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# United States Senate

COMMITTEE ON BANKING, HOUSING, AND  
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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September 26, 2019

The Honorable Kathleen Kraninger  
Director  
Consumer Financial Protection Bureau  
1700 G St. NW  
Washington, DC 20552

Dear Director Kraninger:

I write regarding the Consumer Financial Protection Bureau's failure to provide monetary relief to harmed consumers under your and Acting Director Mulvaney's leadership.<sup>1</sup> This is a critical function of the Bureau—restitution not only gets money back into the hands of victimized consumers, but also ensures that companies that rip off consumers do not get to keep their ill-gotten gains. During Director Cordray's tenure, the Bureau returned approximately \$43 million a week in restitution to harmed consumers. That figure plummeted to about \$6.4 million a week under Acting Director Mulvaney, and as of earlier this year, to \$925,000 a week since you became Director.<sup>2</sup>

The Bureau's failure to return funds to harmed consumers began under Acting Director Mulvaney and has continued since you became Director:

- On December 6, 2018, the Bureau announced a consent order with State Farm Bank for violating the Fair Credit Reporting Act and Consumer Financial Protection Act (CFPA) by furnishing inaccurate information about consumers to credit reporting agencies and obtaining consumer reports for an impermissible purpose.<sup>3</sup> Despite the actual harm or substantial risk of harm to consumers,<sup>4</sup> the Bureau did not require State Farm Bank to pay any civil penalties or provide any restitution to harmed consumers.

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<sup>1</sup> The Consumer Financial Protection Act authorizes the Bureau to obtain "any appropriate legal or equitable relief," including restitution, disgorgement, and payment of damages or other monetary relief. 12 U.S.C. § 5565(a).

<sup>2</sup> See Peterson, Christopher. Dormant: The Consumer Financial Protection Bureau's Law Enforcement Program in Decline. Consumer Federation of America (Mar. 12, 2019), available at <https://consumerfed.org/reports/dormant-the-consumer-financial-protection-bureaus-law-enforcement-program-in-decline/>.

<sup>3</sup> *In the Matter of State Farm Bank, FSB*, File No. 2018-BCFP-0009 (Dec. 6, 2018), available at [https://files.consumerfinance.gov/f/documents/bcftp\\_state-farm-bank\\_consent-order.pdf](https://files.consumerfinance.gov/f/documents/bcftp_state-farm-bank_consent-order.pdf).

<sup>4</sup> State Farm Bank furnished inaccurate information to the credit bureaus, which can negatively affect consumers' ability or the terms on which they can obtain credit, insurance, or even a job. See, e.g., "CFPB Oversight Uncovers And Corrects Credit Reporting Problems," (Mar. 2, 2017) ("Inaccurate information can lead to inaccurate reports and consumer and market harm."), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-oversight-uncovers-and-corrects-credit->

- On January 19, 2019, the Bureau announced a consent order with Sterling Jewelers Inc. for violating the Truth in Lending Act, Regulation Z, and the CFPB by opening store credit-card accounts without consumers' consent, enrolling consumers in payment protection plans without their consent, and deceiving consumers about the financing terms associated with the credit-card accounts.<sup>5</sup> The Bureau required Sterling Jewelers to pay a \$10 million fine, but did not require the company to provide refunds of money consumers paid for the payment protection plans or any other monetary relief to consumers.
- On January 25, 2019, the Bureau announced a consent order with Enova International Inc., an online payday lender, for engaging in unfair acts or practices in violation of the CFPB for withdrawing funds from consumers' accounts without their authorization.<sup>6</sup> The Bureau imposed a \$3.2 million civil penalty, but did not require Enova to pay back the funds they had unlawfully withdrawn from consumers' bank accounts.
- On February 1, 2019, the Bureau announced a stipulated final judgment with NDG Financial Corporation and other defendants for running a payday lending enterprise that engaged in unfair, deceptive, and abusive acts practices in violation of the CFPB and the Credit Practices Rule.<sup>7</sup> The Bureau's Amended Complaint, filed under Director Cordray, sought "damages and other monetary relief . . . to redress injury to consumers."<sup>8</sup> The settlement, however, dropped the requests for restitution and other relief for victimized consumers.

The Bureau's August 28, 2019 settlement with Asset Recovery Associates, a debt collector, continues this pattern of protecting bad actors instead of consumers. During its investigation, the Bureau found that Asset Recovery Associates had violated the Fair Debt Collection Practices Act and the CFPB by making false and deceptive statements to induce consumers to make payments, including: "threatening to sue or arrest consumers even though it did not intend to take such action, falsely representing to consumers that company employees were attorneys, threatening to garnish consumers' wages or place liens on their homes even though it did not intend to do so, and representing that consumers' credit reports would be negatively affected if they did not pay, even though Asset Recovery Associates does not report consumer debts to credit-reporting agencies."<sup>9</sup> In the consent order, the Bureau found that Asset Recovery Associates had

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reporting-problems/. State Farm Bank also initiated credit inquiries in order to solicit consumers for a loan, which can lower consumers' credit scores. *See, e.g.*, "What exactly happens when a mortgage lender checks my credit?", available at <https://www.consumerfinance.gov/ask-cfpb/what-exactly-happens-when-a-mortgage-lender-checks-my-credit-en-2005/>.

<sup>5</sup> *CFPB v. Sterling Jewelers Inc.*, Case No. 1:19-cv-00448 (S.D.N.Y. Jan. 16, 2019), available at [https://files.consumerfinance.gov/f/documents/bcftp\\_sterling-jewelers\\_complaint.pdf](https://files.consumerfinance.gov/f/documents/bcftp_sterling-jewelers_complaint.pdf).

<sup>6</sup> *In the Matter of Enova International, Inc.*, File No. 2019-BCFP-0003 (Jan. 25, 2019), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_enova-international\\_consent-order\\_2019-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_enova-international_consent-order_2019-01.pdf).

<sup>7</sup> *CFPB v. NDG Financial Corp.*, Case No. 1:15-cv-05211 (S.D.N.Y. Feb. 4, 2019), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_ndg-financial-corp\\_consent-order.pdf](https://files.consumerfinance.gov/f/documents/cfpb_ndg-financial-corp_consent-order.pdf).

<sup>8</sup> *CFPB v. NDG Financial Corp.*, Case No. 1:15-cv-05211 (S.D.N.Y. Dec. 11, 2015), Amended Complaint ¶¶ 336-37 (DE 47), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_northway\\_amended-complaint\\_122015.pdf](https://files.consumerfinance.gov/f/documents/cfpb_northway_amended-complaint_122015.pdf).

<sup>9</sup> *See* Consumer Financial Protection Bureau Settles with Asset Recovery Associates news release, Aug. 28, 2019, available at <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-asset-recovery-associates/>.

“regularly” engaged in these practices “since at least January 1, 2015”<sup>10</sup>—in other words, Asset Recovery Associate’s unlawful debt collection tactics were the rule, not the exception.

Despite this finding, the Bureau decided to limit restitution to only those consumers who affirmatively “complained about a false threat or misrepresentation” by Asset Recovery Associates.<sup>11</sup> That is not and never has been the standard for providing restitution to consumers. “Restitution ‘is a form ancillary relief’ that a court can order ‘[i]n the absence of a proof of actual damages.’”<sup>12</sup> The government’s request for restitution must “reasonably approximate[] the defendant’s unjust gains” or “the *full amount lost by consumers*.”<sup>13</sup> In debt collection cases by the Bureau and the Federal Trade Commission, courts have ordered defendants to refund to consumers the *entire* amount they collected through the unlawful collection scheme.<sup>14</sup> For example, in a prior Bureau case, the district court determined that the correct amount of restitution was the \$5,261,484, which represented the total amount that the defendants had collected from consumers through their unlawful debt-collection scheme.<sup>15</sup> Applying this standard for restitution to Asset Recovery Associates, the Bureau should have obtained restitution for *all* amounts Asset Recovery Associates collected from consumers since January 1, 2015.

There was no legal basis for the Bureau to shortchange victimized consumers and limit restitution to just those consumers who complained. The Bureau made a conscious decision to disregard all legal precedent and allow Asset Recovery Associates to keep nearly all of the money it collected for more than four years by lying, threatening, and cheating consumers. This new approach to providing restitution to consumers under your leadership is fundamentally at odds with the Bureau’s mission: it fails to provide relief to victimized consumers, it allows bad actors to retain the profits from their illegal conduct, and it is unfair to those debt collectors who follow the law.

In order to understand the basis for the Bureau’s settlement with Asset Recovery Associates, please respond to the following requests by October 11, 2019:

1. Identify the number of consumers who meet the definition of “Affected Consumer,” and for each, state the amount of restitution they will receive pursuant to the Bureau’s consent order with Asset Recovery Associates.

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<sup>10</sup> *In the Matter of: Financial Credit Services, Inc., d/b/a Asset Recovery Associates*, File No. 2019-BCFP-009 (Aug. 28, 2019) at ¶¶ , available at [https://files.consumerfinance.gov/f/documents/cfpb\\_asset-recovery-associates\\_consent-order\\_2019-08.pdf](https://files.consumerfinance.gov/f/documents/cfpb_asset-recovery-associates_consent-order_2019-08.pdf).

<sup>11</sup> *Id.* ¶ 3.a.

<sup>12</sup> *CFPB v. Gordon*, 813 F.3d 1179, 1195 (9th Cir. 2016) (quoting *FTC v. Gill*, 265 F.3d 944, 958 (9th Cir. 2001)).

<sup>13</sup> *Id.* (quoting *FTC v. Commerce Planet Inc.*, 2016 WL 828326 (9th Cir. 2016)) (emphasis added).

<sup>14</sup> See *CFPB v. Universal Debt & Payment Solutions, LLC*, 2019 WL 1295004, \*19 (N.D. Ga. Mar. 21, 2019); *FTC v. Williams, Scott & Assocs., LLC*, 679 F. App’x 836, 839-40 (11th Cir. 2017) (net revenue of unlawful debt-relief scheme, not net profit, is the correct measure of “unjust gain” in FTC action).

<sup>15</sup> *Universal Debt*, 2019 WL 1295004 at \*19.

2. From January 1, 2015 through the effective date of the consent order (the period covered by the consent order), identify the number of consumers from whom Asset Recovery Associates:
  - a. Attempted to collect a debt; or
  - b. Collected any portion of debt.
3. State the total amount of funds that Asset Recovery Associates collected from consumers from January 1, 2015 through the effective date of the consent order.
4. Produce all documents and communications referring or relating to the issue of restitution in the Bureau's settlement with Asset Recovery Associates, including all memoranda (drafts or final), all drafts of the proposed consent order, and all meeting minutes.
5. Produce all communications between the Bureau and Asset Recovery Associates or its representatives referring or relating to the issue of restitution in the Bureau's settlement with Asset Recovery Associates.

Thank you in advance for your response.

Sincerely,



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Sherrod Brown  
Ranking Member