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Company seeks CFPB records to defend lawsuit over bad check program

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(Reuters) - Victim Services, a California company fighting a proposed class action over its bad check restitution program, has asked a federal court to force the Consumer Financial Protection Bureau to turn over records that could prove many potential class members have already been compensated.

In a petition filed on Friday in Washington D.C. federal court, lawyers for Victim Services at Lee & McShane and Freedman & Taitelman said the CFPB has "inexplicably" failed to produce a single document since a subpoena was served on it in October last year.

The requested information is expected to show that the bulk of the proposed class members suing Victim Services in a separate action in San Francisco federal court have already been paid by the CFPB under a 2015 settlement between the bureau and Victim Services and are not entitled to additional money for the same claims, the company said.

CFPB spokesman Samuel Gilford declined to comment.

Sean Hardy, a lawyer for Victim Services, said in an email that he believes the CFPB may have paid over a million dollars in settlement checks but it will not disclose the exact amount or names of those paid.

Working under contract with California district attorneys, Victim Services administers a program aimed at recouping funds for victims of bad check writers. Under the program, prosecution is waived if bad check writers repay money owed and attend a financial responsibility class.

The CFPB had sued Victim Services in 2015, saying it sent letters out on district attorneys' letterhead suggesting that consumers could be criminally prosecuted if they did not pay debts for bounced checks and enroll in the costly classes.

According to the CFPB's complaint, final warning letters said consumers' cases were being forwarded for possible prosecution, even though that rarely occurred.

In court filings, Victim Services has said it legitimately administers the program at the direction of district attorneys and has helped recover millions of dollars for bad check victims.

As part of its settlement with the CFPB, Victim Services agreed to end allegedly deceptive communications and pay a \$50,000 civil penalty. In a release at the time, the CFPB said it did not ask for a higher penalty because the company was unable to pay more.

In Friday's petition, Victim Services said the CFPB has been paying restitution to California residents out of the bureau's civil penalty fund, which pools penalties collected in its enforcement actions.

The bureau, however, has declined to provide records about the payouts, citing attorney-client privilege, Victim Services said. The company said it is not seeking attorney-client communications themselves, only underlying facts about who received restitution.

The CFPB also said the documents were protected from subpoena by the U.S. Privacy Act, but a protective order has been entered in the class action that will protect any private or confidential information, Victim Services said.

Discovery is still underway in the San Francisco lawsuit, which has not yet been certified as a class. U.S. District Judge Vince Chhabria last year rejected Victim Services' bid to compel arbitration by one of the named plaintiffs, and the company is challenging that decision at the 9th U.S. Circuit Court of Appeals.

The case is *Victim Services v Consumer Financial Protection Bureau*, U.S. District Court, District of Columbia, No 17-2431

For the plaintiffs: Terrence McShane at Lee & McShane and Sean Hardy at Freedman & Taitelman

For the CFPB: not available

--- **Index References** ---

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