STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

Consumer Financial Protection Bureau

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

May 25, 2022

VIA ECF & EMAIL

The Honorable Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square, Room 2103
New York, NY 10007

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Re: *Consumer Financial Protection Bureau and the People of the State of New York v. MoneyGram International, Inc. and MoneyGram Payment Systems, Inc.*
Case No. 22-cv-3256 (KPF)

Dear Judge Failla:

We write on behalf of Plaintiffs, the Consumer Financial Protection Bureau (Bureau) and the State of New York, in response to Defendants' May 20, 2022 letter (ECF No. 22) and in opposition to Defendants' proposed motions. Plaintiffs bring claims under federal and New York state law against Defendants, two MoneyGram companies that have repeatedly violated consumer protection laws, including requirements for "remittance transfers"—money sent abroad by U.S. senders, *see* 12 C.F.R. § 1005.30(e). Defendants' dismissal arguments are meritless. Further, this Court should not transfer this case.

1. Plaintiffs have stated claims for consumer protection violations.

a. Plaintiffs have adequately pled violations of the Remittance Rule.

In assessing a Rule 12(b)(6) motion to dismiss, this Court "draw[s] all reasonable inferences in the plaintiff's favor to determine whether the plaintiff stated a plausible claim to relief." *Bellin v. Zucker*, 6 F.4th 463, 473 (2d Cir. 2021). Plaintiffs adequately allege that the MoneyGram companies violated the Remittance Rule, 12 C.F.R pt. 1005, subpt. B. The companies' previewed arguments ignore the substance of the complaint.

For instance, Plaintiffs state plausible claims that the MoneyGram companies violated the Remittance Rule by failing to disclose an accurate date when funds would be available to the recipient. While Defendants argue that the first sentence of Complaint ¶ 38 is boilerplate and thus try to convince the Court that Plaintiffs did not meet their pleading requirement, Defendants ignore the rest of the paragraph. The sentences that immediately follow describe Defendants'

own conclusions that their disclosed availability dates were inaccurate; allege that the MoneyGram companies repeatedly found delays in their remittance transfers; and state that these identified delays included those that constituted Remittance Rule "errors." Under the Rule, delay errors are instances in which disclosed dates were inaccurate, *i.e.*, "failure[s] to make funds available to a designated recipient by the date of availability" disclosed to the sender for a particular transfer, 12 C.F.R. § 1005.33(a)(1)(iv). These factual allegations underscore that Plaintiffs have stated a plausible claim.

Defendants also attempt to avoid responsibility for their error-resolution violations by ignoring what is implicit in Plaintiffs' allegations of Defendants' violations. The Remittance Rule's error protections apply when a sender indicates a concern, enables the provider to identify basics about the transaction, and complains within six months (generally). *See* 12 C.F.R. § 1005.33(b). Common sense counsels that remittance-senders who take the time to complain would generally meet these requirements. For example, they would tell the company who they are and why they were calling and provide enough information for the company to identify the transfer and its recipient. Plaintiffs' allegations thus "raise a reasonable expectation that discovery will reveal evidence" that senders' notices were sufficient, triggering the error-resolution obligations in instances when Defendants failed to comply with them, *Anderson News, L.L.C. v. Am. Media, Inc.*, 680 F.3d 162, 184 (2d Cir. 2012) (emphases omitted). Plaintiffs adequately plead violations of the Remittance Rule's error-resolution requirements.

b. Plaintiffs have adequately pled a claim for unfair acts and practices.

Plaintiffs have sufficiently alleged that Defendants engaged in unfair acts and practices by failing to make transfers timely available to recipients or refunds timely available to senders. The Complaint identifies substantial injury to consumers that these delays caused, or were likely to cause, and thus it addresses the element that the companies suggest is missing, *see* 12 U.S.C. § 5531(c)(1)(A). For instance, Complaint ¶ 48 explains that the delays deprived, or were likely to deprive, consumers of the use of funds and timely transmission for which they paid. These effects alone constitute substantial injury. *See In re OPM Data Sec. Breach Litig.*, 928 F.3d 42, 66 (D.C. Cir. 2019) (per curiam) (recognizing delay in receipt of refunds and the "forgone time value of that money" as "actual, tangible pecuniary injury"); *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1158 (9th Cir. 2010) (affirming finding of substantial injury where consumers "lost access to and use of [their] funds" and finding that, even if "a bank eventually restored consumers' money, the consumer suffered unavoidable injuries that could not be fully mitigated").

c. Plaintiffs' claims are timely.

Defendants reference Bureau supervisory activity in or before 2016 and argue that Counts I through VI are brought under the Consumer Financial Protection Act (CFPA) and barred by that statute's three-years-from-discovery limitation. *See* 12 U.S.C. § 5564(g)(1). Defendants' analysis is wrong, in at least two ways. "A defendant may raise the affirmative defense that a claim is time-barred in a motion to dismiss only if that defense appears on the face of the complaint." *City of Almaty v. Sater*, 503 F. Supp. 3d 51, 58 (S.D.N.Y. 2020). That is not true here. The Complaint alleges violations that happened as recently as 2022. These violations clearly could not have been discovered more than three years before the complaint was filed. *See*

Compl. ¶¶ 38, 44; *see also id.* ¶ 37. Further, the Complaint does not plead that, for any count, all violations pre-dated 2016. Thus, there is no facially-apparent limitations defense.

d. The funding provision in the Bureau's statute is constitutional.

Defendants claim that the Bureau's statutory method of funding violates the Appropriations Clause of the Constitution. But this argument, which is also before the Second Circuit in *Bureau of Consumer Fin. Prot. v. Law Offices of Crystal Moroney, P.C.*, No. 20-3471 (argued Jan. 18, 2022), is foreclosed by binding Supreme Court and Second Circuit precedent. Both courts have held that the Appropriations Clause simply requires that federal spending be authorized by statute. *See OPM v. Richmond*, 496 U.S. 414, 424 (1990); *Butts v. Barnhart*, 416 F.3d 101, 105 (2d Cir. 2005); *Dun & Bradstreet Corp. Found. v. U.S. Postal Serv.*, 946 F.2d 189, 195 (2d Cir. 1991). Both the Bureau's receipt of funds and its use of those funds are so authorized. *See* 12 U.S.C. § 5497.

2. This Court should not disturb plaintiff's choice of forum.

Plaintiffs will address—and oppose—Defendants' motion to transfer after it is filed. We note here that Defendants' pre-motion letter incompletely and inaccurately portrays this case and their own operations. As just two examples: The companies imply that the Northern District of Texas is their "home district" and that nothing relevant is or was in New York. But, as Plaintiffs will show, Defendant MoneyGram Payment Systems, Inc. identifies its principal place of business as Minneapolis, Minnesota. Further, this case involves a New York plaintiff (the State of New York) and the complaint alleges violations suffered by New York consumers.

Respectfully submitted,

s/ Jason L. Meizlish (with consent)
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