UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALLIED PROGRESS, Plaintiff, v. CONSUMER FINANCIAL PROTECTION BUREAU, Defendant.	)	Civil Action No. 17-686 (CKK)

MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

PRELIMINARY STATEMENT

Plaintiff Allied Progress ("Plaintiff") submitted two Freedom of Information Act ("FOIA") requests to Defendant, the Consumer Financial Protection Bureau ("CFPB"), on April 12, 2017. First, Plaintiff requested documents relating to correspondence between the CFPB and twelve U.S. Senators regarding the CFPB's "Prepaid Rule," a regulation that provides certain protections for consumers using prepaid accounts (*e.g.*, prepaid cards, certain mobile wallet products, and other electronic prepaid accounts that can store funds). *See* 12 C.F.R. Parts 1005 and 1026. Second, Plaintiff requested similar correspondence between the CFPB and two companies, Netspend and Total Systems Services ("TSYS"), as well as representatives of those companies. Plaintiff's requests include records dating back to December 1, 2014 (*i.e.*, shortly before the date the CFPB published the proposed Prepaid Rule in the Federal Register for public comment). Plaintiff asserts that it needs these records because the Senate may invoke the Congressional Review Act ("CRA"), 5 U.S.C. §§ 801-808, which permits Congress to overrule a

regulation within a certain amount of time after its promulgation, to quash the CFPB's Prepaid Rule.

The Electronic Freedom of Information Act Amendments of 1996 added a procedure whereby, on a showing of compelling need, a FOIA requester could obtain expedited processing of its FOIA requests. The preliminary injunction motion at issue here is based on the CFPB's denial of Plaintiff's requests for expedited treatment of Plaintiff's two FOIA requests. The CFPB denied Plaintiff's request for expedited treatment because Plaintiff did not demonstrate that the information it sought was based on a "compelling need," as that term is used in the FOIA, 5 U.S.C. § 552(A)(6)(E)(v)(II), and in the CFPB's regulations, 12 C.F.R. § 1070.17(b)(2)(ii). This was correct.

Furthermore, Plaintiff has the burden of establishing entitlement to expedited treatment, and Plaintiff has failed to do so here. As our Court of Appeals has held, for a requester to succeed in establishing an urgent need for the requested materials, it must establish that the request concerns "a matter of current exigency to the American public." *Al-Fayed v. Central Intelligence Agency*, 254 F.3d 300, 310 (D.C. Cir. 2001). Plaintiff has not established this; therefore, the Court should deny Plaintiff's motion for a preliminary injunction and temporary restraining order.

FACTUAL SUMMARY

On December 23, 2014, the CFPB published a proposed rule in the Federal Register entitled "Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)" to provide certain "comprehensive consumer protections for prepaid financial products." 79 Fed. Reg. 77101. This rule is commonly referred to as the

"Prepaid Rule." The CFPB published the final Prepaid Rule in the Federal Register on November 22, 2016. *See* 81 Fed. Reg. 83934-84387.

On February 1, 2017, Senator David Perdue introduced Senate Joint Resolution 19, which took aim at the CFPB's Prepaid Rule via the CRA. *See* S.J. Res. 19, 115th Cong. (2017) (stating that "Congress disapproves the rule submitted by the [CFPB] related to prepaid accounts . . . and such rule shall have no force or effect"). The Joint Resolution was referred to the Senate Committee on Banking, Housing, and Urban Affairs. On March 30, 2017, the Joint Resolution was discharged from the Committee by petition pursuant to 5 U.S.C. § 802(c). The Joint Resolution is currently on the Senate Calendar awaiting a potential vote. Under the CRA, the Senate may vote on the Joint Resolution within "60 session days beginning with the applicable submission or publication date." 5 U.S.C. § 802(e)(1). Consequently, the Senate's deadline to act on the Prepaid Rule via the CRA is expected to run on or about May 9, 2017.

Plaintiff first submitted substantially similar FOIA requests to the CFPB on April 6, 2017. *See* Declaration of Raynell Lazier (attached hereto) at ¶ 8. These requests both sought expedited processing. *Id.* The Bureau denied the first request for expedited processing on April 6, 2017, and denied the second request for expedited processing the next day. *Id.* ¶ 9. The Bureau explained as to each one that Plaintiff's "letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards." *Id.* Plaintiff then waited almost one week before notifying the CFPB that it was withdrawing its requests and submitting the requests at issue in this case on April 12, 2017. *Id.* ¶ 10. The two new requests cited an op-ed article and a cable news report, both from April 5, 2017, as grounds for granting expedited treatment. The CFPB denied Plaintiff's two new requests for expedited

processing because Plaintiff did not sufficiently support these requests. *Id.* ¶ 12. Plaintiff did not appeal those denials, as allowed for in the CFPB's regulations. *Id.* ¶ 13; *see* 12 C.F.R. § 1070.17(e). This lawsuit followed.

LEGAL STANDARDS

The amended FOIA provides that each agency shall promulgate regulations providing for expedited processing of requests for records "in cases where the person requesting the records demonstrates a "compelling need" and "in other cases determined by the agency." 5 U.S.C. §§ 552(a)(6)(E)(i)(I) and (II). The term "compelling need" is defined as follows:

> (I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
>
> (II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

5 U.S.C. § 552(A)(6)(E)(v).

The FOIA also requires that "[a] demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief." 5 U.S.C. § 552(a)(6)(E)(vii).

In compliance with the FOIA, the CFPB has promulgated regulations implementing the expedited treatment provision. These regulations provide that a FOIA request will be given expedited treatment whenever a requester demonstrates that a "compelling need" for the information exists. 12 C.F.R. § 1070.17(a). The regulations further provide that a "compelling need" exists where the requester can demonstrate one of the following:

> (i) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The

> requester shall fully explain the circumstances warranting such an expected threat so that the CFPB may make a reasoned determination that a delay in obtaining the requested records could pose such a threat; or
>
> (ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal government activity. A person "primarily engaged in disseminating information" does not include individuals who are engaged only incidentally in the dissemination of information. The standard of "urgency to inform" requires that the records requested pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public. The requester must adequately explain the matter or activity and why the records sought are necessary to be provided on an expedited basis.

Id. §§ 1070.17(b)(2)(i) and (ii).

This Circuit, in *Al-Fayed v. Central Intelligence Agency*, *supra*, addressed in detail the FOIA's expedited processing requirement. The Court held that the district court must review denials of expedited processing de novo. 254 F.3d at 305-07. The Court noted that the burden is on the requester to establish a compelling need for expedition. *Id.* at 305 n. 4. It then turned to the legislative history addressing expedited processing:

> The relevant legislative history, to which both the government and appellants refer, offers considerable assistance in interpreting "urgency to inform." As an overarching principle, the legislative history declares that "[t]he specified categories for compelling need are intended to be narrowly applied." H.R. REP. NO. 104-795, at 26 (1996). Congress' rationale for a narrow application is clear: "Given the finite resources generally available for fulfilling FOIA requests, unduly generous use of the expedited processing procedure would unfairly disadvantage other requestors who do not qualify for its treatment." *Id.* Indeed, an unduly generous approach would also disadvantage those requestors who do qualify for expedition, because prioritizing all requests would effectively prioritize none.

Id. at 310.

The Court also cited the following legislative history as providing more specific guidance:

> The standard of "urgency to inform" requires that the information requested should pertain to a matter of a current exigency to the American public and that a reasonable person might conclude that the consequences of delaying a response to a FOIA request would compromise a significant recognized interest. The public's right to know, although a significant and important value, would not by itself be sufficient to satisfy this standard.

Id.

The Court instructed that the following factors must be considered "in determining whether requestors have demonstrated 'urgency to inform,' and hence 'compelling need'":

> [C]ourts must consider at least three factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity. The legislative history also indicates that "[t]he credibility of a requestor" is a relevant consideration. H.R. REP. NO. 104-795, at 26.

Id.

ARGUMENT[1]

In addition to bearing the burden of establishing its entitlement to expedited processing, Plaintiff also bears the burden of establishing that they are entitled to a preliminary injunction. To qualify for such relief, as noted by the *Al-Fayed* court, the requesters must establish that "(1) they have a substantial likelihood of success on the merits; (2) they would suffer irreparable injury if the injunction were not granted; (3) granting the injunction would not injure other

[1] The FOIA expressly permits judicial review of an agency's denial of an expedited processing request, *see* 5 U.S.C. § 552(a)(6)(E)(iii). The CFPB does not dispute that it denied Plaintiff's request; therefore, Defendant concedes that Plaintiff has exhausted its administrative remedies.

parties (for example, those requestors over whom plaintiffs would take precedence if the injunction were issued); or (4) the public interest would be furthered by the injunction." 254 F.3d at 303. *See also Sherley v. Sebelius*, 644 F.3d 388, 392-93 (D.C. Cir. 2011). As explained below, Plaintiff has failed to carry its burden here.

I. Plaintiff Cannot Show a Likelihood of Success on the Merits

Under the standards set out in the FOIA and this Circuit in *Al-Fayed*, Plaintiff has failed to establish that it is entitled to expedited processing of its FOIA requests. First, Plaintiff's FOIA requests did not sufficiently demonstrate that Allied Progress is primarily engaged in the dissemination of information. Second, Plaintiff's FOIA requests failed to establish an urgency to inform the public regarding the subject of its FOIA requests.

a. Plaintiff Did Not Demonstrate that It is Primarily Engaged in the Dissemination of Information

Plaintiff has failed to show a compelling need for expedited treatment because Plaintiff's requests did not demonstrate that it is "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II). "As noted in the legislative history, the category 'should not include individuals who are engaged only *incidentally* in the dissemination of information. The standard of 'primarily engaged' requires that information dissemination be the *main activity* of the requestor, although it need not be their sole occupation.'" *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 276 (D.D.C. 2012), *quoting* H.R. Rep. No. 104-795, at 26, 1996. Courts therefore "must be cautious in deeming non-media organizations as persons primarily engaged in information dissemination"—especially when the court is considering a request for a preliminary injunction. *Id.* at 275-76 & n.7 (D.D.C. 2012) (public-interest law firm had not demonstrated it

was primarily engaged in disseminating information). "Courts generally only find that a plaintiff is primarily engaged in information dissemination if information dissemination is the primary activity of the organization, to the exclusion of other main activities." *Treatment Action Grp. v. Food & Drug Admin.*, No. 15-CV-976, 2016 WL 5171987, at *7-8 (D. Conn. Sept. 20, 2016) (advocacy group had not demonstrated it was primarily engaged in disseminating information); *see also ACLU of N. California v. U.S. Dep't of Justice*, No. C 04-4447, 2005 WL 588354, at *14 (N.D. Cal. Mar. 11, 2005) (ACLU chapter had not demonstrated it was primarily engaged in disseminating information; "[W]hile dissemination of information may be *a* main activity of ACLU-NC, there is no showing that it is *the* main activity."); *Tripp v. U.S. Dep't of Defense*, 193 F. Supp. 2d 229, 241 (D.D.C. 2002) ("To be sure, plaintiff has . . . at times provided information to the media, but no evidence in the record support[s] plaintiff's assertion that she is 'primarily' engaged in such efforts.").

FOIA provides that judicial review of a denial of expedited treatment "shall be based on the record before the agency at the time of the determination," 5 U.S.C. § 552(a)(6)(E)(iii), rather than on additional facts that were not actually presented to the agency at the time of its decision. *See, e.g., Nat'l Day Laborer Org. Network v. U.S. Immigration & Customs Enforcement*, No. 16-CV-387, 2017 WL 746444, at *5-6 (S.D.N.Y. Feb. 17, 2017) (declining to consider group's later-submitted declaration because it was not before the agency at time of decision; holding that advocacy group failed to demonstrate it was primarily engaged in disseminating information). Accordingly, agencies are not obligated to conduct additional research into each request for expedited treatment that they receive in order to determine whether other facts, not presented to the agency by the requester, could indicate a compelling need. The burden is instead on the

requester to "demonstrate" such a need in its submissions to the agency.

Here, based on the record before the CFPB at the time it made its decision, Plaintiff did not specifically aver that disseminating information was its primary activity. The sections of Plaintiff's requests entitled "Application for Expedited Processing" are silent as to this part of the statutory test. Plaintiff's only statements concerning this issue are found in its request for a fee waiver, which generally provides that Plaintiff's mission involves "standing up to Wall Street and other powerful special interests and holding their allies in Congress and the White House accountable" and that it will "use the information gathered . . . to educate the public through reports, press releases, or other media." *See* Pl.'s Exs. 1 & 2, ECF No. 2-3, at 3, 8. First, Plaintiff's mission ("standing up to Wall Street") says nothing about the group's primary activity, since that mission could be advanced in any number of ways. Second, Plaintiff's intention to publish reports, press releases, or other media merely establishes that disseminating information if one of Plaintiff's activities—not that it is its primary activity.

Courts have rejected similar statements from other advocacy groups as insufficient to "demonstrate" the requesters' *primary* activity. *See Landmark Legal Found.*, 910 F. Supp. 2d at 276 (public interest law firm's assertion that "part of its mission" involved disseminating information was "not sufficient to show that Landmark is primarily, and not just incidentally, engaged in information dissemination"); *Treatment Action Grp.*, 2016 WL 5171987, at *8 (request for expedited processing by two advocacy groups fell short because spreading information was only one of their activities). Nor was Plaintiff's statement that it will publish information on its website enough to establish this part of the statutory test. *See Landmark Legal Found.*, 910 F. Supp. 2d at 276 (concluding that plaintiff's reasoning would "allow nearly any

organization with a website, newsletter, or other information distribution channel to qualify as primarily engaged in disseminating information"); *Nat'l Day Laborer Org. Network*, 2017 WL 746444, at *5 (similar statements from advocacy groups were "plainly insufficient" to establish this factor).

Finally, Plaintiff's request that the Bureau consult its website does not cure the latent deficiency in Plaintiff's requests. On its website, Applied Progress describes itself as "[a] nationwide nonprofit grassroots organization [that] uses hard-hitting research and creative campaigns to hold powerful special interests accountable and empower hardworking Americans." ALLIED PROGRESS, https://alliedprogress.org (last visited April 25, 2017). The website also contains links to several non-media activities, such as opposition campaigns directed against executive branch nominees. *See, e.g.,* Oppose Costa, ALLIED PROGRESS, https://alliedprogress.org/opposeacosta (last visited April 25, 2017) ("Tell Your Senators to Oppose Trump [sic] New Labor Nominee"). Again, this information does not sufficiently demonstrate that Plaintiff was primarily engaged in disseminating information. As noted above, agencies are not required to go looking for additional facts and information not actually presented to them by a FOIA requester. Therefore, based on the record before the CFPB at the time of Plaintiff's FOIA requests, the CFPB correctly denied Plaintiff's request for expedited processing.

b. Plaintiff Has Not Established an Urgency to Inform the Public

The second part of the statutory definition of "compelling need"—an urgency to inform the public concerning Federal government activity—provides an additional and independent ground on which the CFPB correctly denied Plaintiff's request for expedited processing. One

factor to be considered under *Al-Fayed* in determining whether a requester has demonstrated an urgency to inform the public is "whether the request concerns a matter of current exigency to the American public." 254 F.3d at 310. The dictionary definition of exigency is "the condition or quality of being exigent, urgency." Exigent is defined as "calling for immediate action or attention; urgent; critical." *Webster's New World Dictionary* (3d College Edition).

In support of Plaintiff's expedited processing request, Plaintiff's FOIA requests provide the following information:

> [L]egislation sits on the Senate Legislative Calendar and could be acted upon at any moment. Specifically, on April 5, 2017, Sen. David Perdue (R-GA) and Rep. Roger Williams (R-TX) wrote an op-ed in which they said they are "using the CRA [Congressional Review Act] concurrently in the House and Senate to push for an end to the Prepaid Card Rule." Also, on April 5, 2017, CNBC reported that the "deadline for introducing any new CRA resolutions" had already passed and legislators "must complete voting on resolutions already in the legislative pipeline by mid-May." As such, it is likely the Congressional Review Act resolution concerning the Prepaid Card rule will receive a vote in the U.S. Congress within a matter of weeks. This demonstrates a compelling need for the public to have access to this information as soon as possible to inform their elected representatives as they consider this legislation.

Here, even if Plaintiff had demonstrated an urgency to inform about the CRA resolution *generally*, it would still have failed to carry its burden to show an urgency to inform the public about the specific information requested in Plaintiff's FOIA requests. "The case law makes it clear that only public interest in the *specific subject of a FOIA request* is sufficient to weigh in favor of expedited treatment." *Elec. Privacy Info. Ctr. v. U.S. Dep't of Def.*, 355 F. Supp. 2d 98, 102-03 (D.D.C. 2004) (emphasis added) (surveying relevant case law). Again, the specific subjects of these requests are communications about the Prepaid Rule between the CFPB and certain elected representatives, and between the CFPB and two prepaid companies. Yet the only reason Plaintiff gives to establish public interest in these specific communications is that it might

"enable the public to see the influences and policymaking process" behind the prepaid rule, and could "contribute to a better understanding of relevant government procedures by the public in a significant way." As a court in this District has said with respect to a similar argument by a FOIA requester, "such a justification would likely sweep almost any FOIA request into the ambit of 'urgency' since FOIA requests are regularly designed to elicit information about how the government is performing its work." *Landmark Legal Found.*, 910 F. Supp. 2d at 277.

Further, Plaintiff's requests failed to demonstrate that any Congressional action is "imminent" here. If Congress chooses to overturn the Prepaid Rule via the CRA—versus any other legislative means—it must do so on or before May 9, 2017. Here, Plaintiff's requests do not sufficiently establish that Senate Joint Resolution 19 is likely to receive a vote in the Senate or, even if it did, whether it would be likely to pass. *See Electronic Privacy Info. Ctr. v. U.S. Dep't of Justice*, 15 F. Supp. 3d 32, 46-47 (D.D.C. 2014) (expedited processing unwarranted where plaintiff failed to identify any scheduled committee hearings or floor votes indicating that action on proposed legislation was imminent). The procedural tool available to Congress here (*i.e.*, the CRA) does not create an exigency. Consequently, Plaintiff's alleged inability to inform here is insufficient to support the need to demonstrate success on the merits of an expedited processing claim. *See Long v. U.S. Dep't of Homeland Security,* 436 F. Supp. 2d 38, 42-43 (D.D.C. 2006) (finding that the allegation that information was necessary in order to provide the information to persons who wish to file briefs in a particular case was not sufficient to show a likelihood of success on the merits on an expedited processing claim).

Finally, the two articles described in Plaintiff's expedited processing requests did not otherwise establish that Plaintiff's requests involve "a matter of current exigency to the

American public." *Al-Fayed*, 254 F.3d at 310. While the CFPB in no way seeks to undercut the importance of its regulations, the limited media coverage cited by Plaintiff here does not warrant a preliminary injunction. *See ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 31-32 (D.D.C. 2004) (expedited processing warranted where plaintiff's request described a "flurry of media attention" and over a dozen articles regarding the Patriot Act). Further, the Prepaid Rule has otherwise received modest news media coverage. Since October 1, 2016, only five articles mentioned the Prepaid Rule in the printed versions of the New York Times, Washington Post, and Wall Street Journal. *See* Declaration of Lisa Kosow (attached hereto) ¶¶ 3-5. Under Plaintiff's standard, arguably *any* proposed legislation receiving some amount of news coverage would constitute an exigency—an approach that would effectively eviscerate the standard in *Al-Fayed*.

II. Plaintiff Cannot Show Irreparable Injury

Although FOIA requesters' "desire to have [their] case decided in an expedited fashion is understandable, that desire, without more, is insufficient to constitute the irreparable harm necessary to justify the extraordinary relief" of a preliminary injunction. *Judicial Watch v. U.S. Dep't of Homeland Security*, 514 F. Supp. 2d 7, 10 (D.D.C. 2007). Here, Plaintiff's generalized interest in engaging in an ongoing public debate using information that it has requested under FOIA is not sufficient to establish that irreparable harm will occur unless the Plaintiff receives immediate access to that information. *Electronic Privacy Info. Ctr. v. U.S. Dep't of Justice*, 15 F. Supp. 3d 32, 46-47 (D.D.C. 2014) (plaintiff failed to establish irreparable harm where it failed to identify any scheduled committee hearings or floor votes indicating that action on proposed legislation was imminent). As discussed *supra*, Plaintiff has offered no evidence that a delay in

the CFPB's disclosing of agency documents here would irreparably harm Plaintiff's ability to provide information to the public, particularly where the limited media coverage has already noted Congress' potential to invoke the CRA with respect to the Prepaid Rule.[2] *See Judicial Watch, Inc.,* 514 F. Supp. 2d at 10 (mere delay in disclosing documents did not irreparably plaintiff's ability to provide information to the public, particularly where the media had already extensively covered the event).

Further, any harm experienced here is of Plaintiff's own making. First, after filing its initial FOIA requests, Plaintiff withdrew and resubmitted its FOIA requests 6 days later. Because the CFPB's FOIA Office generally processes requests on a "first in, first out" basis, the result of Plaintiff's own actions here was to delay the CFPB's processing of Plaintiff's FOIA requests. *See* Lazier Decl. ¶ 11. Second, even after being told by the CFPB that its first two FOIA requests did not provide enough information to establish an entitlement to exigent processing, Plaintiff took only minimal steps to provide additional information in its new requests, simply citing to two news reports (both of which predated Plaintiff's first requests). Third, Senate Joint Resolution 19 was introduced in the Senate over *two months* prior to Plaintiff's initial FOIA request. The next day, several news organizations covered this story on their websites. *See, e.g.,* Yuka Hayashi, Republicans Introduce Resolution to Kill CFPB's Prepaid-Card Rule, WALL ST. J. (Feb. 2, 2017, 6:55 PM),

[2] Notably, Plaintiff has already published on its website an article on the subject of its FOIA requests on the same day it filed this lawsuit. *See* Prepaid Perdue: Senator Pushes the Legislative Limits to Help Major Donor, ALLIED PROGRESS (Apr. 18, 2017), https://alliedprogress.org/research/prepaid-perdue-senator-pushes-legislative-limits-help-major-donor-predatory-prepaid-debit-card-company-just-settled-federal-fraud-charges (last visited April 25, 2017).

https://www.wsj.com/articles/republicans-introduce-resolution-to-kill-cfpbs-prepaid-card-rule-1486077324; Lorraine Woellert, CFPB faces Senate challenge on prepaid card rule, Politico (Feb. 3, 2017, 8:16 AM), http://www.politico.com/story/2017/02/cfpb-faces-senate-challenge-on-prepaid-card-rule-234595 (specifically noting that Netspend is based in Perdue's state). Plaintiff offers no explanation as to why it waited months after the introduction of proposed legislation in the Senate, and less than a month from the CRA's deadline for Congressional action on the CFPB's Prepaid Rule, to file its FOIA requests. To now claim that "time is of the essence" is to effectively force the CFPB to bear the burden of making up for lost time due to Plaintiff's unexplained delay.

III. The Balance of Harms Disfavors a Preliminary Injunction

The third element for a preliminary injunction is a balancing of the harms to the CFPB and other third parties. The CFPB is already searching for responsive records and processing them as they are received and will send its first release to Plaintiff on or about May 10, 2017. Lazier Decl. at ¶ 14 (noting that the CFPB has identified approximately 5,100 potentially response documents to Plaintiff's requests). Moreover, activities of searching for, compiling, and reviewing responsive records to a particular FOIA request takes a considerable amount of time. Imposing an expedited proposed deadline would also force the CFPB, a small agency, to divert limited resources away from other statutory and regulatory obligations in order to process Plaintiff's request, with little or no benefit to the public. Plaintiff offers no cogent reasoning as to why its FOIA request should engender such an unwarranted result.

The CFPB is complying with its obligations under FOIA to process the request in a reasonable manner. Where the agency is processing Plaintiff's broad request in a responsive,

reasonable and prioritized manner, and expects largely to complete its search by May 10, 2017 and send its first production on the same date, the balance of harm strongly disfavors the extreme remedy of preliminary injunction. Lazier Decl. ¶ 14.

IV. A Preliminary Injunction is not in the Public Interest

Similarly, a preliminary injunction is not in the public interest. Congress set forth standards for an agency to accord expedited processing to certain requests, and this Court should be reluctant to expand the grounds on which a requester can force expedited processing beyond those statutory bases. Indeed, were the Court to accept Plaintiff's argument, it would surely encourage sophisticated requesters to seek preliminary injunctive relief in FOIA cases as a matter of course. But neither the public interest nor the equities are well-served by permitting sophisticated FOIA requesters to avoid the requirements of the FOIA, and to disrupt its orderly process. *See, e.g., Renegotiation Bd. v. Bannercraft Clothing Co., Inc.*, 415 U.S. 1, 22-25 (1974); *Columbia Packing Co., Inc. v. USDA*, 563 F.2d 495, 500 (1st Cir. 1977); *cf. The Nation Magazine v. U.S. Dep't of State*, 805 F. Supp. 68, 74 (D.D.C. 1992) (finding that injunctive relief in FOIA case would harm the public interest by disrupting the "orderly, fair, and efficient administration of the FOIA"). Given that there are only so many CFPB staffers to process existing requests, allowing Plaintiff to jump to the head of the line would upset the agency's processes to the detriment of other FOIA requesters. *See Al-Fayed*, 254 F.3d at 310.

CONCLUSION

For the reasons set forth above, the motion for a temporary restraining order and preliminary injunction should be denied. Attached is a draft order reflecting the denial of the motion.

Dated: April 25, 2017
Washington, DC

Respectfully submitted,

CHANNING D. PHILLIPS, D.C. Bar #415793
United States Attorney

DANIEL F. VAN HORN, D.C. Bar #924092
Chief, Civil Division

By: /s/
FRED E. HAYNES, DC Bar #165654
Assistant United States Attorney
CHRISTOPHER HAIR, PA Bar #306656
Special Assistant United States Attorney
555 4th Street, NW
Washington, DC 20530
(202) 252-2510
fred.haynes@usdoj.gov
christopher.hair@usdoj.gov

Attorneys for Defendants

Of Counsel

Kevin E. Friedl, NY Bar # 5240080
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
(202) 435-9268

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ORDER

Upon consideration of the motion by plaintiffs for a temporary restraining order and preliminary injunction directing defendant to give expedited treatment to the two Freedom of Information Act requests they have submitted to defendant, the opposition to that motion by defendant, and the record in this case, it is this _____ day of _____, 2017,

ORDERED that the motion is denied.

_____
UNITED STATES DISTRICT JUDGE