APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 17-56324

CONSUMER FINANCIAL PROTECTION BUREAU
Petitioner-Appellee

v.

SEILA LAW LLC,
Respondent-Appellant

Filed: May 6, 2019

Before: GRABER and WATFORD, Circuit Judges, and ZOUHARY,[*] District Judge.

OPINION

WATFORD, Circuit Judge.

The Consumer Financial Protection Bureau (CFPB) is investigating Seila Law LLC, a law firm that provides a wide range of legal services to its clients, including debt-relief services. The CFPB is seeking to determine

[*] The Honorable Jack Zouhary, United States District Judge for the Northern District of Ohio, sitting by designation.

whether Seila Law violated the Telemarketing Sales Rule, 16 C.F.R. pt. 310, in the course of providing debt-relief services to consumers. As part of its investigation, the CFPB issued a civil investigative demand (CID) to Seila Law that requires the firm to respond to seven interrogatories and four requests for documents. *See* 12 U.S.C. § 5562(c)(1). After Seila Law refused to comply with the CID, the CFPB filed a petition in the district court to enforce compliance. *See* § 5562(e)(1). The district court granted the petition and ordered Seila Law to comply with the CID, subject to one modification that the CFPB does not contest. Seila Law challenges the district court's order on two grounds, both of which we reject.

I

Seila Law's main argument is that the CFPB is unconstitutionally structured, thereby rendering the CID (and everything else the agency has done) unlawful. Specifically, Seila Law argues that the CFPB's structure violates the Constitution's separation of powers because the agency is headed by a single Director who exercises substantial executive power but can be removed by the President only for cause. The arguments for and against that view have been thoroughly canvassed in the majority, concurring, and dissenting opinions in *PHH Corp. v. CFPB*, 881 F.3d 75 (D.C. Cir. 2018) (en banc). We see no need to re-plow the same ground here. After providing a summary of the CFPB's structure, we explain in brief why we agree with the conclusion reached by the *PHH Corp.* majority.

Congress created the CFPB in 2010 when it enacted the Consumer Financial Protection Act, 12 U.S.C. §§ 5481-5603. The Act confers upon the CFPB a broad array of powers to implement and enforce federal con-

sumer financial laws, with the overarching goals of "ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive." 12 U.S.C. § 5511(a). The agency's powers include, among other things, the authority to promulgate rules (§ 5512), conduct investigations (§ 5562), adjudicate administrative enforcement proceedings (§ 5563), and file civil actions in federal court (§ 5564). Congress classified the CFPB as "an Executive agency" and chose to house it within the Federal Reserve System. § 5491(a).

The CFPB is led by a single Director appointed by the President with the advice and consent of the Senate. § 5491(b). The Director serves for a term of five years that may be extended until a successor has been appointed and confirmed. § 5491(c)(1)-(2). The Director may be removed by the President only for "inefficiency, neglect of duty, or malfeasance in office." § 5491(c)(3). A provision of this sort is commonly referred to as a "for cause" restriction on the President's removal authority.

Seila Law contends that an agency with the CFPB's broad law-enforcement powers may not be headed by a single Director removable by the President only for cause. That argument is not without force. The Director exercises substantial executive power similar to the power exercised by heads of Executive Branch departments, at least some of whom, it has long been assumed, must be removable by the President at will. The Supreme Court's separation-of-powers decisions, in particular *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), and *Morrison v. Olson*, 487 U.S. 654 (1988), nonetheless lead us to conclude that the CFPB's structure is constitutionally permissible.

In *Humphrey's Executor*, the Court rejected a separation-of-powers challenge to the structure of the Federal Trade Commission (FTC), an agency similar in character to the CFPB. The petitioner in that case argued that the FTC's structure violates Article II of the Constitution because the agency's five Commissioners, although appointed by the President with the advice and consent of the Senate, may be removed by the President only for cause. The Court rejected that argument, relying heavily on its determination that the agency exercised mostly quasi-legislative and quasi-judicial powers, rather than purely executive powers. 295 U.S. at 628, 631-32. The Court reasoned that it was permissible for Congress to decide, "in creating quasi-legislative or quasi-judicial agencies, to require them to act in discharge of their duties independently of executive control." *Id.* at 629. The for-cause removal restriction at issue there, the Court concluded, was a permissible means of ensuring that the FTC's Commissioners would "maintain an attitude of independence" from the President's control. *Id.*

This reasoning, it seems to us, applies equally to the CFPB, whose Director is subject to the same for-cause removal restriction at issue in *Humphrey's Executor*. Like the FTC, the CFPB exercises quasi-legislative and quasi-judicial powers, and Congress could therefore seek to ensure that the agency discharges those responsibilities independently of the President's will. In addition, as the *PHH Corp*. majority noted, the CFPB acts in part as a financial regulator, a role that has historically been viewed as calling for a measure of independence from Executive Branch control. 881 F.3d at 91-92.

To be sure, there are differences between the CFPB and the FTC as it existed when *Humphrey's Executor* was decided in 1935. The Court's subsequent decision in *Morrison v. Olson*, however, precludes us from relying on

those differences as a basis for distinguishing *Humphrey's Executor*.

The most prominent difference between the two agencies is that, while both exercise quasi-legislative and quasi-judicial powers, the CFPB possesses substantially more executive power than the FTC did back in 1935. But Congress has since conferred executive functions of similar scope upon the FTC, and the Court in *Morrison* suggested that this change in the mix of agency powers has not undermined the constitutionality of the FTC. *See Morrison*, 487 U.S. at 692 n.31. Indeed, in *Morrison* the Court upheld the constitutionality of a for-cause removal restriction for an official exercising one of the most significant forms of executive authority: the power to investigate and prosecute criminal wrongdoing. And more recently, in *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010), the Court left undisturbed a for-cause removal restriction for Commissioners of the Securities and Exchange Commission, who are charged with overseeing a board that exercises "significant executive power." *Id.* at 514.

The other notable difference between the two agencies is that the CFPB is headed by a single Director whereas the FTC is headed by five Commissioners. Some have found this structural difference dispositive for separation-of-powers purposes. See *PHH Corp.*, 881 F.3d at 165-66 (Kavanaugh, J., dissenting). But as the *PHH Corp.* majority noted, *see id.* at 98-99, the Supreme Court's decision in *Humphrey's Executor* did not appear to turn on the fact that the FTC was headed by five Commissioners rather than a single individual. The Court made no mention of the agency's multi-member leadership structure when analyzing the constitutional validity of the for-cause removal restriction at issue. See *Humphrey's Executor*, 295 U.S. at 626-31. And the Court's subsequent decision in

Morrison seems to preclude drawing a constitutional distinction between multi-member and single-individual leadership structures, since the Court in that case upheld a for-cause removal restriction for a prosecutorial entity headed by a single independent counsel. 487 U.S. at 696-97; *see PHH Corp.*, 881 F.3d at 113 (Tatel, J., concurring). As the *PHH Corp.* majority noted, if an agency's leadership is protected by a for-cause removal restriction, the President can arguably exert more effective control over the agency if it is headed by a single individual rather than a multi-member body. *See* 881 F.3d at 97-98.

In short, we view *Humphrey's Executor* and *Morrison* as controlling here. Those cases indicate that the for-cause removal restriction protecting the CFPB's Director does not "impede the President's ability to perform his constitutional duty" to ensure that the laws are faithfully executed. *Morrison*, 487 U.S. at 691. The Supreme Court is of course free to revisit those precedents, but we are not.

II

Seila Law next argues that the CFPB lacked statutory authority to issue the CID. It asserts two separate grounds in support of this argument.

First, Seila Law contends that the CID violates the Consumer Financial Protection Act's practice-of-law exclusion. That exclusion provides, with important exceptions, that the CFPB "may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law." 12 U.S.C. § 5517(e)(1). Seila Law argues that the CID is invalid because it requests information related to Seila Law's activities in providing legal services

to its clients. Specifically, the CID seeks information relevant to determining whether Seila Law has violated the Telemarketing Sales Rule "in the advertising, marketing, or sale of debt relief services or products, including but not limited to debt negotiation, debt elimination, debt settlement, and credit counseling."

The district court correctly held that one of the exceptions to § 5517(e)(1)'s practice-of-law exclusion applies here. Section 5517(e)(3) states: "Paragraph (1) shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H." Subtitle H empowers the CFPB to enforce the Telemarketing Sales Rule, 16 C.F.R. pt. 310, a consumer law that does not exempt attorneys from its coverage even when they are engaged in providing legal services. *See* 15 U.S.C. § 6102; Telemarketing Sales Rule, 75 Fed. Reg. 48,458-01, 48,467-69 (Aug. 10, 2010). The CFPB thus has the authority to investigate whether Seila Law is violating the Telemarketing Sales Rule, without regard to the general practice-of-law exclusion stated in § 5517(e)(1).

Second, Seila Law contends that the CID violates 12 U.S.C. § 5562(c)(2), which provides that "[e]ach civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation." The CID at issue here fully complies with this provision. It identifies the allegedly illegal conduct under investigation as follows: "whether debt relief providers, lead generators, or other unnamed persons are engaging in unlawful acts or practices in the advertising, marketing, or sale of debt relief services or products, including but not limited to debt negotiation, debt elimination, debt settlement, and credit counseling." The CID also identifies the provision

of law applicable to the alleged violation as "Sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; 12 U.S.C. § 5481 et seq., the Telemarketing Sales Rule, 16 C.F.R. § 310.1 et seq., or any other Federal consumer financial law." That information suffices to put Seila Law on notice of the nature of the conduct the CFPB is investigating, and it is not so general as to raise vagueness or overbreadth concerns. *See United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

No. 17-1081

CONSUMER FINANCIAL PROTECTION BUREAU,
Petitioner,

v.

SEILA LAW, LLC,
Respondent.

Filed: August 25, 2017

ORDER GRANTING IN PART PETITION TO ENFORCE CIVIL INVESTIGATIVE DEMAND

STANTON, United States District Judge.

Before the Court is the Consumer Financial Protection Bureau's (CFPB) Petition to Enforce Civil Investigative Demand. (Pet., Doc. 1.) Respondent Selia Law, LLC, has submitted an Opposition (Opp'n, Doc. 20), and the CFPB has filed a Reply (Reply, Doc. 21). After carefully reviewing the papers, the Court GRANTS IN PART the Petition.

I. BACKGROUND

On February 27, 2017, the CFPB issued a Civil Investigative Demand to Seila Law, LLC, which included a notification of purpose, indicating:

> The purpose of this investigation is to determine whether debt relief providers, lead generators, or other unnamed persons are engaging in unlawful acts or practices in the advertising, marketing, or sale of debt relief services or products, including but not limited to debt negotiation, debt elimination, debt settlement, and credit counseling, in violation of Sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 USC §§ 5531, 5536; 12 U.S.C. § 5481 et seq., the Telemarketing Sales Rule, 16 C.F.R. § 310.1 et seq., or any other Federal consumer financial law. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

(CID, Exh. 1, Doc. 1-2.) On March 19, 2017, Seila Law filed a petition to set aside or modify the Civil Investigative Demand (Pet. Set Aside, Exh. 5, Doc. 20-1), which the CFPB Director denied on April 10, 2017 (CFPB Decision, Exh. 2, Doc. 1-2). The decision ordered Seila Law to "produce all responsive documents, items, and information within its possession, custody, or control that are covered by the CID" within ten days. (*Id.* at 5.) Seila Law asked for extension of time to comply with the CID, which the CFPB granted. (Singelmann Decl. ¶ 9, Doc. 1-2.)

On April 27, 2017, Seila Law submitted its response to the CID. (*Id.* ¶ 10.) A week later, the CFPB sent Seila Law a letter claiming that Seila Law's response improperly asserted general objections, failed to provide a privilege log for claims of attorney-client and attorney work

product privilege, raise untimely claims of privilege, withheld relevant documents based on assertions of "confidentiality," and otherwise provided incomplete or deficient responses. (CFPB May 4 Letter, Exh. 3. Doc. 1-2.) Seila Law responded in a letter dated May 22, 2017, challenging the "the enforceability of the CID" and "declin[ing] the CFPB's request at this time to provide further information or documents in response to the CID." (Seila Law Letter May 22, Exh. 4, Doc. 1-2.) In response, the CFPB filed in this Petition to Enforce its Civil Investigative Demand. (Pet., Doc. 1.)

II. LEGAL STANDARD

"To determine whether to enforce an administrative subpoena, a court consideres '[1] whether Congress has granted the authority to investigate; [2] whether procedural requirements have been followed; and [3] whether the evidence is relevant the material to the investigation.'" *CFPB v. Future Income Payments, LLC*, No. 8:17-CV-00303-JLS-SS, 2017 WL 2190069, at *2 (C.D. Cal. May 17, 2017) (quoting *EEOC v. Children's Hosp. Med. Ctr. of N. Cal.*, 719 F.2d 1426, 1428 (9th Cir. 1983) (en banc), *overruled on other grounds as recognized in Prudential Ins. Co. v. Lai*, 42 F.3d 1299, 1303 (9th Cir. 1994)). If the agency has satisfied these "narrow" requirements, a court should enforce an administrative subpoena unless the respondent can demonstrate that compliance would pose an undue burden. *Id.*; *Children's Hosp. Med. Ctr. of N. California*, 719 F.2d at 1428. In response to a petition to enforce an administrative subpoena, a subpoenaed party is free to raise any constitutional challenges, which this Court reviews a plenary basis. *Future Income Payments*, 2017 WL 2190069, at *2.

III. DISCUSSION

Selia Law objects to the enforcement of the CFPB's Civil Investigative Demand because, it asserts, (1) the CFPB is unconstitutionally structured, (2) the notification of purpose is inadequate, (3) the CFPB's practice of law exclusion would preclude any enforcement action, and (4) the CID is overly broad and seeks privileged information.[1] (Opp'n 10-16.) The court considers each argument in turn.

A. CFPB's Constitutionality

In *CFPB v. Morgan Drexen* and *CFPB v. Future Income Payments*, this Court addressed the same constitutional challenges that Seila Law raises. *See Future Income Payments*, 2017 WL 2190069, at *6-9; *CFPB v. Morgan Drexen, Inc.*, 60 F. Supp. 3d 1082, 1086-92 (C.D. Cal. 2014). Like the respondent in *Future Income Payments*, Seila Law relies heavily on the arguments advanced in *PHH Corp v. CFPB*, a vacated 2-1 decision from the D.C. Circuit that this Court continues to find unpersuasive. (*See* Opp'n at 3-7.) Notably, the *PHH* majority acknowledged, "'there is no meaningful difference in responsiveness and accountability to the President' between an agency headed by a commission and a director." *Future Income Payments*, 2017 WL 2190069, at *7 (quoting *PHH*, 839 F.3d at 32). "That is enough to end the inquiry" because the controlling standard enunciated in *Morrison v. Olson* is whether the CFPB Director's for-cause protection from removal "'interfere[s] with the President's exercise of the 'executive power' and his constitutionally appointed duty to 'take care that the laws be faithfully ex-

[1] The Court does not separately consider Seila Law's fleeting Fourth and Fifth Amendment objections because they are entirely derivative of its other arguments. (*See* Opp'n at 8.)

ecuted' under Article II.'" *Id.* (quoting *Morrison v. Olson*, 487 U.S. 654, 690 (1988)). Even if *Morrison* were not controlling, there is no meaningful constitutional distinction that could be drawn between the CFPB and other director-led independent agencies, such as the Social Security Administration, and no "empirical evidence . . . establishes the superiority of either" director or multimember-led independent agencies. *Id.* at *5-8.

To the extent that Seila Law argues that the CFPB is unconstitutionally structured because the agency receives funding outside of the annual Congressional appropriations process (Opp'n at 7), the CFPB is no different than several other financial regulators, such as the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. *See* Adam J. Levitin, *The Consumer Financial Protection Bureau: An Introduction*, 32 Rev. Banking & Fin. L. 321, 343 (2013). In fact, unlike these other agencies, the CFPB's non-appropriated budget is capped by statue. *See id.* Further, "[t]he Appropriations Clause 'does not in any way circumscribe Congress from creating self-financing programs . . . without first appropriating the funds as it does in typical appropriation and supplement appropriation acts." *Morgan Drexen*, 60 F. Supp. 3d at 1089 (quoting *AINS, Inc. v. United States*, 56 Fed.Cl.522, 539 (Fed. Cl. 2003), *aff'd*, 365 F.3d 1333 (Fed. Cir. 2004), *abrogated on other grounds by Slattery v. United States*, 635 F.3d 1298 (Fed. Cir. 2011)). *Accord Am. Fed'n of Gov't Employees, AFL-CIO, Local 1647 v. Fed. Labor Relations Auth.*, 388 F.3d 405, 409 (3d Cir. 2004) ("Congress itself may choose . . . to loosen its own reins on public expenditure. . . . Congress may also decide not to finance a federal entity with appropriations.").

Even assuming that *Morrison* were not controlling *and* an independent agency could not be constitutionally

headed by a director, the proper remedy would not be to refuse to enforce the CID. *Future Income Payments*, 2017 WL 2190069, at *9. In *Buckley v. Valeo*, for example, the Supreme Court held that the process for appointing commissioners to the Federal Election Commission trammeled upon the President's Appointments Power. 424 U.S. 1, 140 (1976). Yet, the Court held, "[i]nsofar as the powers confided in the Commission are essentially of an investigative and informative nature" the agency may execute them because Congress may properly establish offices that "perform duties . . . in aid of those functions that Congress may carry out by itself." *Id.* at 138-39. Because Congress unquestionably wields the subpoena power, *see e.g., Eastland v. U.S. Servicemen's Fund*, 421 U.S. 419, 504 (1975), the CFPB may lawfully execute this authority as well. *Future Income Payments*, 2017 WL 2190069, at *9; *see In re Application of President's Comm'n on Organized Crime*, 763 F.2d 1191, 1201-02 (11th Cir. 1985) (Fay, J., writing separately).

B. Notification of Purpose

Seila Law further protests that the CID fails to provide sufficient notice about the purpose and contours of the CFPB's investigation. (Opp'n at 9-10.) As recounted already, the CID's notification of purpose provides:

> The purpose of this investigation is to determine whether debt relief providers, lead generators, or other unnamed persons are engaging in unlawful acts or practices in the advertising, marketing or sale of debt relief services or products, including but not limited to debt negotiation, debt elimination, debt settlement, and credit counseling, in violation of Sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 USC §§ 5531, 5536; 12 U.S.C. § 5481 et seq., the Telemarketing Sales Rule, 16 C.F.R. § 310.1

> et seq., or any other Federal consumer financial law. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

(CID, Exh. 1.)

"The authority of an administrative agency to issue subpoenas for investigatory purposes is created solely by statute." *United States ex rel. Richards v. De Leon Guerrero*, 4 F.3d 749, 753 (9th Cir. 1993) (quoting *Peters v. United States*, 853 F.2d 692, 696 (9th Cir.1988)). Section 5562, which empowers the CFPB to issue civil investigative demands, provides that "[e]ach civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation." 12 U.S.C. § 5562(c)(2). The CFPB's implementing regulation likewise provides that a subpoenaed person "shall be advised of the nature of the conduct constituting the alleged violation that is under investigation and the provisions of law applicable to such violation." 12 C.F.R. § 1080.5. Yet, like every other administrative agency, the CFPB can define the contours of its investigation "quite generally" while still complying with its statutory obligations. *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1088, 1090 (D.C. Cir. 1992); *see FTC v. Carter*, 636 F.2d 781, 784, 787-89 (D.C. Cir. 1980) (approving of a very broad notification of purpose); *FTC v. Texaco, Inc.*, 555 F.2d 862, 868, 874, & n. 26 (D.C. Cir. 1977) (same).

A few examples illustrate when an agency crosses from defining the scope of its investigation broadly, which it may do, to violating its statutory notice requirements. In *Peters v. United States*, the Ninth Circuit held that, although the Immigration and Naturalization Service had a "broad subpoena and investigatory authority," it could not

issue so-called "John Doe" subpoenas, which demand information about unknown targets of an investigation from third parties. 853 F.2d 692, 696-99 (9th Cir. 1988). Similarly, in *In re Sealed Case (Admin. Subpoena)*, the D.C. Circuit affirmed the district court's determination that the Office of Thrift Supervision could seek information for two stated purposes, but determined that the agency had no authority to demand information for a third proffered purpose, namely to determine whether the targets of the investigation committed "other wrongdoing, as yet unknown." 42 F.3d 1412, 1415-19 (D.C. Cir. 1994). More recently, in *CFPB v. Accrediting Council for Independent Colleges & Schools*, the D.C. Circuit held that a notification of purpose stating that "the purpose of this investigation is to determine whether any entity or person has engaged or is engaging in unlawful acts and practices in connection with accrediting for-profit colleges" failed to identify adequately the conduct subject to the investigation. 854 F.3d 683, 690 (D.C. Cir. 2017). The D.C. Circuit reaffirmed that "a notification of purpose may use broad terms to articulate an investigation's purpose[,]" but found that "§ 5562(c)(2) mandates that the Bureau provide the recipient of the CID with sufficient notice as to the nature of the conduct and the alleged violation under investigation." *Id.* The notification of purpose provided no clue about what "unlawful acts and practices" were under investigation. *Id.* This shortcoming made it impossible to determine what the CFPB was investigating or whether any investigation was within the scope of its statutory authority. *Id.* at 690-91.

Seila Law cleverly uses ellipses to suggest that the CID's notification of purpose provides no clue about the nature of the CFPB's investigation other than that the agency seeks "to determine whether . . . unnamed persons

are engaging in unlawful acts or practices in the advertising, marketing, or sale of debt relief services or products . . . in violation of . . . any other Federal consumer financial law." (Opp'n at 9-10.) But what Seila Law omits through ellipses provides the fair notice that it supposedly seeks. The CID identifies specific types of businesses under investigation ("debt relief providers" and "lead generators"), the conduct subject to investigation ("advertising, marketing, or sale of debt relief services or products, including but not limited to debt negotiation, debt elimination, debt settlement, and credit counseling"), and specific statues and regulations that may have been violated (such as the Telemarketing Sales Rule, 16 C.F.R. § 310.1 *et seq.*). Seila Law's argument reduces to arguing that an administrative agency cannot use more general categories at the end of lists in a notification of purpose. That, however, is not the law. The D.C. Circuit has long affirmed the use of such phrasing, *see, e.g., Texaco, Inc.*, 555 F.2d at 868 (approving of a notification of purpose that listed certain companies and then included the more general phrase "other persons and corporations"), and *Accrediting Council for Independent Colleges & School* held simply that a notification of purpose cannot include *only* broad catch-alls. Indeed, under the *ejusdem generis* and *noscitur a sociis* canons of construction, the broader categories included in this CID are limited based on the other items included in the lists. And unlike in *Peters*, the CFPB is not seeking to enforce a John Doe subpoena; the CFPB seeks information *about* Seila Law *from* Seila Law. Accordingly, Seila Law's contention that the CID's notification of purpose is inadequate lacks merit.

C. Practice of Law Exclusion

Seila Law next contends the CFPB's practice of law exclusion would bar any enforcement action against it.

(Opp'n at 10-14.) This court recently rejected this argument in the related case *CFPB v. Howard*. *See* Order Denying Defendants' Motion to Dismiss at 5-8, Doc. 42, Case No. 8:17-cv-00161-JLS-JEM (May 26, 2017). To summarize, section 5517(e)(3) ("Paragraph 3") provides that the Consumer Financial Protection Act's general prohibition against the CFPB regulating the practice of law "shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H." 12 U.S.C. § 5517(e)(3). Section 1100C in subtitle H of the Consumer Financial Protection Act empowers the CFPB to enforce the Telemarketing Sales Rule, a regulation promulgated by the FTC that does not contain an exception for those engaged in the practice of law. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1100C, 124 Stat. 1376, 2111 (2010); *see also* Telemarketing Sales Rule, 75 Fed. Reg. 48458, 48467-69 (Aug. 10, 2010) (declining to make an exception for the practice of law in the TSR amendments). As such, the practice of law exclusion does not bar the CFPB from enforcing the Telemarketing Sales Rule against Seila Law. *See FTC v. Lainer Law, LLC*, 194 F. Supp. 3d 1238, 1283 (M.D. Fla. 2016). While Seila Law references a district court that adopted a contrary interpretation based on policy concerns (Opp'n at 12-13), this Court opts instead to follow the plain meaning of Paragraph 3, which unmistakably empowers the CFPB to take enforcement actions against attorneys under the transferred authorities insofar as those transferred authorities implicate the practice of law. Congress included the practice of law exclusion to ensure that the CFPB did not employ its general authority over unfair, deceptive,

and abusive practices to regulate the practice of law. Order Denying Defendants' Motion to Dismiss at 7, Doc. 42, Case No. 8:17-cv-00161-JLS-JEM (May 26, 2017). But, to the extent that Congress enacted other statutes that already affect the legal field, nothing in the practice of law exclusion suggests Congress intended a massive curtailment of federal enforcement authority. *Id.*

Seila Law's contrary interpretation—that Paragraphs 3 merely means that "an attorney is not exempt from enforcement by the CFPB merely because his or her status as an attorney . . . ." (Opp'n at 13)—would render it entirely superfluous because section 5517(e)(2) ("Paragraph 2") already accomplishes this. *See* 12 U.S.C. § 5517(e)(2) (allowing the CFPB to regulate attorneys' provision of covered products that are "not offered or provided as part of, or incidental to, the practice of law" or that are provided to a consumer "who is not receiving legal advice or services from the attorney in connection with such financial product or service"). "A cardinal principle of statutory construction" teaches that "a statue ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)). Paragraph 3 offers a classic instance where the canon against surplusage should be applied: Seila Law's construction would mean, quite improbably, that Congress fashioned an entirely redundant statutory provision immediately following the provision that would render that provision redundant. Because courts should resist ascribing that odd statutory drafting to Congress and plain language supports the CFPB's construction, the Court concludes that the practice of law exclusion would not bar an enforcement action by the agency.

D. Overbreadth and Vagueness

Seila Law finally challenges a few of the CID's interrogatories and requests for documents as overbroad or vague. (Opp'n at 14-16.) The CFPB responds that Seila Law has waived these arguments, and that the CID seeks only relevant information. (Reply at 13-16.)

"Courts 'generally will not entertain a challenge to a subpoena that was not first brought before the [administrative agency].'" *NLRB v. Uber Techs., Inc.*, 216 F. Supp. 3d 1004, 1007 (N.D. Cal. 2016) (quoting *NLRB v. Fresh & Easy Neighborhood Mkt., Inc.*, 805 F.3d 1155, 1159 (9th Cir. 2015)). This administrative exhaustion requirement "is grounded in important prudential considerations, such as providing an agency with the opportunity to correct its mistakes before it is haled into court and ensuring that parties do not employ judicial review to weaken an agency's administrative processes." *Seraji v. Gowadia*, No. 8:16-CV-01637-JLS-JCG, 2017 WL 2628545, at *3 (C.D. Cal. Apr. 28, 2017) (Staton, J.); *see Fresh & Easy Neighborhood Mkt., Inc.*, 805 F.3d at 1159 (noting that the exhaustion requirement reflects "deference to the Board's interest and expertise in managing the cases before it"). Courts have excused a subpoenaed party's failure to exhaust its administrative remedies where it raises a constitutional challenge or identifies "exceptional circumstances." *Uber Techs., Inc.*, 216 F. Supp. 3d at 1007; *see EEOC v. Lutheran Soc. Servs.*, 186 F.3d 959, 964-67 (D.C. Cir. 1999); *EEOC v. Cuzzens of Georgia, Inc.*, 608 F.2d 1062, 1064 (5th Cir. 1979).

Seila Law raised its overbreadth and vagueness objections to certain interrogatories and requests for documents in its petition to set aside or modify the CID. (Pet. Set Aside, Exh. 5.) The CFPB declined to consider these arguments, reasoning that Seila Law failed to comply with

12 C.F.R § 1080.6 because it did not "submit specific modification requests in writing" during the meet-and-confer process. (CFPB Decision at 4-5, Exh. 2.) The applicable regulation, however, does not provide that a party waives its challenges by failing to submit proposed written modifications during the meet-and-confer process; all it says is that, in a petition to set aside a CID, the agency "will consider only issues raised during the meet-and-confer process." 12 C.F.R. § 1080.6(c)(3). Because neither side suggests that Seila Law failed to raise its specific concerns during the meet-and-confer process, Seila Law did not waive these objections.

Seila Law contends that the CID's request for information about "other services," or simply "services," could be construed to encompass information related to the firm's immigration, personal injury, criminal defense, and real estate practices that have nothing to do with the stated purposes of the subpoena. (Opp'n at 15-16; *see also* Opp'n at 11-12.) The Court agrees. The CID does not define what "other services" are, and the CFPB has not articulated how any investigation into Seila Law's immigration, personal injury, criminal defense, or real estate practices would not be barred by the CFPB's practice of law exclusion. The court will accordingly limit the definition of "other services" in Interrogatories Nos. 5 and 6 to the areas of inquiry identified in the CID that would not be barred by other CFPB's practice of law exclusion, specifically the "advertising, marketing, or sale of debt relief services or products," including "debt negotiation, debt elimination, debt settlement, and credit counseling." (CID, Exh. 1.) Similarly, the mention of "services" in Interrogatory No. 5 and Requests for Documents Nos. 2 and 4 shall be limited to the "advertising, marketing or sale of debt relief services or products," including "debt negotia-

tion, debt elimination, debt settlement, and credit counseling." By narrowing the definition of "other services" and "services," the Court also ensures that the definition of "consumer" will not sweep in information unrelated to the stated lawful purposed of this investigation.[2] (See Opp'n at 15.)

Separately, Seila Law complains that the term "affiliated" in Interrogatory No. 4—and by cross-reference Request for Documents No. 3—is vague and overbroad. (Opp'n at 14-15.) As the CFPB has not defined the term, there is no reason to suggest that the word should not take its commonsense meaning in this context—specifically, those who had a close professional connection or association with Seila Law or Aissac Seila Aiono during the relevant period. *See, e.g.*, Merriam-Webster's Collegiate Dictionary 21 (11th ed. 2003). Under this plain-meaning interpretation, the court rejects Seila Law's suggestion that the word "affiliated" is vague and overbroad. The requested information is necessary, for instance, to determine whether "the Howard defendants . . . transferred the debt relief business, including the files of former Morgan Drexen consumers, to Seila Law." (Notice of Related Case at 3, Doc. 5.)

Finally, Seila Law claims that the CID seeks information projected by the attorney-client and work product privileges. (Opp'n at 16.) But, like in any civil litigation, Seila Law must first make an adequate privilege log (see CID at Instruction D, Exh. 1), which it has not done yet.

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[2] Seila Law contends that the CFPB cannot seek information about attorneys' marketing of "debt relief and other services," because states have traditionally regulated attorney advertising. (Opp'n at 15.) But the Telemarketing Sales Rule bars certain marketing practices for debt relief services when offered through telemarketing, *see* 16 C.F.R. § 310.4(a)(2), and Paragraph 3 commits the CFPB to enforcing the TSR, so Seila Law's contention is unavailing.

Thus, with the narrowing construction, the Court finds that the CID seeks only relevant information and is not vague.

IV. CONCLUSION

For the aforementioned reasons, CFPB's petition is GRANTED IN PART. Seila Law is hereby COMPELLED to comply with the CID within ten (10) days of this order or at a later date as may be established by this court or the CFPB, except for the following limitations to the definition of "other services" and "services" in the CID. "Services" and "other services" shall be construed to mean the "advertising, marketing or sale of debt relief services or products," including "debt negotiation, debt elimination, debt settlement, and credit counseling."