cfpb Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552

IN RE FRANCESCA GIAMPICCOLO
2015-CFPB-Giampiccolo-0001

**DECISION AND ORDER ON FRANCESCA GIAMPICCOLO'S PETITION TO SET ASIDE CIVIL INVESTIGATIVE DEMAND**

Francesca Giampiccolo has petitioned the U.S. Consumer Financial Protection Bureau for an order to set aside a civil investigative demand (CID). For the reasons set forth below, the petition is denied.

## FACTUAL BACKGROUND

Giampiccolo is a former employee of NCO Financial Systems, Inc. Her duties included executing affidavits in support of collection lawsuits filed to recover debts allegedly owed to the National Collegiate Student Loan Trusts. The Bureau issued the CID to obtain Giampiccolo's oral testimony about her former employment pursuant to its authority to investigate violations of Federal consumer financial law. The sole ground for the petition is the asserted burden of compliance on Giampiccolo, who suffers from certain medical ailments. The precise nature of these ailments has been redacted from the publicly available version of Giampiccolo's petition at her request. *See* 12 C.F.R. § 1080.6(g). Those details are not necessary to resolve her petition, and therefore only such description is provided as is germane to the issues considered here.

## LEGAL DETERMINATION

Recipients of a CID may petition the Director of the Bureau for an order modifying or setting aside the CID. 12 U.S.C. § 5562(f); 12 C.F.R. § 1080.6(e). Such petitions must "specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with [12 U.S.C. § 5562], or upon any constitutional or other legal right or privilege." 12 U.S.C. § 5562(f)(3). Giampiccolo does not contend that the CID is contrary to statutory or constitutional law, or that it infringes upon any legal right or privilege, but contends simply that compliance with the CID will impose an "undue burden" on her.

In resolving prior petitions, the Bureau has "draw[n] on a body of law that the courts have developed over many years to address similar judicial and administrative processes." *See PHH Corp.*, 2012-MISC-PHH Corp-001, at 4. Here, that body of precedent includes cases in which courts have addressed motions to quash subpoenas and motions for protective orders under FED. R. CIV. P. 26(c). Rule 26(c) allows a district court, "for good cause," to "issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Motions seeking such protective orders to avoid giving depositions are disfavored by courts and rarely granted. *See Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979).

Accordingly, a petition to quash a subpoena based on the potential medical risk to the witness must be supported by a "specific demonstration of facts in support of the request as opposed to conclusory or speculative statements about the need for a protective order and the harm which will be suffered without one." *Dunford v. Rolly Marine Serv, Co.*, 233 F.R.D. 635, 636 (S.D. Fla. 2005). A short declaration from a potential witness expressing a desire to avoid testimony due to a medical ailment will likely be insufficient to support the "very heavy burden … to prevent a deposition." *Id.* Instead, as the cases cited by Giampiccolo's petition illustrate, a motion for a protective order seeking to prevent the deposition of a witness based on a medical condition will only be granted when a doctor has provided sworn testimony demonstrating that the deposition is simply not feasible due to the witness's medical condition or cannot be conducted without placing the witness's health in jeopardy. *See id.* (granting motion for a protective order based on "sworn medical evidence that [the witness] is undergoing continued intensive care for a medical condition that does not allow her to be deposed"); *Frideres v. Schiltz*, 150 F.R.D. 153, 155 (S.D. Iowa 1993) (granting motion for a protective order based on opinion of two doctors that witness's participation in a deposition presented a "very real risk of serious injury or perhaps even death related to the stress involved"); *In re McCorhill Publ'g, Inc.*, 91 B.R. 223, 224-25 (Bankr. S.D.N.Y. 1988) (precluding deposition of witness where doctor testified that it "would constitute a direct threat to his life and could cause heart failure" and that his vegetative state made him "physically incapable of furnishing any information").

The exclusive support provided for Giampiccolo's petition is a short declaration describing her medical ailments, the medications she takes to treat those ailments, and the effect of those medications on her memory. Enforcement counsel has already offered to accommodate her by conducting the investigational hearing near her home in Duluth, Georgia, and will afford her appropriate opportunities for breaks during her testimony. These accommodations ensure that the hearing will not impose an undue burden on Giampiccolo. Further, the possibility that her testimony could be unreliable because the medications may affect her memory is not a sufficient ground to grant her petition. *See, e.g., Metlife Investors USA Ins. Co. v. Star Lite Brokerage, Inc.*, 2012 WL 4344606, at *2-3 (D. Del. Sept. 21, 2012); *Hill v. Cintas Corp.*, 2009 WL 3153329, at *1-2 (D. Neb. Sept. 25, 2009). Enforcement counsel is entitled to explore the extent of her memory, and her reliability (or lack thereof) may then be judged by the ultimate trier of fact.

**CONCLUSION**

Giampiccolo's petition to quash the CID is denied.

Richard Cordray

Richard Cordray, Director

August 1, 2015