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12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA
 14 WESTERN DIVISION

15 CONSUMER FINANCIAL
 16 PROTECTION BUREAU,

17 Petitioner,

18 v.

19 ZERO PARALLEL, LLC,

20 Respondent.

Case No. 2:16-cv-8897

**MEMORANDUM IN SUPPORT OF
 PETITION TO ENFORCE CIVIL
 INVESTIGATIVE DEMAND**

21 The Consumer Financial Protection Bureau (Bureau) petitions this Court for
 22 an order requiring Zero Parallel, LLC to comply with the civil investigative
 23 demand (CID) issued to it on April 25, 2016.¹ The Consumer Financial Protection
 24 Act of 2010 (CFPA) gives the Bureau authority to issue CIDs and enforce them in
 25 federal district court.² CIDs are a type of investigative, administrative subpoena,

26 ¹ Cater Decl. ¶ 4, Ex. 1 (CID).

27 ² 12 U.S.C. §§ 5562(c)(1), (e)(1).

1 and proceedings to enforce them are initiated by a petition to the federal district
2 court where the CID recipient “resides, is found, or transacts business” for an order
3 to enforce the CID.³ Because the Bureau has authority to issue the CID, and the
4 Court has authority to enforce it, the Bureau respectfully requests that this Court
5 direct Zero Parallel to show cause as to why it should not be required to comply
6 with the CID and, thereafter, enter an order requiring compliance.

7 **Statement of Facts**

8 On April 25, 2016, the Bureau issued a CID to Zero Parallel, a company that
9 obtains consumer-loan applications from online advertisers and then sells the loan
10 applications to purchasers that include payday and other small-dollar lenders. The
11 CID was issued as part of an investigation into possible violations of the CFPA and
12 other federal consumer-financial laws.⁴ The CID required Zero Parallel to respond
13 to fifteen document requests, five interrogatories, and two written-report requests,
14 and to provide oral testimony.⁵

15 On May 16, 2016, Zero Parallel petitioned the Bureau to set aside the CID
16 (Petition).⁶ The Bureau denied the Petition on July 14, 2016, issuing an order that
17 directed Zero Parallel to produce “all responsive documents, items, and
18 information within its possession, custody, or control that are covered by the CID”
19 within 21 days and to make a witness available to provide oral testimony.⁷ The
20 order also invited Zero Parallel to engage in further discussions with Bureau staff
21 about modifying the CID.⁸

22 ³ 12 U.S.C. § 5562(e)(1); 12 C.F.R. § 1080.10. *See also FTC v. Nat’l Claims Serv.,*
23 *Inc.*, No. S 98-283 (FCD) (DAD), 1999 WL 819640, at *1 (E.D. Cal. 1999).

24 ⁴ Cater Decl. ¶ 4, Ex. 1 at 8 (CID Notification of Purpose).

25 ⁵ Cater Decl. ¶ 4, Ex. 1 at 9-12.

26 ⁶ Cater Decl. ¶ 7.

27 ⁷ Cater Decl. ¶ 8, Ex. 2 at 56.

28 ⁸ Cater Decl. ¶ 8, Ex. 2 at 56.

1 Beginning with a meet-and-confer on July 29, 2016, and continuing into
2 November 2016, Zero Parallel raised no further objection to the validity of the CID
3 or the Bureau's authority to issue it.⁹ The Bureau and Zero Parallel met and
4 conferred extensively for more than three months regarding potential modifications
5 to the CID.¹⁰ Zero Parallel made several requests to limit the documents and
6 information sought by the Bureau and to extend production deadlines.¹¹ The
7 Bureau granted a number of the requests in three separate modifications to the
8 CID,¹² and, as of September 22, 2016, Zero Parallel had made five partial
9 productions in compliance with the CID, as modified.¹³

10 After reviewing the partial productions, the Bureau informed Zero Parallel
11 that it would not further modify the CID, as the company had requested, with
12 respect to responsive e-mails.¹⁴ Zero Parallel initially claimed that the CID's
13 request for e-mails was unduly burdensome, but on November 9, 2016, after
14 Bureau staff coordinated with Zero Parallel's electronic-discovery vendor to
15 optimize available technology to reduce the volume of responsive e-mails, Zero
16 Parallel agreed to produce the requested e-mails.¹⁵ Zero Parallel proposed a final
17 modification to the CID to allow it to complete its production by December 9,
18 2016.¹⁶

19 On November 11, 2016—just two days after agreeing to produce the
20 remaining materials—Zero Parallel asserted that the Bureau lacked authority to
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22 ⁹ Cater Decl. ¶ 9.

23 ¹⁰ Cater Decl. ¶¶ 9-16.

24 ¹¹ Cater Decl. ¶¶ 10, 13.

25 ¹² Cater Decl. ¶¶ 11-13, 15.

26 ¹³ Cater Decl. ¶ 14.

27 ¹⁴ Cater Decl. ¶ 16.

28 ¹⁵ Cater Decl. ¶ 17, Ex. 6.

¹⁶ Cater Decl. ¶ 17, Ex. 6.

1 issue the CID. The company offered to “voluntarily” produce the outstanding
2 materials according to its own schedule, delaying its production by several months,
3 and refused to comply with the CID for oral testimony. The company claims it will
4 make a witness available for testimony at an undetermined point after its
5 production is complete.

6 **Argument**

7 Zero Parallel’s contention that the Bureau does not have authority to compel
8 the production of documents and testimony specified in the CID is incorrect. The
9 law is well-settled that administrative agencies should be given wide latitude in
10 exercising their power to investigate by subpoena,¹⁷ including investigating by
11 CID.¹⁸ The scope of judicial review of an administrative subpoena is quite narrow,
12 and enforcement is warranted so long as the inquiry is within the authority of the
13 agency, the demand is not too indefinite, and the information sought is reasonably
14 relevant.¹⁹ The Ninth Circuit has stated that a court’s review is limited to: “(1)
15 whether Congress has granted the authority to investigate; (2) whether procedural
16 requirements have been followed; and (3) whether the evidence is relevant and
17 material to the investigation.”²⁰ So long as the agency passes this test, “the
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19 ¹⁷ *FTC v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001); *see also, e.g.*,
20 *EEOC v. Fed. Express Corp.*, 558 F.3d 842, 851 n.3 (9th Cir. 2009); *United States*
21 *v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 470 (2d Cir. 1996).

22 ¹⁸ *FTC v. Mfgs. Hanover Consumer Servs., Inc.*, 543 F. Supp. 1071, 1073 (“A CID
23 is analogous to an investigative subpoena.”); *Morgan Drexen, Inc. v. CFPB*, 979 F.
24 Supp. 2d. 104, 107 (D.D.C. 2013) (stating that a civil investigative demand is a
25 form of administrative subpoena).

26 ¹⁹ *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950).

27 ²⁰ *FDIC v. Garner*, 126 F.3d 1138, 1142 (9th Cir. 1997) (quoting *EEOC v.*
28 *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)).

1 subpoena should be enforced unless the party being investigated proves the inquiry
 2 is unreasonable because it is overbroad or unduly burdensome.’’²¹ The CID at
 3 issue here easily satisfies the applicable test.

4 First, the CID falls squarely within the Bureau’s authority. The CFPA
 5 broadly authorizes the Bureau to investigate violations of federal consumer-
 6 financial laws and to issue a CID to “any person” the Bureau “has reason to believe
 7 . . . may be in possession, custody, or control of . . . any information, relevant to a
 8 violation.’’²² The CID seeks information to determine whether persons involved in
 9 the marketing, selling, or collection of payday loans have been engaged in acts or
 10 practices that violate the CFPA—the foremost statute the Bureau is charged with
 11 enforcing—or any other federal consumer-financial law.²³ Such an investigation is
 12 plainly an acceptable use of the authority granted to the Bureau under the CFPA.
 13 Nevertheless, the general proposition stands that “agencies should remain free to
 14 determine, in the first instance, the scope of their own jurisdiction when issuing
 15 investigative subpoenas.’’²⁴ An agency such as the Bureau “has a power of
 16 inquisition . . . [and] can investigate merely on suspicion that the law is being
 17 violated, or even just because it wants assurance that it is not.’’²⁵

18 Second, the Bureau followed all applicable procedural requirements for the
 19 issuance of a CID. The CID was issued by a Deputy Assistant Director of the
 20 Office of Enforcement²⁶ and included a Notification of Purpose advising Zero
 21

22 ²¹ *Garner*, 126 F.3d at 1143 (quoting *Children’s Hosp.*, 719 F.2d at 1428).

23 ²² 12 U.S.C. § 5562(c).

24 ²³ *Cater Decl.* ¶ 4, Ex. 1 at 8 (CID Notification of Purpose).

25 ²⁴ *Ken Roberts Co.*, 276 F.3d at 586; *see also Federal Express Corp.*, 558 F.3d at
 26 851 n.3.

27 ²⁵ *Morton Salt Co.*, 338 U.S. at 642-43; *see also Casey v. FTC*, 578 F. 2d 793, 799
 28 (9th Cir. 1978).

²⁶ 12 C.F.R. § 1080.6.

1 Parallel of the nature of the conduct being investigated.²⁷ The CID was served by a
2 Bureau investigator on Zero Parallel's counsel, who agreed to accept service via
3 e-mail.²⁸

4 Third, the information sought is relevant and material to the investigation.
5 Courts traditionally give wide latitude in determining relevance in the context of an
6 administrative subpoena, which must be enforced if the information sought could
7 be pertinent to a legitimate agency inquiry.²⁹ An agency request is relevant as long
8 as it is "not plainly incompetent or irrelevant to any lawful purpose" of the
9 agency.³⁰ Here, the Bureau seeks materials as part of its investigation into whether
10 the CFPA and other federal consumer-financial laws have been violated in
11 connection with the marketing or collection of payday loans. Each request in the
12 CID relates to Zero Parallel's role in the marketing of loans and sale of consumer-
13 loan applications.³¹ The information sought by the Bureau, including e-mails
14 between Zero Parallel and entities that generate and purchase loan applications, is
15 relevant and material to the Bureau's inquiry into Zero Parallel's practices and
16 compliance with laws the Bureau enforces.

17 Finally, the CID is not overly broad or unduly burdensome. The Bureau
18 engaged in extensive discussions with Zero Parallel to obtain information
19 efficiently and to minimize the production burden on the company. Indeed, the
20 Bureau modified the CID three times to accommodate Zero Parallel's requests and
21 was prepared to make a fourth modification after working with Zero Parallel to

22 ²⁷ 12 C.F.R. § 1080.5.

23 ²⁸ Cater Decl. ¶ 4; 12 U.S.C. §§ 5562(c)(7), (8)(A).

24 ²⁹ *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 507-09 (1943); *see also, e.g.,*
25 *Morton Salt Co.*, 338 U.S. at 652; *Federal Express Corp.*, 558 F.3d at 854.

26 ³⁰ *Endicott Johnson Corp.*, 317 U.S. at 509; *see also EEOC v. Karuk Tribe*
Housing Auth., 260 F.3d 1071, 1076 (9th Cir. 2001).

27 ³¹ Cater Decl. ¶ 5.

1 reduce the burden of the outstanding e-mail production. The CID, as modified, is
2 not unduly burdensome, as Zero Parallel itself conceded when it agreed to comply
3 just days before reversing its position.

4 **Conclusion**

5 The CID to Zero Parallel was issued within the Bureau’s authority, followed
6 applicable procedural requirements, and sought information relevant and material
7 to a Bureau investigation. The Bureau respectfully requests that the Court grant its
8 petition, order Zero Parallel to show cause as to why it has not complied with the
9 CID, and, after giving Zero Parallel an opportunity to be heard and the Bureau an
10 opportunity to respond, order Zero Parallel to comply with the CID within 10 days
11 of the Court’s order or at such later date as the Bureau may determine.

12 Dated: December 1, 2016

Respectfully submitted,

13
14 /s/ Owen P. Martikan

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PROOF OF SERVICE

I hereby certify that on December 1, 2016, I caused a true and correct copy of the document entitled Memorandum in Support of Petition to Enforce Civil Investigative Demand to be served by U.S. mail and e-mail on counsel for Respondent Zero Parallel, LLC as follows:

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