knowledge or understanding of CITIZENS’ voluntary payments to customers potentially affected by the conduct YOU allege in this ACTION.
 - **Proposal:** Citizens is willing to omit the word “information.”
- **Topic 14:** YOUR efforts to preserve the emails or files relevant to the claims alleged in this ACTION, including the date YOU first anticipated litigation.
 - **Proposal:** Citizens is willing to narrow this topic to cover only the date and factual circumstances around when the Bureau first anticipated litigation.

Possible deposition dates

Citizens would like to schedule the Bureau’s Rule 30(b)(6) deposition between November 2 and 18. Please let us know what dates within that time period work for the Bureau so that we can issue an amended notice once we are able to work out the final topics.

* * *

Citizens understands that these issues must be discussed with the management at the Bureau. However, with the close of fact discovery looming, Citizens stresses that these issues must be brought to a speedy resolution. The topics in Citizens’ deposition notice are properly within the bounds of Rule 30(b)(6) and Citizens is entitled under the Federal Rules to proceed with this deposition. Accordingly, please provide your final positions on the noticed topics, as revised per the proposals listed in this letter, no later than 5 pm ET on Monday, October 17.

Citizens reserves all rights.

Sincerely,



Jacob Spencer



CC: Charles Eric Mothander, CFPB (via email)
Renée S. Orleans, CFPB (via email)
Helgi C. Walker, Gibson, Dunn & Crutcher LLP (via email)
Elizabeth P. Papez, Gibson, Dunn & Crutcher LLP (via email)
Geoffrey W. Millsom, Adler Pollock & Sheehan P.C. (via email)
Daniel J. Procaccini, Adler Pollock & Sheehan P.C. (via email)

EXHIBIT 8

**FILED UNDER SEAL
PURSUANT TO
PROTECTIVE
ORDER**

EXHIBIT 9

**FILED UNDER SEAL
PURSUANT TO
PROTECTIVE ORDER**

EXHIBIT 10

From: [Watson, Rebecca \(CFPB\)](#)
To: [Barrett, Claudia M.](#); [Mothander, Eric \(CFPB\)](#); [Orleans, Renee \(CFPB\)](#); [Swink, Matthew \(CFPB\)](#)
Cc: [Walker, Helgi C.](#); [Papez, Elizabeth P.](#); [Spencer, Jacob](#); [Richman, Brian](#); [Copeland, Zachary B.](#); [Hammersley, Philip](#); [Millsom, Geoffrey](#); [Procaccini, Daniel](#)
Subject: RE: CFPB v. Citizens Bank
Date: Friday, December 23, 2022 2:21:59 PM

[WARNING: External Email]

Dear Claudia,

We received your deposition notices for Bureau employees Robert Gutierrez, David Bleicken, and Christopher Johnson Wednesday afternoon. Despite the lengthy discovery period in this case, Citizens chose to issue these notices setting depositions at the close of discovery without consulting with the Bureau about the availability of these three witnesses.

In any event, the noticed individual depositions are not appropriate given, among other reasons, the narrow issues for discovery that the Court has identified in this case. Please notify us no later than by close of business on January 4, 2023, whether Citizens will withdraw these notices.

If Citizens refuses to withdraw its notices, the Bureau intends to file a motion for protective order. We are available to meet and confer on January 5, 2023; please provide us times when you are available that day. In advance of our meeting, and in order to make our conferral most productive, please provide us, in writing, what nonprivileged matter relevant to Citizens' defense (and within the confines of the Court's discovery orders) that Citizens maintains these three fact witnesses could provide. We look forward to hearing from you.

Thank you and happy holidays,

Rebecca

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From: Barrett, Claudia M. <CBarrett@gibsondunn.com>
Sent: Wednesday, December 21, 2022 3:05 PM
To: Watson, Rebecca (CFPB) <Rebecca.Watson@cfpb.gov>; Mothander, Eric (CFPB) <Charles.Mothander@cfpb.gov>; Orleans, Renee (CFPB) <Renee.Orleans@cfpb.gov>; Swink, Matthew (CFPB) <Matthew.Swink@cfpb.gov>
Cc: Walker, Helgi C. <HWalker@gibsondunn.com>; Papez, Elizabeth P. <EPapez@gibsondunn.com>; Spencer, Jacob <JSpencer@gibsondunn.com>; Richman, Brian <BRichman@gibsondunn.com>; Copeland, Zachary B. <ZCopeland@gibsondunn.com>; Hammersley, Philip <PHammersley@gibsondunn.com>; Millsom, Geoffrey <Gmillsom@apslaw.com>; Procaccini, Daniel <DProcaccini@apslaw.com>
Subject: CFPB v. Citizens Bank

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Rebecca and all,

Attached please find deposition notices for Bureau employees Robert Gutierrez, David Bleicken, and Christopher Johnson. Please let us know if the dates listed herein will work for these witnesses and your team.

Thanks,

Claudia

Claudia M. Barrett
Of Counsel

GIBSON DUNN

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EXHIBIT 11

From: [Watson, Rebecca \(CFPB\)](#)
To: [Barrett, Claudia M.](#); [Mothander, Eric \(CFPB\)](#); [Orleans, Renee \(CFPB\)](#); [Swink, Matthew \(CFPB\)](#)
Cc: [Walker, Helgi C.](#); [Papez, Elizabeth P.](#); [Spencer, Jacob](#); [Richman, Brian](#); [Copeland, Zachary B.](#); [Hammersley, Philip](#); [Millsom, Geoffrey](#); [Procaccini, Daniel](#)
Subject: RE: CFPB v. Citizens Bank
Date: Wednesday, January 18, 2023 12:26:37 PM

[WARNING: External Email]

Claudia and colleagues,

Thank you for conferring with us on January 12. We appreciated the conversation, and the additional information you provided regarding your deposition notices to Mr. Bleicken, Mr. Johnson, and Mr. Gutierrez.

Following further consideration, the Bureau continues to disagree that Citizens' deposition notices are proper, given the discovery and 30(b)(6) testimony the Bureau has already provided. Further, based on the additional information you shared during our January 12 conferral, the information Citizens represented it is now seeking is largely privileged.

We understand, based on our January 12 conferral, that you will not be withdrawing your deposition notices. As a result, the Bureau will be filing a motion for a protective order imminently.

Regards,

Rebecca

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From: Barrett, Claudia M. <CBarrett@gibsondunn.com>
Sent: Wednesday, January 18, 2023 9:29 AM
To: Watson, Rebecca (CFPB) <Rebecca.Watson@cfpb.gov>; Mothander, Eric (CFPB) <Charles.Mothander@cfpb.gov>; Orleans, Renee (CFPB) <Renee.Orleans@cfpb.gov>; Swink, Matthew (CFPB) <Matthew.Swink@cfpb.gov>
Cc: Walker, Helgi C. <HWalker@gibsondunn.com>; Papez, Elizabeth P. <EPapez@gibsondunn.com>; Spencer, Jacob <JSpencer@gibsondunn.com>; Richman, Brian <BRichman@gibsondunn.com>; Copeland, Zachary B. <ZCopeland@gibsondunn.com>; Hammersley, Philip <PHammersley@gibsondunn.com>; Millsom, Geoffrey <Gmillsom@apslaw.com>; Procaccini, Daniel <DProcaccini@apslaw.com>
Subject: RE: CFPB v. Citizens Bank

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Rebecca,

We wanted to follow up on the Bureau's position with regard to the deposition notices we discussed

at last Thursday's meet and confer. In particular, we'd like to know if the Bureau will produce Mr. Gutierrez and if so, on what date he is available, as we need to arrange a court reporter and prepare our exhibits and any further delay will unnecessarily increase costs on our side. Please also let us know whether the Bureau has been able to identify the individuals who would have personal knowledge of the facts discussed last week.

We look forward to hearing from you as soon as possible on these issues.

Thanks,
Claudia
Claudia M. Barrett
Of Counsel

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CBarrett@gibsondunn.com • www.gibsondunn.com

From: Watson, Rebecca (CFPB) <Rebecca.Watson@cfpb.gov>
Sent: Thursday, January 12, 2023 7:52 AM
To: Barrett, Claudia M. <CBarrett@gibsondunn.com>; Mothander, Eric (CFPB) <Charles.Mothander@cfpb.gov>; Orleans, Renee (CFPB) <Renee.Orleans@cfpb.gov>; Swink, Matthew (CFPB) <Matthew.Swink@cfpb.gov>
Cc: Walker, Helgi C. <HWalker@gibsondunn.com>; Papez, Elizabeth P. <EPapez@gibsondunn.com>; Spencer, Jacob <JSpencer@gibsondunn.com>; Richman, Brian <BRichman@gibsondunn.com>; Copeland, Zachary B. <ZCopeland@gibsondunn.com>; Hammersley, Philip <PHammersley@gibsondunn.com>; Millsom, Geoffrey <Gmillsom@apslaw.com>; Procaccini, Daniel <DProcaccini@apslaw.com>
Subject: RE: CFPB v. Citizens Bank

[WARNING: External Email]

Good morning Claudia, 1:30pm today works for us. I will circulate a Teams invite.

Rebecca

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From: Barrett, Claudia M. <CBarrett@gibsondunn.com>
Sent: Thursday, January 12, 2023 1:01 AM
To: Watson, Rebecca (CFPB) <Rebecca.Watson@cfpb.gov>; Mothander, Eric (CFPB) <Charles.Mothander@cfpb.gov>; Orleans, Renee (CFPB) <Renee.Orleans@cfpb.gov>; Swink, Matthew (CFPB) <Matthew.Swink@cfpb.gov>
Cc: Walker, Helgi C. <HWalker@gibsondunn.com>; Papez, Elizabeth P. <EPapez@gibsondunn.com>;

Spencer, Jacob <JSpencer@gibsondunn.com>; Richman, Brian <BRichman@gibsondunn.com>; Copeland, Zachary B. <ZCopeland@gibsondunn.com>; Hammersley, Philip <PHammersley@gibsondunn.com>; Millsom, Geoffrey <Gmillsom@apslaw.com>; Procaccini, Daniel <DProcaccini@apslaw.com>

Subject: RE: CFPB v. Citizens Bank

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Thanks, Rebeccah, we are available on Thursday 1/12 at 1:30 p.m. if that still works for you and your team.

Claudia M. Barrett
Of Counsel

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Tel +1 202.887.3642 • Fax +1 202.530.9619
CBarrett@gibsondunn.com • www.gibsondunn.com

From: Watson, Rebeccah (CFPB) <Rebeccah.Watson@cfpb.gov>

Sent: Tuesday, January 10, 2023 3:30 PM

To: Barrett, Claudia M. <CBarrett@gibsondunn.com>; Mothander, Eric (CFPB) <Charles.Mothander@cfpb.gov>; Orleans, Renee (CFPB) <Renee.Orleans@cfpb.gov>; Swink, Matthew (CFPB) <Matthew.Swink@cfpb.gov>

Cc: Walker, Helgi C. <HWalker@gibsondunn.com>; Papez, Elizabeth P. <EPapez@gibsondunn.com>; Spencer, Jacob <JSpencer@gibsondunn.com>; Richman, Brian <BRichman@gibsondunn.com>; Copeland, Zachary B. <ZCopeland@gibsondunn.com>; Hammersley, Philip <PHammersley@gibsondunn.com>; Millsom, Geoffrey <Gmillsom@apslaw.com>; Procaccini, Daniel <DProcaccini@apslaw.com>

Subject: RE: CFPB v. Citizens Bank

[WARNING: External Email]

Dear Claudia and colleagues,

We are available to confer tomorrow from 12:30-4:30pm and Thursday from 1:30-4:30pm. Per our December 23 email and our requests in the parties' January 5 conferral, we renew our request that Citizens be prepared to provide us with the information you are seeking from the depositions noticed December 21.

Thank you,

Rebeccah

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From: Barrett, Claudia M. <CBarrett@gibsondunn.com>
Sent: Tuesday, January 3, 2023 12:59 PM
To: Mothander, Eric (CFPB) <Charles.Mothander@cfpb.gov>; Watson, Rebecca (CFPB) <Rebecca.Watson@cfpb.gov>; Orleans, Renee (CFPB) <Renee.Orleans@cfpb.gov>; Swink, Matthew (CFPB) <Matthew.Swink@cfpb.gov>
Cc: Walker, Helgi C. <HWalker@gibsondunn.com>; Papez, Elizabeth P. <EPapez@gibsondunn.com>; Spencer, Jacob <JSpencer@gibsondunn.com>; Richman, Brian <BRichman@gibsondunn.com>; Copeland, Zachary B. <ZCopeland@gibsondunn.com>; Hammersley, Philip <PHammersley@gibsondunn.com>; Millsom, Geoffrey <Gmillsom@apslaw.com>; Procaccini, Daniel <DProcaccini@apslaw.com>
Subject: RE: CFPB v. Citizens Bank

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Eric, thanks for your email. We are available at 9:30am ET on Thursday to confer on the deposition notices.

Thanks,
Claudia

Claudia M. Barrett
Of Counsel

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Tel +1 202.887.3642 • Fax +1 202.530.9619
CBarrett@gibsondunn.com • www.gibsondunn.com

From: Mothander, Eric (CFPB) <Charles.Mothander@cfpb.gov>
Sent: Tuesday, January 3, 2023 12:14 PM
To: Barrett, Claudia M. <CBarrett@gibsondunn.com>; Watson, Rebecca (CFPB) <Rebecca.Watson@cfpb.gov>; Orleans, Renee (CFPB) <Renee.Orleans@cfpb.gov>; Swink, Matthew (CFPB) <Matthew.Swink@cfpb.gov>
Cc: Walker, Helgi C. <HWalker@gibsondunn.com>; Papez, Elizabeth P. <EPapez@gibsondunn.com>; Spencer, Jacob <JSpencer@gibsondunn.com>; Richman, Brian <BRichman@gibsondunn.com>; Copeland, Zachary B. <ZCopeland@gibsondunn.com>; Hammersley, Philip <PHammersley@gibsondunn.com>; Millsom, Geoffrey <Gmillsom@apslaw.com>; Procaccini, Daniel <DProcaccini@apslaw.com>
Subject: RE: CFPB v. Citizens Bank

[WARNING: External Email]

Claudia,

We are currently available from 9:30 am–2 pm for a meet and confer this Thursday (1/5). We look forward to hearing from you.

Thank you,
Eric

Eric Mothander
Attorney | Office of Enforcement
Office: (202) 435-7321
Bureau of Consumer Financial Protection
consumerfinance.gov

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From: Barrett, Claudia M. <CBarrett@gibsondunn.com>
Sent: Tuesday, December 27, 2022 3:22 PM
To: Watson, Rebecca (CFPB) <Rebecca.Watson@cfpb.gov>; Mothander, Eric (CFPB) <Charles.Mothander@cfpb.gov>; Orleans, Renee (CFPB) <Renee.Orleans@cfpb.gov>; Swink, Matthew (CFPB) <Matthew.Swink@cfpb.gov>
Cc: Walker, Helgi C. <HWalker@gibsondunn.com>; Papez, Elizabeth P. <EPapez@gibsondunn.com>; Spencer, Jacob <JSpencer@gibsondunn.com>; Richman, Brian <BRichman@gibsondunn.com>; Copeland, Zachary B. <ZCopeland@gibsondunn.com>; Hammersley, Philip <PHammersley@gibsondunn.com>; Millsom, Geoffrey <Gmillsom@apslaw.com>; Procaccini, Daniel <DProcaccini@apslaw.com>
Subject: RE: CFPB v. Citizens Bank

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Rebecca,

I hope you had a good holiday. We can be available on 1/5 to confer about the depositions. Please let us know what times work on your end so we can coordinate schedules. As to the substance of your email, we do not see any basis for the Bureau to move for a protective order to prevent the testimony of fact witnesses who have knowledge relevant to the claims and defenses in the case, and who can answer questions to which your 30(b)(6) designee was not prepared to respond.

Discovery remains ongoing and, as the Court indicated, may continue beyond February if necessary. If the issue is the dates, we are of course happy to work with your office to find mutually agreeable dates that work for both parties and the witnesses, just like we did for the 30(b)(6) deposition. To make progress next week, including on the scope issues you raised (and on which we reserve all rights), please let us know what dates these witnesses would be available so that we can issue amended notices for their testimony.

Thanks and we hope you have a Happy New Year,

Claudia

Claudia M. Barrett
Of Counsel

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Tel +1 202.887.3642 • Fax +1 202.530.9619
CBarrett@gibsondunn.com • www.gibsondunn.com

From: Watson, Rebeccah (CFPB) <Rebeccah.Watson@cfpb.gov>

Sent: Friday, December 23, 2022 2:22 PM

To: Barrett, Claudia M. <CBarrett@gibsondunn.com>; Mothander, Eric (CFPB) <Charles.Mothander@cfpb.gov>; Orleans, Renee (CFPB) <Renee.Orleans@cfpb.gov>; Swink, Matthew (CFPB) <Matthew.Swink@cfpb.gov>

Cc: Walker, Helgi C. <HWalker@gibsondunn.com>; Papez, Elizabeth P. <EPapez@gibsondunn.com>; Spencer, Jacob <JSpencer@gibsondunn.com>; Richman, Brian <BRichman@gibsondunn.com>; Copeland, Zachary B. <ZCopeland@gibsondunn.com>; Hammersley, Philip <PHammersley@gibsondunn.com>; Millsom, Geoffrey <Gmillsom@apslaw.com>; Procaccini, Daniel <DProcaccini@apslaw.com>

Subject: RE: CFPB v. Citizens Bank

[WARNING: External Email]

Dear Claudia,

We received your deposition notices for Bureau employees Robert Gutierrez, David Bleicken, and Christopher Johnson Wednesday afternoon. Despite the lengthy discovery period in this case, Citizens chose to issue these notices setting depositions at the close of discovery without consulting with the Bureau about the availability of these three witnesses.

In any event, the noticed individual depositions are not appropriate given, among other reasons, the narrow issues for discovery that the Court has identified in this case. Please notify us no later than by close of business on January 4, 2023, whether Citizens will withdraw these notices.

If Citizens refuses to withdraw its notices, the Bureau intends to file a motion for protective order. We are available to meet and confer on January 5, 2023; please provide us times when you are available that day. In advance of our meeting, and in order to make our conferral most productive, please provide us, in writing, what nonprivileged matter relevant to Citizens' defense (and within the confines of the Court's discovery orders) that Citizens maintains these three fact witnesses could provide. We look forward to hearing from you.

Thank you and happy holidays,

Rebeccah

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From: Barrett, Claudia M. <CBarrett@gibsondunn.com>
Sent: Wednesday, December 21, 2022 3:05 PM
To: Watson, Rebecca (CFPB) <Rebecca.Watson@cfpb.gov>; Mothander, Eric (CFPB) <Charles.Mothander@cfpb.gov>; Orleans, Renee (CFPB) <Renee.Orleans@cfpb.gov>; Swink, Matthew (CFPB) <Matthew.Swink@cfpb.gov>
Cc: Walker, Helgi C. <HWalker@gibsondunn.com>; Papez, Elizabeth P. <EPapez@gibsondunn.com>; Spencer, Jacob <JSpencer@gibsondunn.com>; Richman, Brian <BRichman@gibsondunn.com>; Copeland, Zachary B. <ZCopeland@gibsondunn.com>; Hammersley, Philip <PHammersley@gibsondunn.com>; Millsom, Geoffrey <Gmillsom@apslaw.com>; Procaccini, Daniel <DProcaccini@apslaw.com>
Subject: CFPB v. Citizens Bank

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Rebecca and all,

Attached please find deposition notices for Bureau employees Robert Gutierrez, David Bleicken, and Christopher Johnson. Please let us know if the dates listed herein will work for these witnesses and your team.

Thanks,
Claudia
Claudia M. Barrett
Of Counsel

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Tel +1 202.887.3642 • Fax +1 202.530.9619
CBarrett@gibsondunn.com • www.gibsondunn.com

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EXHIBIT 12

**FILED UNDER SEAL
PURSUANT TO
PROTECTIVE
ORDER**

EXHIBIT 13

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

Bureau of Consumer Financial
Protection,

Plaintiff,

v.

Citizens Bank, N.A.,

Defendant.

Case No. 1:20-cv-00044-WES-LDA

Hon. William E. Smith

Magistrate Judge Lincoln D. Almond

**PLAINTIFF'S SUPPLEMENTAL RESPONSES TO
DEFENDANT'S NOTICE OF DEPOSITION OF PLAINTIFF
PURSUANT TO RULE 30(b)(6)**

Pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff, the Bureau of Consumer Financial Protection (Bureau), hereby provides supplemental responses to the topics included in Citizens' September 13, 2022 notice of deposition of the Bureau pursuant to Fed. R. Civ. P. 30(b)(6) (Notice) by Defendant Citizens Bank, N.A. (Citizens).

PRELIMINARY STATEMENT

Pursuant to the Bureau and Citizens' agreement, as memorialized in the Bureau's October 21, 2022 letter to Citizens, the Bureau provides the following supplemental responses below. In doing so, the Bureau incorporates its preliminary statement and objections as set forth in its October 7, 2022 objections to Citizens' Notice (Objections).

SUPPLEMENTAL RESPONSES TO DEPOSITION TOPICS

Topic 2:

The PERSONS, processes, and facts YOU rely upon to bring and maintain YOUR claim(s) for civil monetary penalties from CITIZENS in this ACTION, specifically, the factors, evidence, comparators, and other information YOU consult, review, or otherwise consider in making YOUR claim(s) and demand(s) for civil monetary penalties, including with respect to applying the statutory penalty amounts and mitigating factors, 12 U.S.C. § 5565(c)(2)-(3), in specific amounts or amounts yet to be determined, against CITIZENS.

Supplemental Response to Topic 2:

The Bureau incorporates its objections to Topic 2, as set forth in its Objections. The Bureau further states the following, as previously provided to Citizens on pages 6 through 8 of the Bureau's May 13, 2021 Settlement Statement and updated to reflect penalty amounts adjusted for inflation and additional discovery the Bureau has produced to Citizens:

The Bureau is seeking civil money penalties for Citizens' prohibited conduct for each of the four categories of violations, as described in Counts I/II, III/IV, V/VI, and VII/VIII, occurring from July 21, 2011, onward.¹ As alleged in the Bureau's Complaint, Citizens' violations in this matter date back to 2010 and continued until 2016.

Under the Consumer Financial Protection Act (CFPA), any person that violates

¹ July 21, 2011 is the date consumer financial protection functions transferred from other federal agencies to the Bureau pursuant to the Dodd-Frank Act. *See* Bureau of Consumer Financial Protection, Designated Transfer Date, 75 Fed. Reg. 57,252 (Sept. 20, 2010); 12 U.S.C. § 5512.

Federal consumer financial law shall pay a civil penalty.² The statute provides for three tiers of penalties: (1) up to \$5,000 a day for each day during which such violation continues; (2) up to \$25,000 a day for each day during which a Defendant recklessly engages in a violation; and (3) up to \$1,000,000 a day for each day during which a Defendant knowingly violates the law.³ Here, Citizens engaged in each practice as follows:

- Counts I/II: failing to reasonably investigate customers' billing error notices and unauthorized use claims for 1,441 days (July 21, 2011, through June 2015);
- Counts III/IV: failing to refund finance charges and fees when customers' billing error notices and unauthorized use claims were found meritorious for 1,625 days (July 21, 2011, through December 2015);
- Counts V/VI: failing to provide required notices to customers who submitted billing error notices for 1,685 days (July 21, 2011, through February 2016); and
- Counts VII/VIII: failing to provide information regarding credit counseling organizations to customers who called its toll-free phone number designated for such information for 1,594 days (July 21, 2011, through November 2015).

Each day that Citizens engaged in each of the practices alleged in Counts I/II, III/IV, V/VI, and VII/VIII is counted separately under the CFPA when calculating the penalty. Hence, given the 6,345 days Citizens violated Federal consumer financial law, an

² 12 U.S.C. § 5565(c)(1).

³ 12 U.S.C. § 5565(c)(2).

appropriate civil penalty in this case amounts to \$32.8 million at the first penalty tier.⁴

In determining a penalty, the CFPB requires that a court consider the following mitigating factors:

- the size of financial resources and good faith of the person charged;
- the gravity of the violation or failure to pay;
- the severity of the risks to or loss of the consumers, which may take into account the number of products or services sold or provided;
- the history of previous violations; and
- such other matters as justice may require.⁵

Regarding these factors:

- Citizens recently reported over \$220 billion in total assets and is one of the fifteen largest consumer banks in the U.S.;
- Citizens began to disclose *some* of the prohibited conduct described in the Bureau's Complaint only *after* receiving an information request from the Bureau's Office of Supervision in 2015 in advance of its examination of Citizens' credit card account management practices;
- In its own January 2020 press release concerning this litigation, Citizens estimated that approximately 25,000 of its customers have been affected by the prohibited conduct described in the Bureau's Complaint; and
- Over the past decade, Citizens (previously known as RBS Citizens, N.A.) has been subject to federal agency public consent orders relating to its consumer banking practices, including 2013 consent orders with the OCC and FDIC, 2015 consent orders with the Bureau, the OCC, and the FDIC, and a separate 2015 consent order with the OCC.⁶

Finally, in response to your request for the "factors, evidence, comparators, and other information" the Bureau relies upon regarding the statutory factors for civil money penalties, the Bureau has already produced documents in discovery it anticipates

⁴ For Citizens' violations that continued past November 2, 2015, which includes Counts III, V, and VII, the Bank is subject to higher, inflation-adjusted penalty amounts: (1) up to \$6,323 a day under the first tier; (2) up to \$31,616 a day under the second tier; and (3) up to \$1,264,622 a day under the third tier. *See* 12 C.F.R. § 1083.1 (2022 inflation-adjusted amounts).

⁵ 12 U.S.C. § 5565(c)(3).

⁶ The 2013 federal actions required Citizens and a state banking affiliate to pay a total of \$10 million in civil penalties, while the 2015 actions required Citizens to pay a total of \$22.5 million in civil penalties.

relying on to support its arguments concerning those statutory factors. The Bureau disclosed to Citizens that it intends to cite public consent orders against Citizens, the Supervisory Letter relevant to the Exam, the Bureau's supervisory Roll-up Reports to Citizens, and certain materials Citizens submitted to the Bureau in connection with the Bureau's prior public enforcement action against Citizens. *See* Dkt. No. 61 at 15–16; *see also* Jun. 14, 2022 Watson letter to Spencer; Nov. 1, 2021 Watson letter to Papez. While all of these materials have been in Citizens' possession, the Bureau produced these materials to Citizens in discovery.

Topic 14:

YOUR efforts to preserve the emails or files relevant to the claims alleged in this ACTION, including the date YOU first anticipated litigation.

Supplemental Response to Topic 14:

The Bureau incorporates its objections to Topic 14 as set forth in its Objections. The Bureau further states the following: As set forth in the January 21, 2022 Declaration of Rebeccah Watson supporting the Bureau's opposition to Citizens' Motion to Dismiss, Dkt. No. 61-2 at ¶ 16: The Bureau reasonably anticipated litigation as of February 22, 2016. On that date, the Associate Director for SEFL determined that the potential violations identified by Supervision should be investigated further by the Office of Enforcement.

Dated: October 28, 2022

Respectfully submitted,

/s/ Rebeccah Watson
Rebeccah Watson (DC #989313)

Charles Eric Mothander (DC
#1032539) Renée S. Orleans (MD
Bar) *Enforcement Attorneys*
Bureau of Consumer Financial
Protection 1700 G Street, NW
Washington, DC 20552
Telephone (Watson): 202-435-7895
Telephone (Mothander): 202-435-7321
Telephone (Orleans): 202-435-7271
Fax: 202-435-7722
E-mail:
Rebeccah.Watson@cfpb.gov E-
mail: Charles.Mothander@cfpb.gov
E-mail: Renee.Orleans@cfpb.gov

Attorneys for Plaintiff

EXHIBIT 14

Bureau structure

Learn more about the divisions and organizational structure of the Bureau.

Last updated January 30, 2023



Rohit Chopra, Director

(Position is required by the [Dodd-Frank Act](https://www.congress.gov/bill/111th-congress/house-bill/4173/text) [↗](#)
(<https://www.congress.gov/bill/111th-congress/house-bill/4173/text>))

[About the Director](https://cfpb.gov/about-us/the-bureau/about-director/) (cfpb.gov/about-us/the-bureau/about-director/)

Office of the Director

Deputy Director



DEPUTY DIRECTOR

Zixta Martinez

(Position is required by the [Dodd-Frank Act](https://www.congress.gov/bill/111th-congress/house-bill/4173/text) [↗](#)
(<https://www.congress.gov/bill/111th-congress/house-bill/4173/text>))



OFFICE OF STRATEGY

Vacant, Chief Strategy Officer

The Chief Operating Officer also reports to the Deputy Director.

Chief of Staff



CHIEF OF STAFF

Jan Singelmann



DEPUTY CHIEF OF STAFF

Jocelyn Sutton



EXECUTIVE SECRETARY

Emily Ross



CHIEF TECHNOLOGIST

Erie Meyer



LEGISLATIVE AFFAIRS

Kellie Larkin, Staff Director

Other offices within the Office of the Director



OFFICE OF CIVIL RIGHTS

Melissa Brand, Assistant Director

(Office and position are required under the [Elijah E. Cummings Act](#) [↗](https://www.congress.gov/bill/116th-congress/house-bill/135) (<https://www.congress.gov/bill/116th-congress/house-bill/135>) and [EEOC regulations](#) [↗](https://www.eeoc.gov/eeoc-regulations) (<https://www.eeoc.gov/eeoc-regulations>))



OFFICE OF FAIR LENDING & EQUAL OPPORTUNITY

Patrice Ficklin, Assistant Director

(Position is required by the [Dodd-Frank Act](#) [↗](https://www.congress.gov/bill/111th-congress/house-bill/4173/text) (<https://www.congress.gov/bill/111th-congress/house-bill/4173/text>))



OFFICE OF MINORITY & WOMEN INCLUSION (OMWI)

Vacant, Assistant Director

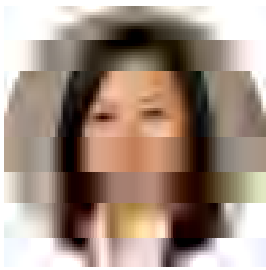
(Position is required by the [Dodd-Frank Act](#) [↗](https://www.congress.gov/bill/111th-congress/house-bill/4173/text) (<https://www.congress.gov/bill/111th-congress/house-bill/4173/text>))

Divisions

Divisions at the CFPB report directly to the Office of the Director, except for the Operations Division, which reports to the Deputy Director.

Operations

Operations is the operational support arm of the CFPB. The Chief Operating Officer reports to the Deputy Director.



CHIEF OPERATING OFFICER

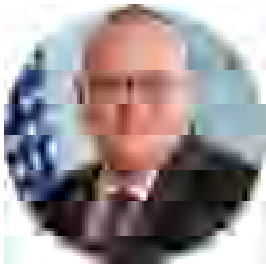
Jean Chang (Acting)



DEPUTY CHIEF OPERATING OFFICER

Katherine Sickbert (Acting)

Division offices: Operations



OFFICE OF ADMINISTRATIVE OPERATIONS

Martin Michalosky, Chief Administrative Officer



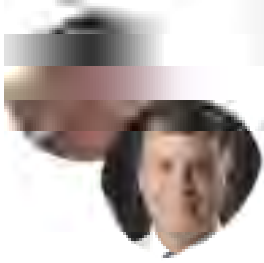
OFFICE OF HUMAN CAPITAL

Tyshawn Thomas, Chief Human Capital Officer



OFFICE OF THE CHIEF DATA OFFICER

Ren Essene, Chief Data Officer



OFFICE OF FINANCE AND PROCUREMENT

Dana James, Chief Financial Officer (Acting)
Joshua Galicki, Chief Procurement Officer (Acting)



OFFICE OF TECHNOLOGY AND INNOVATION

Chris Chilbert, Chief Information Officer

Consumer Education & External Affairs



ASSOCIATE DIRECTOR

Karen Andre



DEPUTY ASSOCIATE DIRECTOR

Vacant

Division offices: Consumer Education & External Affairs



OFFICE OF CONSUMER RESPONSE

Christopher Johnson, Assistant Director



OFFICE OF PUBLIC AFFAIRS

Sam Gilford, Chief Communications Officer and Assistant Director of Public Affairs



OFFICE OF STAKEHOLDER MANAGEMENT

Vacant, Assistant Director



OFFICE OF FINANCIAL EDUCATION

Dubis Correal, Staff Director

Legal



GENERAL COUNSEL

Seth Frotman

Division offices: Legal



FRONT OFFICE

Sonya Pass, Senior Legal Counsel and Chief of Staff



OFFICE OF GENERAL LAW & ETHICS

Sonya White, Deputy General Counsel



OFFICE OF LAW & POLICY

Rebecca Deutsch, Deputy General Counsel



OFFICE OF LITIGATION

Steven Bressler, Deputy General Counsel



OFFICE OF OVERSIGHT

Jason Powell, Deputy General Counsel

Supervision, Enforcement & Fair Lending



ASSOCIATE DIRECTOR

David Uejio (Acting)



DEPUTY ASSOCIATE DIRECTOR

David Bleicken

Division offices: Supervision, Enforcement & Fair Lending



OFFICE OF ENFORCEMENT

Eric Halperin, Assistant Director



OFFICE OF SUPERVISION EXAMINATIONS

Lorelei Salas, Assistant Director (Acting)

[Supervision regional directors \(cfpb.gov/about-us/the-bureau/bureau-structure/supervision-regional-directors/\)](https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/supervision-regional-directors/)



OFFICE OF SUPERVISION POLICY

Lorelei Salas, Assistant Director

Research, Monitoring & Regulations



ASSOCIATE DIRECTOR

Ashwin Vasan



DEPUTY ASSOCIATE DIRECTOR

Janis K. Pappalardo



DEPUTY ASSOCIATE DIRECTOR

Dan Sokolov

Division offices: Research, Monitoring & Regulations



OFFICE OF CONSUMER POPULATIONS

Desmond Brown, Principal Assistant Director



OFFICE OF RESEARCH

Jason Brown, Assistant Director



OFFICE OF REGULATIONS

Susan Bernard, Assistant Director



OFFICE OF SMALL BUSINESS LENDING MARKETS

Grady Hedgespeth, Assistant Director



OFFICE OF MORTGAGE MARKETS

Mark McArdle, Assistant Director



OFFICE OF CONSUMER CREDIT, PAYMENTS, & DEPOSITS MARKETS

John McNamara, Assistant Director



OFFICE OF COMPETITION AND INNOVATION

Ann Epstein, Associate Director



PRIVATE EDUCATION LOAN OMBUDSMAN

Robert Cameron

(Position is required by the [Dodd-Frank Act](#) [↗](#)
(<https://www.congress.gov/bill/111th-congress/house-bill/4173/text>))

Office of the Ombudsman

This office is not part of any CFPB division or the Office of the Director.

Ombudsman



OMBUDSMAN

Wendy Kamenshine

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(<https://www.congress.gov/bill/111th-congress/house-bill/4173/text>))

REQUEST SPEAKING INFO

Ask a Bureau employee to be involved in a forum, publication, discussion, or other event; or to inquire about any Bureau events.

invitations2cfpb@consumerfinance.gov

RELATED LINKS

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[Open government \(cfpb.gov/open-government\)](https://www.consumerfinance.gov/open-government/)

An official website of the United States government

EXHIBIT 15

**FILED UNDER SEAL
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PROTECTIVE
ORDER**