

1 EANET, PC
2 Matthew L. Eanet (SBN 227490)
3 550 S. Hope Street, Suite 750
4 Los Angeles, CA 90071
5 Telephone: 310-775-2495
6 Facsimile: 310-593-2589
7 matt@eanetpc.com
8 *Attorney For Defendant Kaine Wen*

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 Bureau of Consumer Financial
12 Protection; et al.,
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14 Plaintiffs,
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16 vs.
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18 Consumer Advocacy Center Inc., d/b/a
19 Premier Student Loan Center; et al.,
20
21 Defendants, and
22
23 Infinite Management Corp., f/k/a Infinite
24 Management Solutions Inc., et al.
25
26 Relief Defendants.

Case No. SACV 19-1998-MWF(Ksx)

**DEFENDANT KAINE WEN’S
OPPOSITION TO PLAINTIFF’S
RENEWED MOTION FOR
ORDER TO SHOW CAUSE WHY
DEFENDANT SHOULD NOT BE
HELD IN CONTEMPT AND FOR
RELATED RELIEF**

Hearing Date: May 6, 2022
Time: 9:00 a.m.
Court: Hon. Michael W. Fitzgerald
Courtroom: 5A

1 Defendant Kaine Wen (“Mr. Wen”) respectfully submits this Opposition to
2 Plaintiff the Consumer Financial Protection Bureau’s (“Plaintiff” or the “Bureau”)
3 Renewed Motion for an Order to Show Cause Why Defendant Wen Should Not Be Held
4 in Contempt and for Related Relief (the “Renewed Motion”), as follows:

5 **I. OPPOSITION**

6 The Court should deny the Bureau’s Renewed Motion. Intent on punishing Mr.
7 Wen, the Bureau has brought the instant, Renewed Motion, after its prior Motion for an
8 Order to Show Cause why Mr. Wen should not be held in contempt was denied by the
9 Court. As acknowledged by the Bureau in its moving papers, on January 8, 2021, the
10 Bureau brought its first Motion for Order to Show Cause, which came before the Court
11 for hearing on February 24, 2021, following which the Court issued an order on March
12 16, 2021 in which the Court denied the without prejudice the Bureau’s request for a
13 contempt order to show cause. Bureau’s Motion dated 04/08/2022, at p. 2:17-20 [ECF
14 365].

15 The Bureau now seeks to punish Mr. Wen for purported failure to turn over
16 information while Mr. Wen is incarcerated in Federal prison and has no access to
17 records that the Bureau seeks, cannot comply with any orders, or meaningfully meet or
18 communicate with counsel. It does so by way of a lengthy and complicated expert
19 declaration.

20 “The standard for finding a party in civil contempt is well settled: The moving
21 party has the burden of showing by clear and convincing evidence that the contemnors
22 violated a specific and definite order of the court. The burden then shifts to the
23 contemnors to demonstrate why they were unable to comply.” *F.T.C. v. Affordable*
24 *Media*, 179 F.3d 1228, 1239 (9th Cir. 1999), *quoting, Stone v. City and County of San*
25 *Francisco*, 968 F.2d 850, 856 n. 9 (9th Cir.1992).

26 Critical to the case at issue: “A party's inability to comply with a judicial order
27 constitutes a defense to a charge of civil contempt. *Id.* at 1239.

1 Thus: “While the court is bound by the enforcement order, it will not be blind to
2 evidence that compliance is now factually impossible. Where compliance is impossible,
3 neither the moving party nor the court has any reason to proceed with the civil contempt
4 action.” *United States v. Rylander*, 460 U.S. 752, 757, 103 S.Ct. 1548, 75 L.Ed.2d 521
5 (1983).

6 *As the Bureau is well aware, Mr. Wen is currently confined in the custody of the*
7 *Federal Correctional Institute in Sheridan, Oregon.* The Bureau has acknowledged as
8 much in its recent Ex Parte Application to Depose Incarcerated Person. Ex Parte
9 Application filed 03/17/2022, at p. 1:26-27 [ECF 355]. Legal mail sent to Mr. Wen at
10 FCI Sheridan can take one to two weeks to arrive, if it arrives at all. Counsel has not
11 been able to have a privileged discussion with Mr. Wen concerning the instant
12 application after it was filed, despite having made a request to prison staff. Mr. Wen
13 does not have access to the trading platforms, documents, or information sought by the
14 CFPB as he is incarcerated.

15 **II. REQUEST FOR CONTINUANCE OF HEARING DATE**

16 In the event the Court is inclined to proceed with the Renewed Motion,
17 notwithstanding the foregoing, Mr. Wen respectfully requests that the hearing on the
18 Renewed Motion should be continued to a date after Mr. Wen has had an opportunity to
19 review documents and to meet and confer with his counsel, who can then prepare any
20 opposition, which counsel estimates could be submitted after May 20, 2022, with any
21 hearing 14 days thereafter. There is no prejudice in granting a continuance as Mr. Wen
22 is incarcerated without access to cryptocurrency trading platforms.

23 **III. CONCLUSION**

24 For the foregoing reasons, Mr. Wen respectfully requests that the Court should
25 (1) deny the Bureau’s Renewed Motion for an Order to Show Cause Why Defendant
26 Wen Should Not Be Held in Contempt and for Related Relief; or, in the alternative,
27 (2) continue the hearing date on the Bureau’s Renewed Motion for an Order to Show
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1 Cause Why Defendant Wen Should Not Be Held in Contempt and for Related Relief to a
2 date after June 4, 2022 to enable Mr. Wen an opportunity to review documents and to
3 meet and confer with counsel.
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5

6 Dated: April 25, 2022

EANET, PC

7 By: /s/ Matthew L. Eanet

8 Matthew L. Eanet

9 Attorneys for Defendant Kaine Wen
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