UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CONSUMER DATA INDUSTRY ASSOCIATION, **Plaintiff,** v. **STATE OF TEXAS THROUGH KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF TEXAS,** **Defendant.**	§ § § § § § § § § § § § §	**No. 1:19-CV-00876-RP**

JOINT MOTION TO STAY

Plaintiff Consumer Data Industry Association ("CDIA"), and Defendant State of Texas through Ken Paxton, in his Official Capacity as Attorney General for the State of Texas, respectfully and jointly move the Court to stay this action until a time after the impending enactment by the Consumer Financial Protection Bureau ("CFPB") of rules regarding the Fair Credit Reporting Act. In support thereof, the Parties state as follows:

This case involves the question of whether and to what extent the Fair Credit Reporting Act, 15 U.S.C. §1681 *et seq.* ("FCRA"), preempts Texas' Medial Debt Act, Tex. Bus. & Com. Code § 20.05(a)(5), which prohibits the reporting of certain kinds of medical collection account information in consumer reports by consumer reporting agencies. Currently, discovery is set to close on May 31, 2024, and the parties' motions for summary judgment are due on June 14, 2024. A bench trial is currently set for November 4, 2024. Given the imminence of a potential proposed rulemaking on the FCRA, as explained in more detail below, the parties request a stay of the case.

The CFPB, which is a federal regulator that has certain regulatory and enforcement authority under the FCRA, is currently engaged in a process to adopt a formal rule interpreting certain provisions of the FCRA and topics related to credit reporting—one of which is medical debt. The CFPB first disclosed potential FCRA rulemaking in its regulatory Agenda released in the fall of 2022, although it only obliquely referred to it as under "[consideration] whether to amend Regulation V."[1] Nothing more occurred with the potential rulemaking for a year, when the CFPB engaged in the feedback process required by the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), in which the CFPB sought input from small business participants on issues under consideration within the potential rule, including the regulation of medical debt.[2] With respect to medical debt, the SBREFA documents suggest various approaches are under consideration by the CFPB from delaying the reporting of medical debt by furnishers to consumer reporting agencies, to a ban on the use of medical debt by creditors in credit underwriting decisions, to the adoption of specific dispute handling rules related to consumer medical date, among others.[3] The CFPB has published no definitive timeframe for the rulemaking, and has not provided a draft rule to the public or to industry. Thus, while industry has known that the rulemaking is underway, and that medical debt will likely be included in the proposed rule, the details and timing of the proposal have been unknown.

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[1] Fair Credit Reporting Act Rulemaking, CFPB Agency Rule List - Fall 2022 found at: https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=3170-AA54 (last visited 5/20/2024).

[2] *See Small Business Review Panel for Consumer Reporting Rulemaking* found at https://www.consumerfinance.gov/rules-policy/small-business-review-panels/small-business-review-panel-for-consumer-reporting-rulemaking/ (last visited 5/14/2024).

[3] *Small Business Advisory Review Panel For Consumer Reporting Rulemaking Outline of Proposals and Alternatives Under Consideration,* pp. 17-18, https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf (last visited 5/20/2024).

However, on May 6, 2024, Vice President Harris referenced the impending rule in a way that suggests it may be issued shortly, and further, that the proposed rule will likely regulate the reporting of medical debt by consumer reporting agencies. She stated "[w]e are also implementing a rule—and this is critically important—we are also implementing a rule that medical debt cannot be used in calculating your credit score…which means medical debt cannot be the reason someone is denied a car loan, a home loan, or a small-business loan."[4] Further, staff from the CFPB confirmed recently (at CDIA's industry conference) that the CFPB continues to plan on regulating medical debt in two ways - by regulating its use by lenders in credit decisioning, and by limiting its inclusion in consumer reports by consumer reporting agencies. Some industry experts suggested the rule could be issued in the next 1-2 months, although the CFPB declined to pinpoint a timeline, stating only that the rule is a top priority for the CFPB and that work remained ongoing.

At this time, the extent to which the proposed FCRA rule will impact this case is unknown.[5] Given that the time horizon for the issuance of a notice of proposed rulemaking, while still unknown, appears more imminent, the parties suggest that they be allowed time to review the final rule and evaluate its impact on the case before this Court and consider how each should proceed. Respectfully, neither the parties, nor this Court, benefit from a full summary judgment briefing on issues that may be materially affected by the rule, and about which further briefing might later be required before the trial date set in this matter.

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[4] https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/05/06/remarks-by-vice-president-harris-during-the-nationwide-economic-opportunity-tour/) (last visited 5/20/2024).

[5] To be clear, by filing this Motion, CDIA does not concede that the proposed rule would have any binding effect on this Court or the case, or that any party waives any argument regarding the applicability of the rule or the authority of the CFPB to act by agreeing to the stay contemplated herein. Both parties reserve the right to argue the extent to which, if any, the issues in this matter

Once the rule is enacted, the parties have agreed to meet and confer within thirty (30) days and assess their respective positions on the impact of the rule. Further, the parties have agreed to provide a joint status report to the Court regarding if or how the case should proceed within forty-five (45) days of the rule's enactment. Accordingly, the parties respectfully and jointly request that the Court enter an order staying this case pending the enactment of the rule, and for other such relief as justice may require.

Dated: May 28, 2024

Respectfully Submitted:

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are impacted by the proposed rule, including any argument regarding the authority of the CFPB to act.

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[PROPOSED] ORDER GRANTING JOINT MOTION TO STAY

Having considered the Parties' Joint Motion to Stay, the Court considers the motion meritorious and GRANTS the motion.

Therefore, it is ORDERED that the motion is GRANTED; the case and all pending deadlines are stayed pending the enactment of any rule issued by the Consumer Financial Protection Bureau's anticipated rulemaking on the federal Fair Credit Reporting Act (the "Rule").

It is FURTHER ORDERED that the Parties submit a status report 45 days within the enactment of the Rule.

SIGNED this _________ day of __________________________, 2024.

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ROBERT L. PITMAN
UNITED STATES DISTRICT JUDGE