

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

In the Matter of:
FastBucks Holding Corporation

PETITION TO SET ASIDE FEBRUARY 12, 2018
CIVIL INVESTIGATIVE DEMANDS

I. INTRODUCTION

The Bureau enjoys vast investigative powers over those it regulates, but this power is subject to important limits. The most important of those limits is at issue in the current Petition: investigative tools cannot be used to harass targets. As explained below, FastBucks has been the target of threats that it will be buried and bankrupted from a Bureau Enforcement attorney for years, and as those threats have escalated, so too has the Bureau's involvement with the Company. Since July 2017, FastBucks has received a total of seven (7) Civil Investigative Demands ("CIDs") as part of a Bureau investigation. While the Bureau has never granted a Petition to Set Aside a CID, if the petition process is to have any meaning or integrity, the Bureau should set aside the current CIDs under review.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

FastBucks is a small dollar lender with operations in four (4) states and has been in operation for nearly eighteen (18) years. One of the states where it operates is New Mexico. The Company had a long-standing dispute with the state of New Mexico that began in 2009 and resulted in a 2012 judgment ordering FastBucks to pay restitution to consumers ("New Mexico Action"). FastBucks filed for Chapter 11 bankruptcy on December 10, 2012 following the 2012 judgment, which delayed payment of restitution. In November 8, 2016, a New Mexico court ordered FastBucks to pay a significant sum that nearly forced the Company to shutter its operations ("New Mexico Action Final Order").

John Thompson, formerly an enforcement attorney for the state in the New Mexico Action, is now a CFPB Enforcement attorney. Since he joined the CFPB in 2013, Mr. Thompson has repeatedly taunted and harassed FastBucks' owner, Charles Horton, through direct messages on social media.

On November 8, 2016, Mr. Thompson messaged Mr. Horton, at Mr. Thompson's initiation, to say "Enjoy chapter 7 bankruptcy, Charles!" Exhibit A. This message followed the New Mexico Action Final Order. Mr. Thompson also made a lengthy public post, declaring "FastBucks' day of reckoning has finally arrived." Exhibit B.

On November 8, 2017, Mr. Thompson messaged Mr. Horton again regarding his Company, stating: "Happy Anniversary!" which again refers to the New Mexico Action Final Order. Exhibit C. He further wrote: "[D]oes it ever occur [sic] to the guests on your board room show that maybe they shouldn't take business advice from someone whose company owes 6x gross earnings to the regulators?" *Id.* Mr. Thompson further told Mr. Horton to "Just make sure you're in ch. 7 this time, Charles. FastBucks can't be a going concern in New Mexico." Exhibit D. He also declared, "[t]he arc of justice is long, indeed, but FastBucks's day of reckoning is nigh....You're going down." Exhibit E.

Ominously, Mr. Thompson also wrote: "You should want me at the CFPB, Charles. Otherwise I'll just come back to NM and bury your companies even deeper," and "[b]ut know this: your businesses are predatory." Exhibit F.

Since Mr. Thompson joined the CFPB, it has focused its attention on FastBucks. Commencing on October 14, 2013, FastBucks underwent its first examination from the Bureau. A second examination commenced on October 3, 2016. On March 2, 2017, the Bureau notified FastBucks that it was considering a referral of the examination results to the CFPB's enforcement office ("PARR Letter"). In relevant part, the PARR Letter claimed that

[REDACTED]:

- [REDACTED];
- [REDACTED];

- [REDACTED]; and
- [REDACTED].

FastBucks responded to these concerns by explaining that [REDACTED], and it further noted that [REDACTED].

The Enforcement office opened an investigation nonetheless. FastBucks received an initial CID for documents on July 31, 2017. It received two CIDs for oral testimony on October 26, 2017. On February 12, 2018, it received four additional CIDs for oral testimony and documents.¹

FastBucks participated in a Meet & Confer discussion with CFPB staff on February 22, 2018. During this discussion, FastBucks' counsel notified the staff of Mr. Thompson's threatening contact with Mr. Horton.² A letter documenting these concerns immediately followed and requested that the CIDs be withdrawn. Subsequently, CFPB Enforcement Director Kristen Donoghue contacted FastBucks' counsel and explained that, while the Bureau took Mr. Thompson's conduct seriously, the CIDs would not be withdrawn. Ms. Donoghue instructed that further discussions regarding the CIDs should be with Enforcement staff. On March 12, 2018, counsel for FastBucks informed the staff that the Company intended to file a Petition to Set Aside the CIDs.³

¹ The Bureau's letter of February 23, 2018, extended the deadline to file this Petition until March 16, 2018.

² FastBucks did not raise Mr. Thompson's conduct prior to the current CIDs at issue. Primarily, it believed that its concerns would not be taken seriously and that if it complained about Mr. Thompson's conduct, it would suffer reprisals.

³ A Meet and Confer Statement is attached as Exhibit G.

III. LEGAL STANDARD

“Under the ‘reasonable relevance’ standard, courts will enforce an administrative subpoena [or CID] issued in aid of an investigation if: ‘(1) the subpoena is within the statutory authority of the agency; (2) the information sought is reasonably relevant to the inquiry; and (3) the demand is not unreasonably broad or burdensome.’” *United States v. Zadeh*, 820 F.3d 746, 755 (5th Cir. 2016) (quoting *United States v. Transocean Deepwater Drilling, Inc.*, 767 F.3d 485, 488 (5th Cir. 2014) (footnote omitted)); *United States v. Powell*, 379 U.S. 48, 57-58 (1964). If the government makes this preliminary showing, the burden then shifts to the respondent to prove that enforcement of the subpoena would be improper. *United States v. Barrett*, 837 F.2d 1341, 1345 (5th Cir. 1988).

Enforcement of a subpoena is improper where it would amount to an abuse of the court's process. *Powell v. United States*, 379 U.S. 49, 58 (1964). “Such an abuse would take place if the [subpoena] had been issued for an improper purpose, such as to harass the [respondent] or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation.” *Id.* A CID recipient may demonstrate bad faith or improper purpose by alleging specific facts. *See Crystal v. United States*, 172 F.3d 1141, 1144 (9th Cir. 1999); *U.S. v. Ins. Consultants of Knox, Inc.*, 187 F.3d 755, 759 (7th Cir. 1999). Where the government’s good faith is at issue, the recipient need not “*disprove* the government's profession of good faith.” Rather, it need only create a substantial question regarding the validity of the government’s purpose. *United States v. Gertner*, 65 F.3d 963, 967 (1st Cir. 1995) (citing *United States v. Samuels, Kramer & Co.*, 712 F.2d 1342, 1348 (9th Cir.1983)).

IV. THE CID SHOULD BE SET ASIDE BECAUSE IT WAS ISSUED FOR AN IMPROPER PURPOSE

The Bureau is making good on Mr. Thompson's threat to "bury" FastBucks. Since July 2017, the Company has received seven (7) CIDs over what appears to be a concern about missing adverse action notices and unwanted phone calls to consumers. This level of involvement and attention is highly abnormal for a CFPB investigation and for what is—at its heart—a recordkeeping issue.

Importantly, the Enforcement team's escalating investigation of FastBucks corresponded directly with Mr. Thompson's increasing anger and agitation that FastBucks had not entered Chapter 7 bankruptcy. Mr. Thompson celebrated the Company's anticipated demise in November 2016 by telling Mr. Horton to "enjoy chapter 7 bankruptcy." The celebration proved to be premature in the summer of 2017. The first CID followed, and the Bureau's requests have steadily followed since that time.

Both the timing of the investigation and Mr. Thompson's vitriol create a substantial question as to the Bureau's purpose in issuing so many CIDs to investigate a recordkeeping issue. A CFPB staff member with a prior direct connection to this Company, and a demonstrated hostile intention, credibly could have driven, and may still be driving this investigation. Pursuing an investigation because of such animus against a company is a textbook example of the abuse of process decried in *United States v. Powell*, 379 U.S. at 57-58.

The Company concedes that Mr. Thompson is not "officially" assigned to the FastBucks' investigation. Yet Mr. Thompson works side by side with the assigned staff and reports to the same supervisors. Moreover, at some point, the Bureau made a decision to open an investigation into FastBucks. Even if he were not assigned to the investigation, Mr. Thompson

could have influenced that decision through his own expressed desire to “bury” FastBucks when the New Mexico Action Judgment failed to do so.

The Acting Director warned of this exact type of behavior in his January 23, 2018 email to CFPB staff, exhorting them to act with “humility and prudence” in implementing the agency’s mission of enforcing federal consumer financial law through its “unparalleled power.”⁴ That power is being misused here. A legitimate, state-licensed lender, has been subjected to repeated CIDs and, until current leadership assumed control of the CFPB, it was harassed and taunted by one of the Enforcement attorneys whose division would pursue a case against it.

As part of its “ongoing commitment to transparency,” the Bureau publishes the Director’s final decision on petitions to modify or set aside CIDs publicly on its website.⁵ The transparency is admirable, but it is also telling. Out of thirty-three (33) public decisions, there is *not a single decision* in favor of the Petitioner-CID Recipient. These lopsided outcomes suggest that there is no fair process in place to actually challenge unlawfully-issued CIDs. This must stop. When the Bureau uses its investigative process as a tool for harassment and its attorneys openly call for the destruction of a target, any hope for fair enforcement is lost. Under Acting Director Mulvaney, the Bureau has espoused a commitment to rational application of the law and use of the Bureau’s vast powers. The Acting Director should make good on those promises and set aside the current CIDs.

⁴ <https://bankingjournal.aba.com/wp-content/uploads/2018/01/Mulvaney-Memo.pdf>

⁵ <https://www.consumerfinance.gov/policy-compliance/enforcement/petitions/>

V. CONCLUSION

FastBucks respectfully requests that the Bureau grant this Petition and set aside the CIDs.

Respectfully submitted,

Dated: March 14, 2018

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Counsel for FastBucks Holding Corporation



Johnny Thompson

**Johnny Thompson**

November 8, 2016 · 🌐



It's finally over, folks. After trying the FastBucks case in the spring of 2012, the NM attorney general obtained a favorable decision from Judge Vigil, who retired from the bench the following day. One small problem, though: he didn't liquidate damages before leaving the bench.

That small oversight set into motion a lot of post-trial shenanigans -- including a ch. 11 bankruptcy filing in Dallas and a preposterous removal of post-trial motion practice to federal court in Albuquerque. Four very long years later, FastBucks' day of reckoning has finally arrived. As I hope to say a second time later tonight: Scoreboard.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, in accordance with a plan of distribution to be approved by this Court, the Defendants shall pay the sum of thirty-two million, two hundred fifty-five thousand and fifty-four dollars (\$32,255,054.00) in restitution to the consumer borrowers who were affected by their business practices and identified in the consumer loan data provided by the Defendants to the Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the parties shall present a





Johnny Thompson

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November 8, 2016 · 🌐

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Search



Messages

Active (131)

Groups

Calls

4:48 PM

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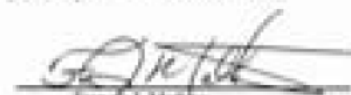
Johnny Thompson >
Messenger

NOV 8, 6:32 PM

Happy Anniversary!

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED the parties shall present a plan of distribution to this Court no later than sixty (60) days from the date of this Final Judgment.


Francis J. Mathews
District Court Judge



Still the same a year later. Nothing much changed. Happy anniversary to you.

NOV 9, 5:31 PM

Then you must be in violation of the permanent injunction! Good luck with that, Charles!

Hey, does it ever occur to the guests on your board room show that maybe they shouldn't take business advice from someone whose company owes 6x gross earnings to the regulators?

Nope. Not at all. Judge ruled, along time



Home



People



Games

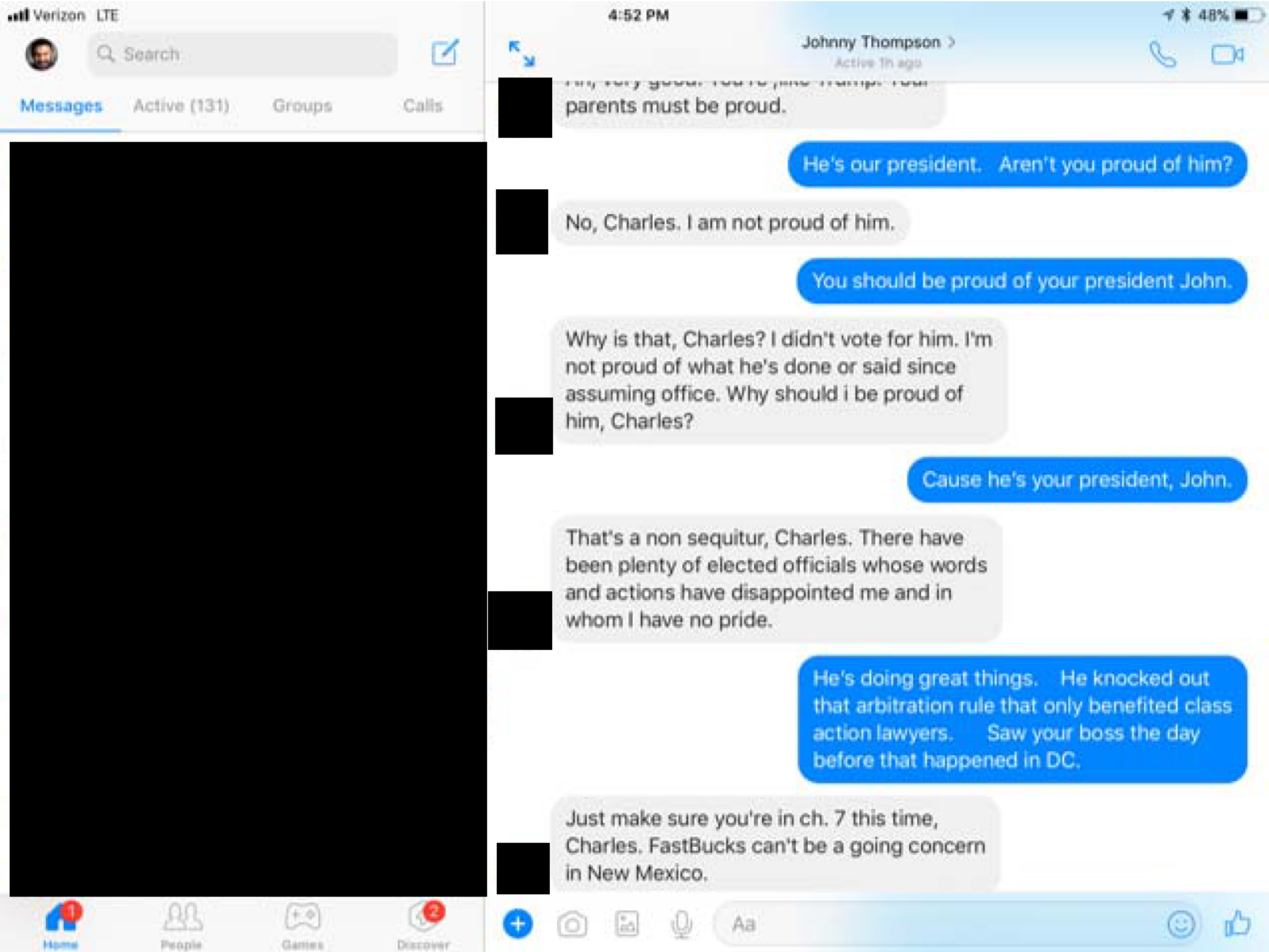


Discover



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Search



Messages

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Johnny Thompson >

Active now



I gotta go, Charles. Happy Anniversary, again.
The arc of justice is long, indeed, but
FastBucks's day of reckoning is nigh

Don't you have any friends in NM to keep you
up on things?

We won't be back in BK court from the NMAG
case.

Have a great night John.

You're going to lose the appeal and owe 32
million.

Again, You are way behind.

You can spin that however you want.

You're going down.

Let's talk again next year John.

Let's. I'll be in Dallas in May. We can grab
beers.



Let's do it!



Home



People



Games



Discover



Aa



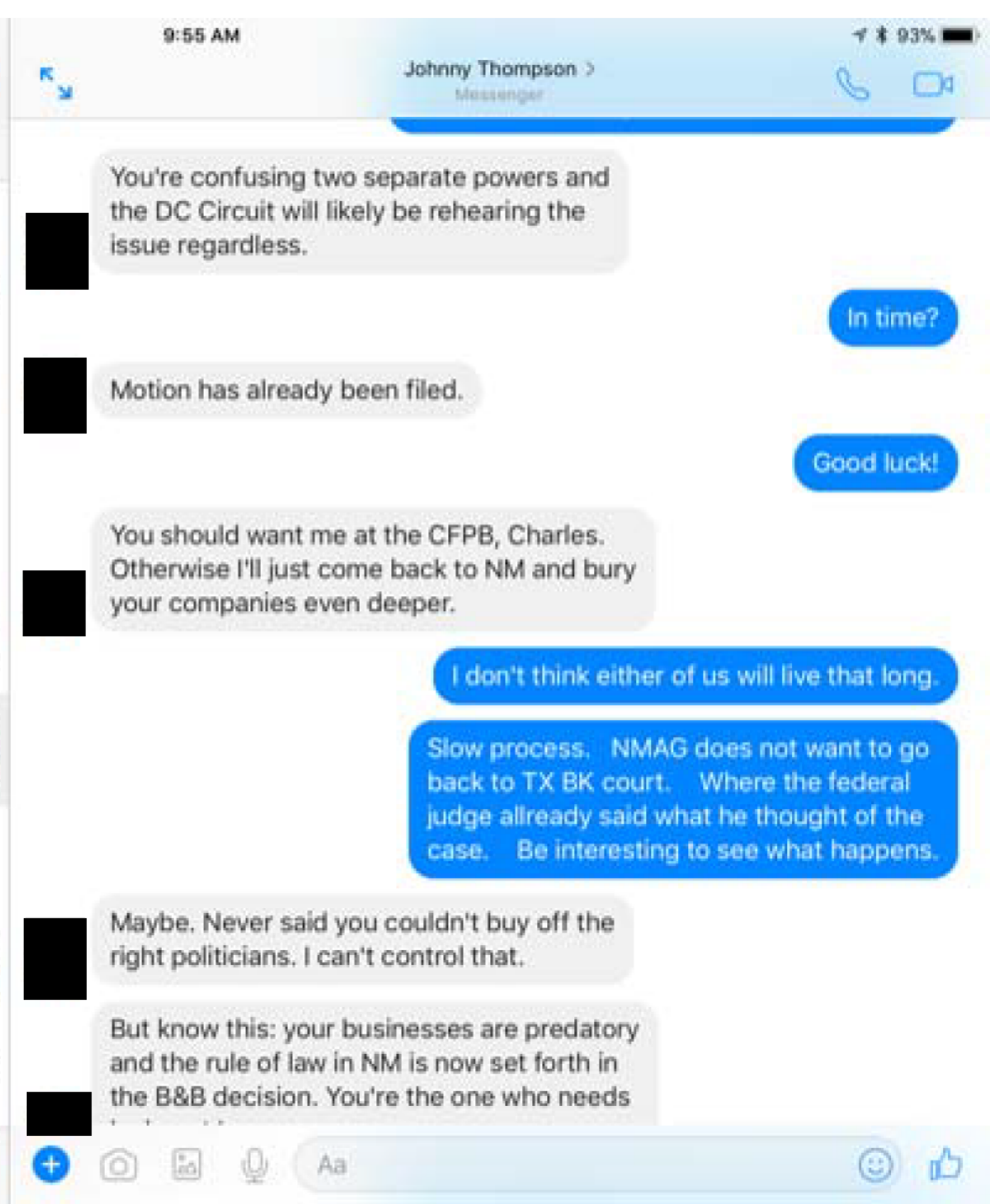
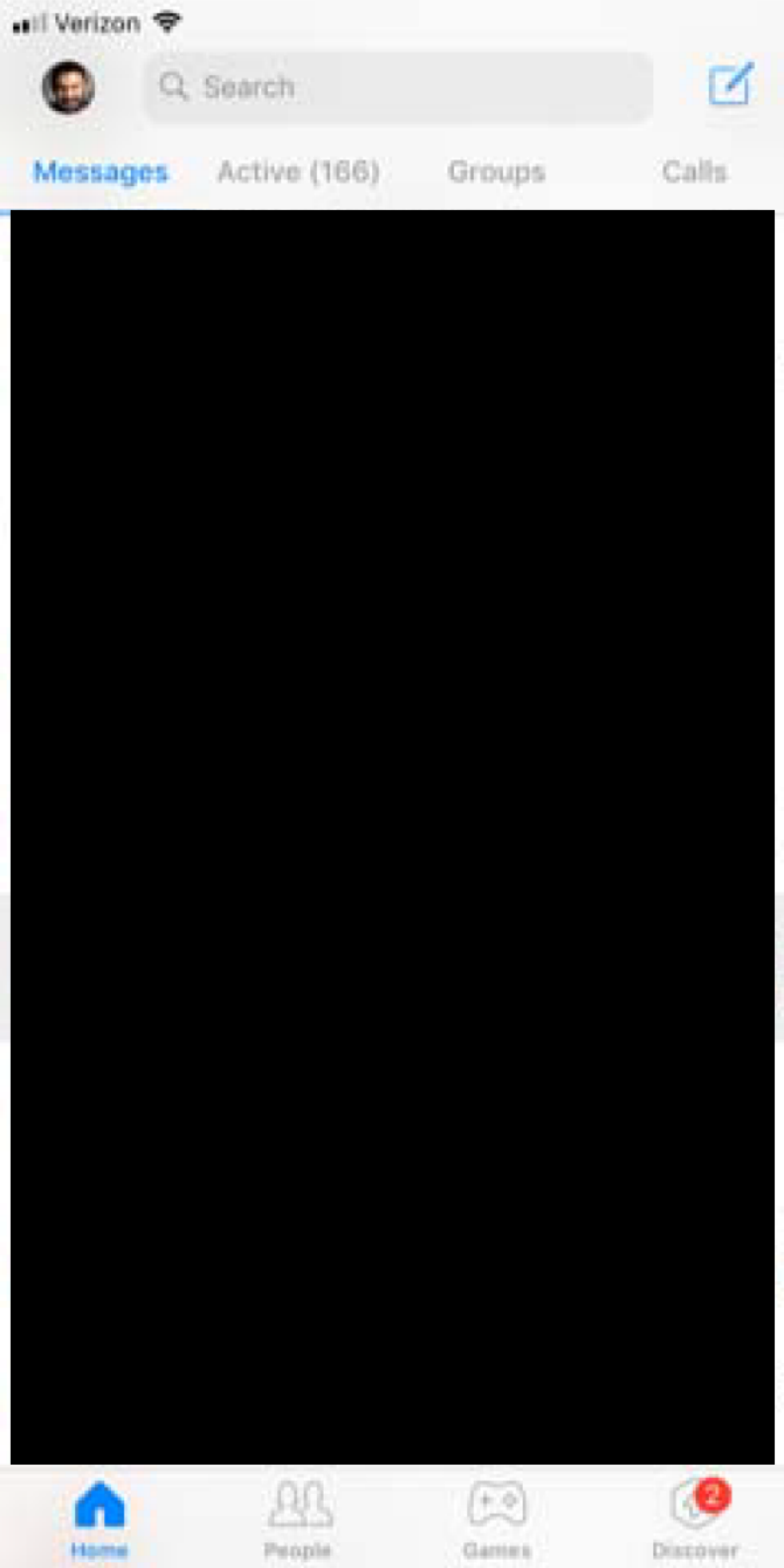


EXHIBIT G

MEET AND CONFER STATEMENT

Counsel for the petitioner, FastBucks Holding Corporation (“FastBucks” or the “Company”), has conferred with counsel for the Consumer Financial Protection Bureau (the “CFPB” or “Bureau”) pursuant to 12 C.F.R. § 1080.6(c), in a good-faith effort to resolve by agreement the issues raised by the petition and has been unable to reach such an agreement.

On February 22, 2018, Allen Denson and Hurshell Brown, counsel for FastBucks, conferred with Edward Keefe, counsel for the Bureau, by telephone concerning the CID and pursuant to 12 C.F.R. § 1080.6(c). At that time, counsel for FastBucks requested that the CID be set aside due to misconduct by a CFPB enforcement attorney. A letter to CFPB staff followed, also on February 22, 2018. The Bureau denied FastBucks’ request on March 8, 2018. On March 12, 2018, counsel for FastBucks informed the staff that the Company intended to file a Petition to Set Aside the CID. FastBucks thereafter filed its Petition to Modify or Set Aside the CID.

Respectfully submitted,

Dated: March 14, 2018

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