

THE
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Judge Preska sets deadlines for filings on jurisdictional issues in RD Legal Funding case

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On July 25, Judge Preska [entered an order](#) setting deadlines for RD Legal Funding and the New York Attorney General (NYAG) to submit filings on jurisdictional issues and addressing other procedural matters.

Judge Preska had previously issued an order on June 21 denying RD Legal Funding's motion to dismiss the NYAG's federal UDAAP claims under the CFPA and state law claims but terminating the CFPB's participation in the case as a consequence of her determination that because the CFPB's single-director-removable-only-for-cause structure is unconstitutional, the CFPB lacked authority to bring claims under the CFPA. In Judge Preska's view, the proper remedy was to strike the CFPA (Title X of Dodd-Frank) in its entirety rather than just sever the for-cause removal provision.

In her June 21 order, Judge Preska set a July 9 deadline for counsel to advise the court how they intended to proceed. In the joint submission made by RD Legal Funding and NYAG pursuant to Judge Preska's order, RD Legal Funding asserted that the June 21 order "struck each substantive provision of the [CFPA] that forms the basis of federal jurisdiction, which RD Legal will address in a separate filing." In her July 25 order, Judge Preska set August 3, 2018 as the deadline for RD Legal Funding to make its "proposed filing on what they describe as jurisdictional issues" and set August 13, 2018 as the deadline for the NYAG to respond.

Last week, RD Legal Funding filed an answer to the complaint in which, citing to Judge Preska's June 21 order, it denied the NYAG's allegation that it has authority under Dodd-Frank Section 1042 to enforce the provisions of the CFPA. Presumably, RD Legal Funding will detail the legal basis for these denials in its filing on jurisdictional issues.

In the joint submission made pursuant to Judge Preska's June 21 order, RD Legal Funding also asked the court to make an express finding that there is "no just reason for delay" and enter judgment against the CFPB alone under Rule 54(b) of the Federal Rules of Civil Procedure, and if the CFPB sought immediate review of the June 21 order, certify the order for interlocutory appeal and stay the proceeding during the appeal's pendency. The NYAG indicated that it wanted the case to proceed as quickly as possible and would oppose any request by RD Legal Funding for delay, including a request for interlocutory appeal and a stay of the proceeding.

The CFPB has not yet indicated whether it will appeal Judge Preska's June 21 order to the Second Circuit. Because the case remains active, it cannot appeal the order without a finding by Judge Preska that there is no reason to delay the appeal under Rule 54(b). In her July 25 order, Judge Preska preemptively denied RD Legal Funding's request for certification of her June 21 order for interlocutory appeal and for a stay of the proceeding during the pendency of the appeal in the event the CFPB were to seek immediate review of her June 21 order by the Second Circuit "pursuant to some mechanism other than a Rule 54(b) judgment."

Judge Preska's July 25 order also directed the NYAG to inform the court if it wished to be heard should RD Legal Funding "persist in their request that the Court enter judgment against the [CFPB] under Rule 54(b)." [In a letter to Judge Preska dated July 27, 2018](#), the NYAG stated that it "does not take a position on this issue, with one caveat related to expediency." The NYAG indicated that it "believes that this case should proceed as expeditiously as possible in this Court and objects to any scenario where the Court would issue a stay." It stated further that "to the extent that the Court issues a judgment under Rule 54(b), the NYAG requests that the Court

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deny any request by the RD Legal Parties for a stay of this proceeding.”

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