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CENTRAL DIST. OF CALIF.
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 12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14 CONSUMER FINANCIAL
 PROTECTION BUREAU,
 15
 16 Petitioner,
 17 v.
 18 GREAT PLAINS LENDING,
 LLC, MOBILOANS, LLC &
 19 PLAIN GREEN, LLC,
 20 Respondents.
 21

CV14-02090-MWF(PLA)

Case No. _____

**MEMORANDUM IN SUPPORT OF
 PETITION TO ENFORCE
 CIVIL INVESTIGATIVE DEMANDS**

INTRODUCTION

22
 23
 24 The Consumer Financial Protection Bureau (Bureau) petitions this Court, pursuant to
 25 Section 1052 of the Consumer Financial Protection Act (CFPA),¹ and Fed. R. Civ. P.

26 _____
 27 ¹ 12 U.S.C. § 5562; *see also* 12 C.F.R. § 1080.10.

1 81(a)(5), for an order requiring Respondents Great Plains Lending, LLC, MobiLoans, LLC,
2 and Plain Green, LLC to comply with the Civil Investigative Demands (CIDs) issued to
3 Respondents on June 12, 2012.² The CIDs were issued in the course of a non-public
4 investigation concerning possible violations of Section 1036 of the CFPA³ and other Federal
5 consumer financial laws by small-dollar online lenders. Respondents have not complied with
6 the CIDs, and the Bureau therefore is now proceeding to enforce the CIDs that it issued
7 under its powers of compulsory administrative process.⁴

8 As shown below, the Bureau has authority under the CFPA to issue the CIDs to
9 Respondents, and the CIDs met procedural requirements, seek relevant information, and are
10 not overbroad or unduly burdensome. Accordingly, the Bureau respectfully requests that this
11 Court (1) direct Great Plains Lending, LLC, MobiLoans, LLC, and Plain Green, LLC to
12 show cause why they should not fully comply, and (2) thereafter enter an order enforcing the
13 CIDs.⁵

14 JURISDICTION AND VENUE

15 The Bureau has authority under Section 1052 of the CFPA to issue CIDs and,
16 whenever a person fails to comply, enforce them in district court.⁶ Section 1052 and its
17 related regulations authorize the Bureau to petition the district court “in any judicial district
18

19 ² Proceedings to enforce administrative process, such as these CIDs, are initiated by a
20 petition and order to show cause (rather than by complaint and summons) and are summary
21 in nature. *See, e.g., FTC v. Carter*, 636 F.2d 781, 789 (D.C. Cir. 1980); *FTC v. MacArthur*, 532
22 F.2d 1135, 1141-42 (7th Cir. 1976); *Genuine Parts Co. v. FTC*, 445 F.2d 1382, 1388 (5th Cir.
1971).

23 ³ 12 U.S.C. § 5536.

24 ⁴ CIDs are a type of investigative administrative subpoena. *See, e.g., FTC v. Invention*
25 *Submission Corp.*, 965 F.2d 1086, 1087, 1089 (D.C. Cir. 1992); *General Finance Co. v. FTC*, 700
26 F.2d 366, 367-68 (7th Cir. 1983).

27 ⁵ *See, e.g., EPA v. Alyeska Pipeline Serv. Co.*, 836 F.2d 443, 446 (9th Cir. 1988) (upholding a
28 district court order to enforce an administrative investigative subpoena).

⁶ 12 U.S.C. § 5562(c)(1), (e).

1 in which [that] person resides, is found, or transacts business.”⁷ Each of the Respondents
2 has conducted business continuously in this district for at least the past two years.⁸
3 Accordingly, venue is proper in this district.

4 **STATEMENT OF FACTS**

5 The Bureau, an agency of the United States, is empowered under the CFPA to
6 enforce Federal consumer financial laws,⁹ including the Truth in Lending Act (TILA),¹⁰ the
7 Electronic Funds Transfer Act (EFTA),¹¹ and the Gramm-Leach-Bliley Act (GLBA).¹² The
8 Bureau is also authorized by Sections 1031 and 1036 of the CFPA to take action to prevent
9 “unfair, deceptive, or abusive act[s] or practice[s] . . . in connection with any transaction with
10 a consumer for a consumer financial product or service.”¹³

11 This matter arises from the Bureau’s investigation into several online lenders that
12 offer a variety of small-dollar loan products – including payday loans, installment loans, and
13 lines of credit – to consumers nationwide. As part of the investigation, the Bureau issued a
14 CID to each of the Respondents on June 12, 2012, requiring them to answer interrogatories
15 and produce documents.¹⁴ The CIDs contained a “Notification of Purpose” advising the
16 Respondents that the Bureau’s investigation sought to determine whether small-dollar online
17 lenders have engaged in unlawful acts or practices relating to the advertising, marketing,
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19 ⁷ 12 U.S.C. § 5562(e)(1); *see also* 12 C.F.R. § 1080.10(b)(1). This venue provision is similar to
20 language in numerous other federal statutes. *See, e.g.*, 15 U.S.C. § 22 (Clayton Act); 15 U.S.C.
21 § 77v(a) (Securities Act of 1933); 7 U.S.C. § 13a-1 (Commodity Exchange Act).

22 ⁸ Decl. of Meredith B. Osborn in Support of Petition to Enforce Civil Investigative
23 Demands (Osborn Decl.) at ¶ 13.

24 ⁹ 12 U.S.C. § 5491(12), (14); 12 U.S.C. §§ 5511(c)(4), 5512(a), 5531(a), 5564(a).

25 ¹⁰ 15 U.S.C. § 1601 *et seq.*

26 ¹¹ 15 U.S.C. § 1693 *et seq.*

27 ¹² 15 U.S.C. § 6802 *et seq.*

28 ¹³ 12 U.S.C. §§ 5531(a); *see also* 5536(a)(1)(B).

¹⁴ Osborn Decl., Ex. A (CIDs issued to Great Plains Lending LLC, MobiLoans LLC, and Plain Green LLC).

1 provision, or collection of small-dollar loan products in violation of Section 1036 of the
 2 CFPA, TILA, EFTA, GLBA, or any other Federal consumer financial law.¹⁵ The CIDs
 3 sought, for example, information about consumer complaints, marketing, underwriting, and
 4 processing of electronic transfers.

5 On July 17, 2012, Respondents jointly filed an administrative petition under 12 C.F.R.
 6 § 1080.6(e) to set aside the CIDs.¹⁶ Respondents challenged the CIDs on three grounds:
 7 (1) the Bureau lacked authority to issue the CIDs; (2) the CIDs failed to comply with the
 8 applicable statutory and regulatory requirements, including providing an adequate notice of
 9 their purpose and scope; and (3) the CIDs were overbroad and unduly burdensome.

10 On September 26, 2013, the Bureau's Director, Richard Cordray, issued a decision
 11 and order denying Respondents' petition to set aside the CIDs.¹⁷ The decision and order
 12 directed Respondents to comply with the CIDs by October 17, 2013.¹⁸ At the request of
 13 Respondents' counsel, the Bureau extended the compliance date until October 24, 2013.
 14 Respondents have failed to comply with the Bureau's CIDs.¹⁹

15 **STANDARD FOR JUDICIAL ENFORCEMENT**

16 The standard for judicial enforcement of federal agency investigative process, such as
 17 the instant CIDs, is well settled. Although "the court's function is neither minor nor
 18 ministerial, the scope of issues which may be litigated in a [compulsory process] enforcement
 19 proceeding must be narrow, because of the important governmental interest in the
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 22 ¹⁵ *Id.*

23 ¹⁶ Osborn Decl., Ex. B (Joint Petition to set aside the civil investigative demands issued to
 Great Plains Lending, LLC, MobiLoans, LLC, and Plain Green, LLC).

24 ¹⁷ Osborn Decl., Ex. C (Decision and Order on Petition by Great Plains Lending, LLC;
 25 MobiLoans, LLC; and Plain Green, LLC to set aside Civil Investigative Demands, *In re Great
 Plains Lending, LLC et al.*, 2013-MISC-Great Plains Lending-0001).

26 ¹⁸ *Id.*

27 ¹⁹ Osborn Decl. at ¶ 9.

1 expeditious investigation of possible unlawful activity.”²⁰ A district court must enforce
 2 agency process so long as (1) the agency has authority to investigate; (2) the procedural
 3 requirements have been followed; (3) the information sought is relevant to the investigation;
 4 and (4) the request is not overbroad or unduly burdensome.²¹

5 I. The Bureau has authority to investigate.

6 The Bureau has authority to investigate potential violations of Federal consumer
 7 financial laws.²² “Whenever the Bureau has reason to believe that any person may be in
 8 possession, custody, or control of any documentary material or tangible things, or may have
 9 any information, relevant to a violation,” the CFPA broadly authorizes the Bureau to issue a
 10 CID to that person.²³ The Act defines “person” to mean “an individual, partnership, *company*,
 11 corporation, association (incorporated or unincorporated), trust, estate, cooperative
 12 organization, *or other entity*.”²⁴ Respondents squarely fall within this definition of “person”:
 13 Respondents, all limited liability companies, qualify as both “companies” and “other
 14 entities.” Accordingly, the Bureau has authority to issue CIDs to Respondents.

16 ²⁰ *FTC v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977) (en banc) (internal citation omitted).

17 ²¹ *NLRB v. Bakersfield Californian*, 128 F.3d 1339, 1341 (9th Cir. 1994); *see also United States v.*
 18 *Powell*, 379 U.S. 48, 57-58 (1964) (an administrative summons will be enforced if the agency
 19 shows that “the investigation will be conducted pursuant to a legitimate purpose, that the
 20 inquiry may be relevant to the purpose, that the information sought is not already within the
 21 [agency’s] possession, and that the administrative steps required by the [Internal Revenue]
 22 Code have been followed...”); *Okla. Press Publ’g Co. v. Walling*, 327 U.S. 186, 209 (1946) (an
 23 administrative subpoena is valid if “the investigation is authorized by Congress, is for a
 24 purpose Congress can order, and the documents sought are relevant to the inquiry”); *Endicott*
 25 *Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943) (an administrative subpoena is valid if “[t]he
 26 evidence sought by the subpoena was not plainly incompetent or irrelevant to any lawful
 27 purpose of the Secretary in the discharge of her duties”).

28 ²² 12 U.S.C. § 5561, 5562.

²³ 12 U.S.C. § 5562(c).

²⁴ 12 U.S.C. § 5481(19) (emphasis added). Courts have resisted attempts to narrow such all-
 inclusive definitions. *See, e.g., Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S.
 687, 705 (1995); *Consumers Union of U.S., Inc. v. Heimann*, 589 F.2d 531, 533 (D.C. Cir. 1978).

1 Respondents have refused to comply with the CIDs, maintaining that they are
2 implicitly exempt from the Bureau's CID authority because they are "arms" of Indian
3 tribes.²⁵ But even if, *arguendo*, Respondents were arms of Indian tribes, they would be subject
4 to the Bureau's CID authority because the CFPA is a law of general applicability. As the
5 Supreme Court stated in *Federal Power Commission v. Tuscarora Indian Nation*,²⁶ "[I]t is now well
6 settled by many decisions of this Court that a general statute in terms applying to all persons
7 includes Indians and their property interests."²⁷ As explained in *Donovan v. Coeur d'Alene*
8 *Tribal Farm*, the Ninth Circuit has consistently invoked this rule to hold that laws of general
9 applicability presumptively apply not just to individual Indians, but also to tribes, arms of
10 tribes, and other tribally affiliated entities.²⁸

11 The CFPA meets the *Coeur d'Alene* standard. The Bureau's enforcement powers under
12 the statute broadly cover all "person[s]" who offer or provide consumer financial products
13 or services,²⁹ subject to limited exemptions.³⁰ The particular statutory provision governing
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15 ²⁵ Osborn Decl., Ex. B at 8-19.

16 ²⁶ 362 U.S. 99 (1960).

17 ²⁷ *Id.* at 116 (citing cases).

18 ²⁸ 751 F.2d 1113, 1115-16 & n.2 (9th Cir. 1985) (explaining that "generally applicable federal
19 statutes ordinarily apply to Indian tribes and their activities"; applying *Tuscarora* to question
20 of whether "tribal enterprise," a commercial farm wholly owned and operated by tribe, was
21 subject to Occupational Safety and Health Act (OSHA); and concluding that tribal enterprise
22 was subject to OSHA); *see also U.S. Dep't of Labor v. Occupational Safety & Health Review*
23 *Comm'n*, 935 F.2d 182, 183-84 (9th Cir. 1991) (applying *Tuscarora* and concluding that on-
24 reservation sawmill owned and operated by tribe was subject to OSHA); *E.E.O.C. v. Karuk*
25 *Tribe Housing Auth.*, 260 F.3d 1071, 1078 (9th Cir. 2001) (applying *Tuscarora* to determine
26 "whether the Tribe is subject to the ADEA [Age Discrimination in Employment Act] in its
27 role as [complainant's] employer" and concluding that ADEA did not apply to Tribe's
28 employment relationship with plaintiff because employment relationship touched on "purely
internal matters" related to Tribe's self-governance and dispute was entirely "intramural"
between tribal government and complainant, who was member of Tribe).

26 ²⁹ *See* 12 U.S.C. §§ 5481(6), 5531(a), 5536(a); *see generally* 12 U.S.C. 5561, 5562.

27 ³⁰ *See, e.g.*, 12 U.S.C. §§ 5517, 5519.

1 the issuance of CIDs has an even broader scope, authorizing the Bureau to issue a CID to
2 “any person,” whether or not a provider of financial products and services.³¹ Therefore, the
3 CFPA in general, and the provision relating to the issuance of CIDs in particular,
4 presumptively apply to Respondents even if they were deemed arms of Indian tribes.

5 **II. The CIDs meet procedural requirements.**

6 Before enforcing an administrative subpoena such as the instant CIDs, courts look to
7 whether the “administrative steps required” by the authorizing statute and regulation have
8 been followed.³² Here, the CIDs meet the procedural requirements of Section 1052 of the
9 CFPA and 12 C.F.R. Part 1080.³³ The CIDs were issued in writing, signed by the Assistant
10 Director of the Office of Enforcement, and served upon Respondents by certified mail,
11 return receipt requested, at their principal place of business.³⁴ As described above, the CIDs
12 stated “the nature of the conduct constituting the alleged violation . . . under investigation
13 and the provision of law applicable to such violation.”³⁵

14 **III. The CIDs seek information that is relevant to the Bureau’s** 15 **investigation.**

16 The information and documents sought must be relevant to the agency’s investigation
17 in order for the CID to be enforceable. Relevance in this setting is a low threshold. The
18 Supreme Court has held that an agency request is relevant so long as it is “not plainly
19 incompetent or irrelevant to any lawful purpose” of the agency.³⁶ Moreover, an agency’s own

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21 ³¹ 12 U.S.C. § 5562(c).

22 ³² *See Powell*, 379 U.S. at 58; *see also United States v. Richey*, 632 F.3d 559, 564 (9th Cir. 2011);
23 *United States v. Dynavac, Inc.*, 6 F. 3d 1407, 1414 (9th Cir. 1993) (“The government’s burden is
24 a slight one, and may be satisfied by a declaration from the investigating agent that
25 the *Powell* requirements have been met.”).

26 ³³ 12 U.S.C. § 5562(c)(1), (c)(2), (c)(8)(C).

27 ³⁴ *See* 12 C.F.R. § 1080.6(a); Osborn Decl. at ¶ 4.

28 ³⁵ 12 U.S.C. § 5562 (c)(2); *accord* 12 C.F.R. § 1080.5 (Notification of Purpose); Osborn Decl.,
Ex. A.

³⁶ *Endicott Johnson Corp.*, 317 U.S. at 509.

1 appraisal of relevancy must be accepted so long as it is not “obviously wrong,” and so long
2 as the request is designed to assist the agency in ascertaining whether “the law is being
3 violated in some way and . . . to determine whether or not to file a complaint.”³⁷

4 Here, the CIDs meet this standard. Each of the CIDs’ document requests and
5 interrogatories pertain to the CIDs’ stated purpose of determining “whether small-dollar
6 online lenders or other unnamed persons have engaged or are engaging in unlawful acts or
7 practices relating to the advertising, marketing, provision, or collection of small-dollar loan
8 products” in violation of stated Federal consumer financial laws. The CIDs request
9 information about Respondents’ loan products, consumer complaints, marketing and
10 underwriting practices, and processing of electronic transfers.

11 **IV. The CIDs are not overbroad or unduly burdensome.**

12 It has long been the rule that a subpoena “should be enforced unless the party being
13 investigated *proves* the inquiry is unreasonable because it is overbroad or unduly
14 burdensome.”³⁸ Here, the CIDs are neither overbroad nor unduly burdensome.

15 The CFPA and its implementing regulations provide that a CID must describe
16 responsive information “with such definiteness and certainty” as to allow the recipient to
17 identify the desired materials.³⁹ As explained by the Supreme Court, the inquiry “comes
18 down to [whether] specification of the documents to be produced [is] adequate, but not
19 excessive, for the purposes of the relevant inquiry.”⁴⁰ The broadness of an investigation is
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23 ³⁷ *Invention Submission Corp.*, 965 F.2d at 1089-90.

24 ³⁸ *FDIC v. Garner*, 126 F.3d 1138, 1143 (9th Cir. 1997) (emphasis added) (quoting *EEOC v.*
25 *Children’s Hosp. Med. Ctr. of N. Cal.*, 719 F.2d 1426, 1427 (9th Cir. 1983)) (upholding
26 challenged subpoena).

27 ³⁹ See 12 U.S.C. § 5562(c)(3); 12 C.F.R. § 1080.6(a)(1)-(3).

28 ⁴⁰ *Okl. Press Publ’g Co.*, 327 U.S. at 209.

1 not sufficient justification to refuse enforcement of a subpoena.⁴¹ Here, the CIDs’ requests
2 are all sufficiently tailored to meet these standards.

3 In order to set aside a CID on the basis of undue burden, the challenging party must
4 show that “compliance threatens to unduly disrupt or seriously hinder normal operations of
5 a business.”⁴² It cannot make that showing on the mere basis that the subpoena “requires the
6 production of a large number of documents.”⁴³ Instead, Respondents are required to show
7 “the exact nature and extent of the hardship” imposed and state specifically how compliance
8 will harm their business.⁴⁴ Here, compliance with the CIDs will not seriously hinder
9 Respondents’ normal operations.

22 ⁴¹ See, e.g., *Texaco*, 555 F.2d at 882; *Genuine Parts Co.*, 445 F.2d at 1391 (citing *Morton Salt*, 338
23 U.S. at 652) (affirming that agencies must be accorded “extreme breadth” in investigations).

24 ⁴² *Texaco*, 555 F.2d at 882.

25 ⁴³ *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 513 (4th Cir. 1996).

26 ⁴⁴ *FTC v. Markin*, 391 F. Supp. 865, 870 (W.D. Mich. 1974), *aff’d*, 532 F.2d 541 (6th Cir.
27 1976); see also *SEC v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1056 (2d Cir. 1973) (“[T]he
28 mere suggestion . . . of possible damage to [one’s] business activities is not sufficient to block
an authorized inquiry into relevant matters.”) (citation omitted).

CONCLUSION

For the foregoing reasons, this Court should grant the Bureau's petition and enter an order requiring Respondents to comply in full with the civil investigative demands within 10 days of the Court's order, or at such later date as may be established by the Bureau.

Dated: March 18, 2014

Respectfully submitted,

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