

In Re:

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FRANCESCA GIAMPICCOLO

PETITION TO SET ASIDE CIVIL INVESTIGATIVE DEMAND AND REQUEST FOR CONFIDENTIAL TREATMENT

Francesca Giampiccolo (Fran), through counsel and pursuant to 12 C.F.R. § 1080.6(e), submits the following Petition to Set Aside the Civil Investigative Demand (CID) served by the Consumer Financial Protection Bureau (CFPB) on February 9, 2015.

I. REQUEST FOR CONFIDENTIAL TREATMENT

1. Pursuant to 12 C.F.R. § 1080.6(g), Fran requests the CFPB treat this Petition as confidential and for advance notice should the CFPB determine that it will disclose or release the Petition or any order.

2. 12 C.F.R. § 1080.6(g) provides that petitions and orders thereto are part of the public records of the CFPB unless the CFPB “determines otherwise for good cause shown.” 12 C.F.R. § 1080.6(g). “In evaluating whether a petitioner has shown good cause for confidential treatment of all or a portion of a petition to modify or set aside a CID, the Bureau generally employs the standards for withholding material from public disclosure established by the FOIA amendments to the Administrative Procedure Act, 5 U.S.C. § 552.” *In re Great Plains Lending, LLC, et al.*, 2012-MISC-Great Plains Lending-002, at p. 2, CFPB Decision on Request for Confidential Treatment (Nov. 26, 2013). Further, “the Bureau retains discretion to withhold all or portions of a petition from public disclosure when there is good cause and when the withheld information is not otherwise required by law to be disclosed.” *Id.*

3. Here, the relevant FOIA exemption is Exemption 6. Exemption 6 provides agencies are to withhold from disclosure “medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” 5 U.S.C. § 552(b)(6). In evaluating the application of Exemption 6, courts first consider whether the requested files are the type intended to be protected, that is, whether they are personnel, medical, or similar files. *See Pacific Molasses Co. v. NLRB*, 577 F.2d 1172, 1178 (5th Cir. 1978). If this threshold requirement is met, then the courts balance two compelling and competing interests – the individual’s right to privacy and the public’s right of free access to government information or public records. *See Dep’t of Air Force v. Rose*, 425 U.S. 352, 372-381 (1976).

4. As discussed in detail below, Fran seeks to set aside the CID based on her poor health and prescribed medications which severely impair Fran’s memory. This Petition discusses in detail Fran’s sensitive medical information. Under the analysis applied by the Supreme Court and the lower federal courts, this petition (1) is the type of information intended to be protected, and (2) Fran’s right to privacy clearly outweighs the public’s right to access. Therefore, this Petition should be treated as confidential.

5. Further, good cause under § 1080.6(g) has been shown. “Section 1080.6(g) grants the Bureau discretion to keep information confidential that is not otherwise required by law to be disclosed even if it does not fall under a FOIA exemption.” *In re Great Plains Lending, LLC, et al.*, 2012-MISC-Great Plains Lending-002, at p. 3, CFPB Decision on Request for Confidential Treatment (Nov. 26, 2013). There is no case law regarding what constitutes “good cause” under § 1080.6(g). However, where denying a

request for confidential treatment would result in public disclosure of an individual's private medical information – including diagnosis, treating physician, prescribed medications, and the side effects of those medications – “good cause” clearly exists. Lastly, the Health Insurance Portability and Accountability Act (HIPAA) requires confidential treatment of Fran's medical information.

6. FOIA, HIPAA and § 1080.6(g) necessitate this Petition be withheld from public disclosure. Therefore, Fran respectfully requests the CFPB deem this Petition confidential.

II. PETITION TO SET ASIDE

A. Standard of Review.

7. If the subject of a CID objects then it “may file with the Bureau a petition for an order by the Bureau modifying or setting aside the demand” within 20 days of service. 12 C.F.R. § 1080.6(d). The Director of the CFPB has the responsibility to rule on petitions to modify or set aside CIDs. *Id.* at § 1080.6(d)(3).

8. “In setting a general framework for resolving the issues raised in such petitions, it is appropriate to draw on a body of law that the courts have developed over many years to address similar judicial and administrative processes.” *In re PHH Corporation*, 2012-MISC-PHH Corp-0001, at p. 4, Decision and Order on PHH's Corporation's Petition to Modify or Set Aside Civil Investigative Demand (Sept. 20, 2012). The courts generally look to whether (1) the investigation is for a lawfully authorized purpose; (2) the information requested is relevant to the investigation; and (3) procedural requirements are followed. *See, e.g., U.S. v. Powell*, 379 U.S. 48, 57-58

(1964); *U.S. v. Morton Salt Co.*, 338 U.S. 632, 654 (1950). Only if these factors are established will a CID be enforced.

9. However, “a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power.” *Morton Salt*, 338 U.S. at 652. If the CID imposes an “undue burden” or constitutes an abuse of the court’s process, it will not be enforced. *See, e.g., RNR Enterprises, Inc. v. SEC*, 122 F.3d 93, 97 (2d Cir. 1997); *FDIC v. Wentz*, 55 F.3d 905, 908 (3d Cir. 1995); *EEOC v. Maryland Cup Corp.*, 785 F.2d 471, 475-76 (4th Cir. 1986); *NLRB v. N. Bay Plumbing, Inc.*, 102 F.3d 1005, 1007 (9th Cir. 1996).

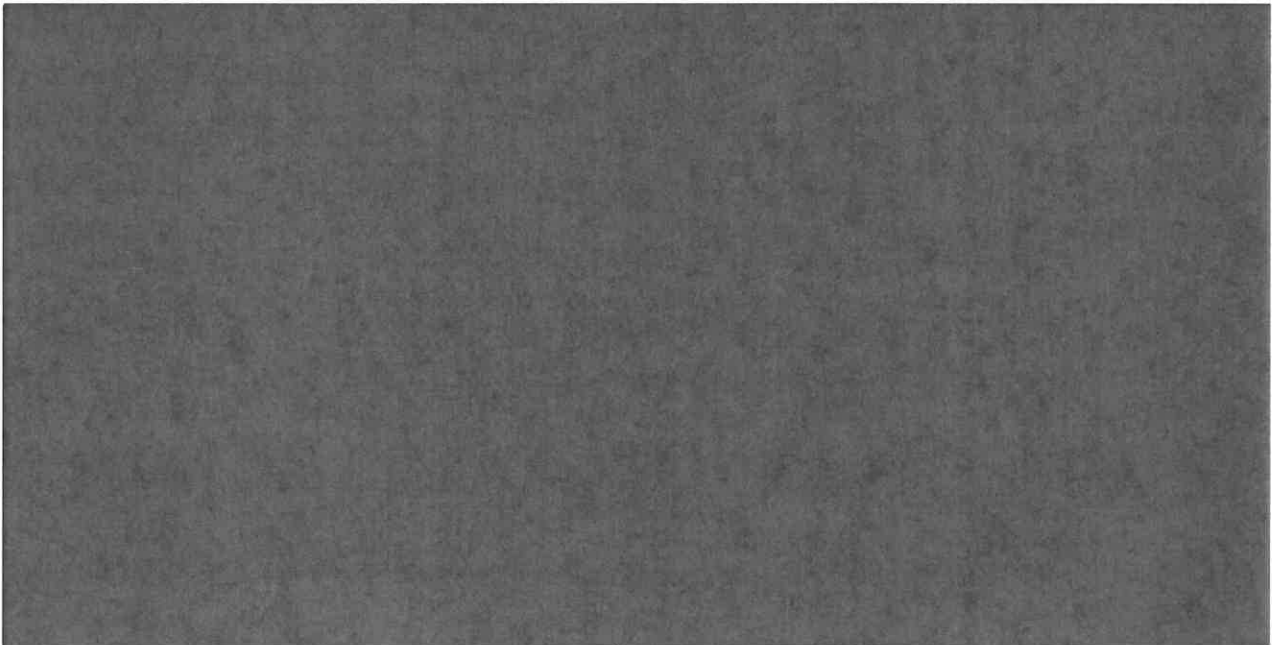
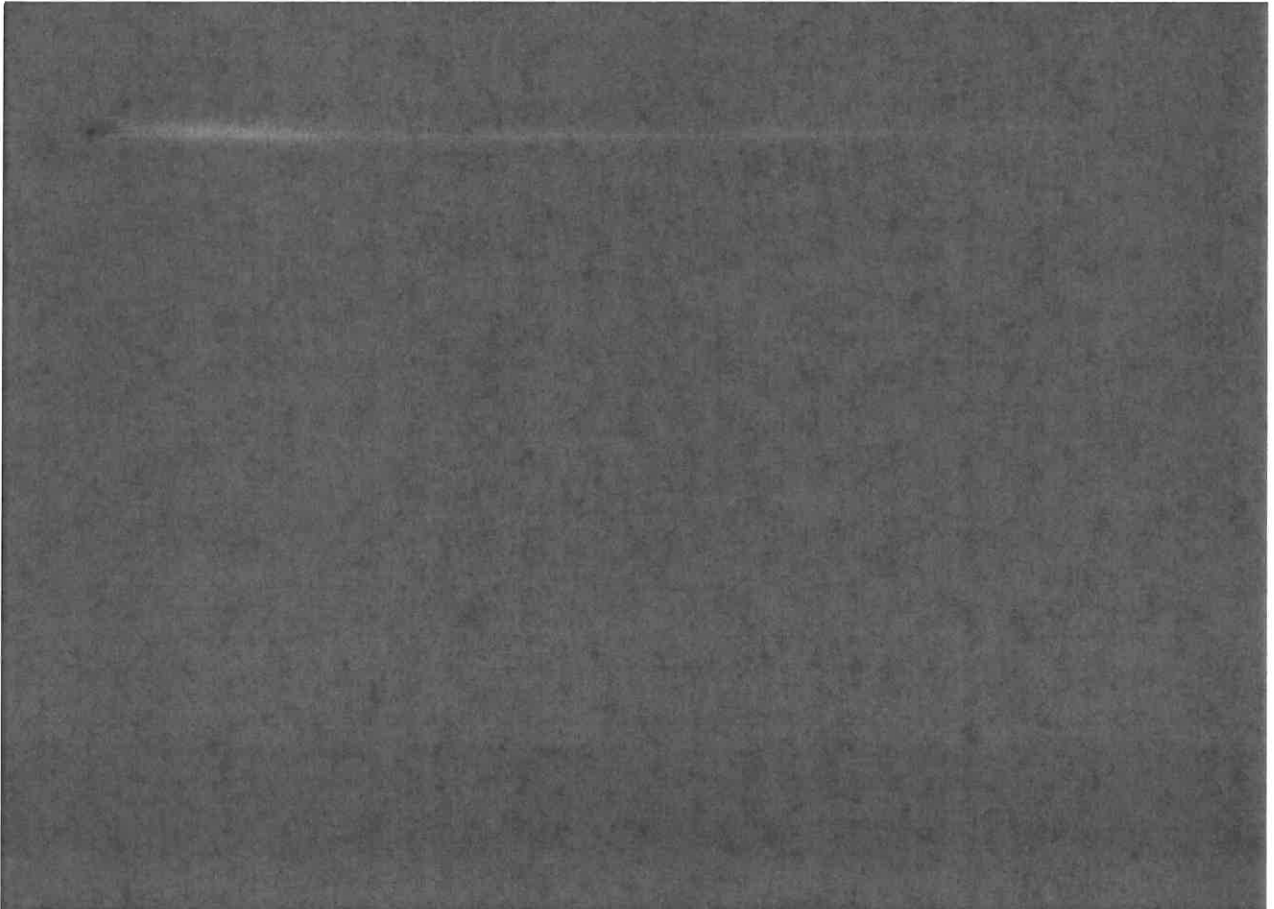
10. The CFPB has adopted this framework to resolve petitions to modify or set aside CIDs. *In re PHH Corporation*, 2012-MISC-PHH Corp-0001, at p. 5, Decision and Order on PHH’s Corporation’s Petition to Modify or Set Aside Civil Investigative Demand (Sept. 20, 2012).

B. The CID is Unduly Burdensome.

11. Courts have refused to enforce a subpoena of a third party witness where the third party witness is unable to attend and sit for a deposition for medical reasons. *See, e.g., Dunford v. Rolly Marine Serv. Co.*, 233 F.R.D. 635, 637 (S.D. Fla. 2005); *Frideres v. Schiltz*, 150 F.R.D. 153, 156 (S.D. Iowa 1993); *In re McCorhill*, 91 B.R. 223, 225 (S.D. N.Y. Bankr. 1988).

12. Fran is a former employee of NCO Financial Systems, Inc. (NCO). Fran was one of many employees who executed affidavits in support of collection lawsuits


filed to recover unpaid National Collegiate Student Loan Trust (NCSLT) debts. Fran's employment with NCO ceased nearly 2 years ago in July 2013.



III. STATEMENT OF CONFERENCE

Counsel for Fran, David Israel, timely conferred by telephone with counsel for the CFPB, Edward Keefe, in a good faith effort to resolve this issue. During that call, counsel for the CFPB indicated the CFPB would not withdraw the CID to Fran based on her medical issues. Following that call, on February 17, 2015, counsel for Fran sent a letter continuing the meet and confer, further outlining Fran's medical challenges and requesting the CFPB agree to withdraw its CID to Fran. *See* February 17, 2015 Letter attached hereto as **Exhibit B**. To date, counsel has not received a response from the CFPB. Accordingly, Fran files this Petition requesting the CID be set aside.

Respectfully submitted,



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Bryan C. Shartle
LA Bar No. 27640
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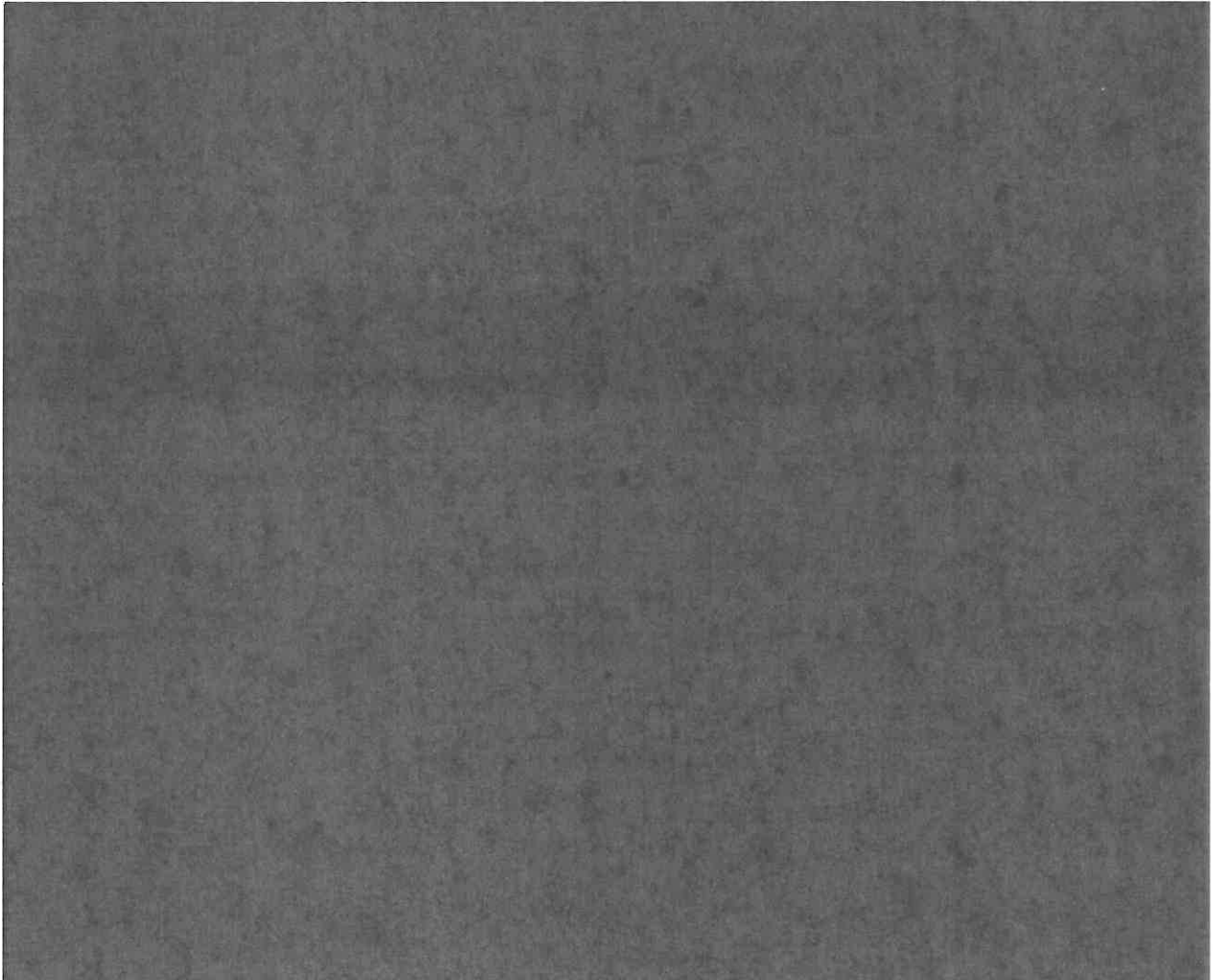
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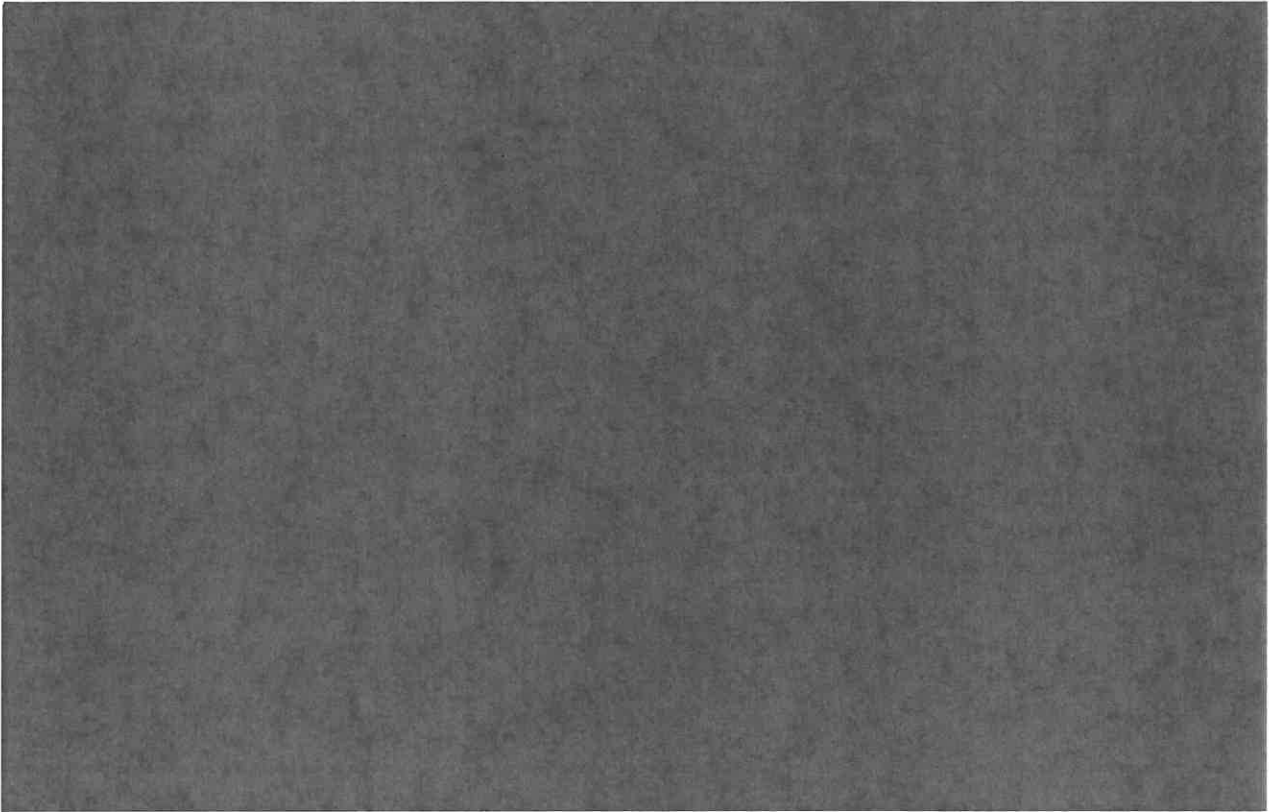
FRANCESCA GIAMPICCOLO

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DECLARATION OF FRANCESCA GIAMPICCOLO

1. My name is Francesca Giampiccolo. I am over 18 years of age and am competent to testify to the contents of this declaration based on my personal knowledge of the facts and circumstances set forth herein.





I, Francesca Giampiccolo, declare under penalty of perjury that the foregoing is true and correct.

Dated this 18th day of February, 2015.



Francesca Giampiccolo

Whitney L. White

From: Whitney L. White
Sent: Tuesday, February 17, 2015 11:21 AM
To: edward.keefe@cfpb.gov; Mayer, Nicole (CFPB) (Nicole.Mayer@cfpb.gov)
Cc: Israel, Dave; Shartle, Bryan
Subject: CFPB CID regarding Fran Giampiccolo - Meet and Confer
Attachments: WLW Meet and Confer Ltr to E. Keefe and N. Mayer re F. Giampiccolo CID.pdf

Nicole and Ed,

Enclosed please find a letter continuing the meet and confer you had with Dave last week regarding Fran and including a written request to set aside the CID based upon Fran's extremely poor health.

Please let us know if the CFPB will agree to set aside the CID to Fran. If you have any questions or wish to discuss further please call. We look forward to your response.

Thank you,
Whitney



**SESSIONS
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NATHAN &
ISRAEL LLC**

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February 17, 2015


Via E-mail

Mr. Edward Keefe, Esq.
Ms. Nicole Mayer, Esq.
Consumer Financial Protection Bureau
1625 Eye Street, NW
Attn: Office of Enforcement
Washington, DC 20006

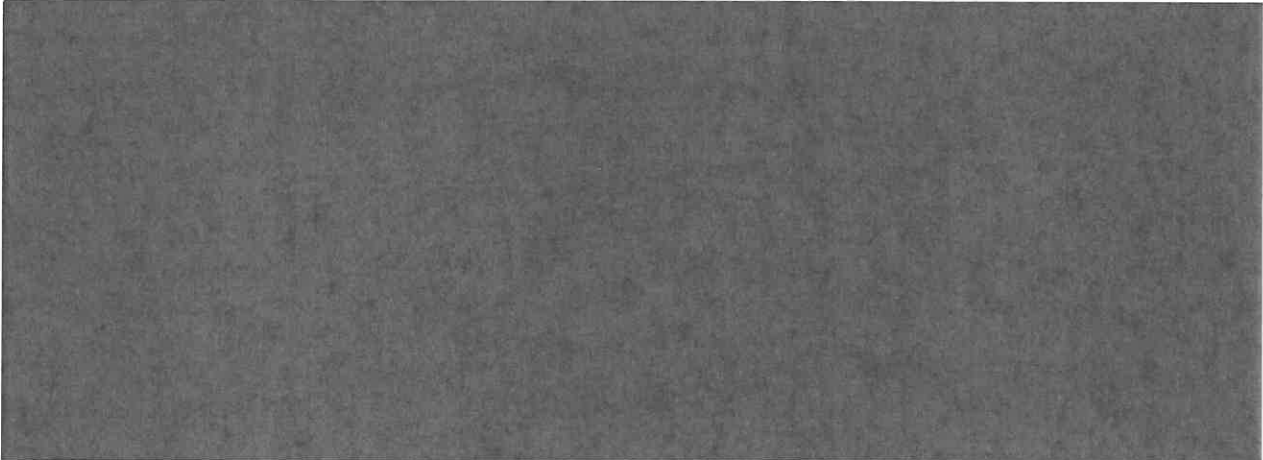
**Re: Civil Investigative Demand Issued to Francesca Giampiccolo
Continuation of Meet and Confer**

Dear Ed and Nicole:

SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.C. represents Francesca Giampiccolo (Fran). The purpose of this letter is to: a) continue the meet and confer regarding the Civil Investigative Demand (CID) served on February 9, 2015; and b) request the Consumer Financial Protection Bureau (CFPB) withdraw its CID.



Fran is a former employee of NCO Financial Systems, Inc. (NCO). Fran is one of many employees who executed affidavits in support of collection lawsuits filed to recover unpaid National Collegiate Student Loan Trust (NCSLT) debts. Fran has not been employed by NCO since July 2013.



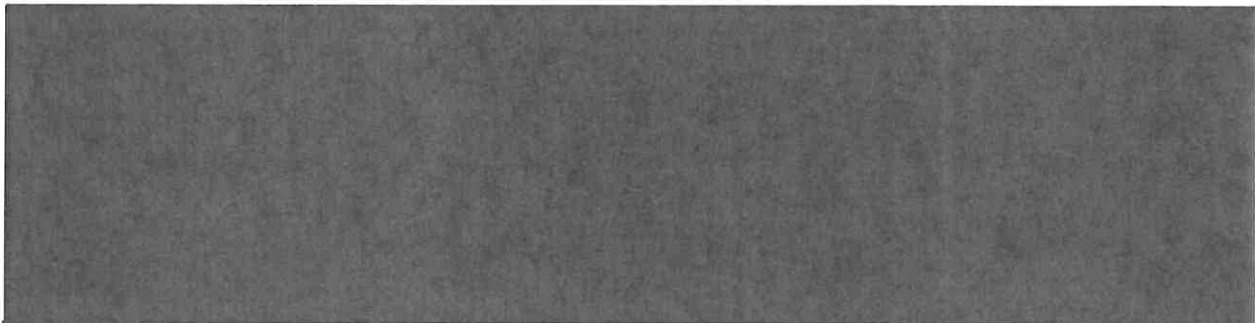
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SESSIONS FISHMAN NATHAN & ISRAEL LLC

ATTORNEYS AT LAW

Mr. Edward Keefe and Ms. Nicole Mayer
Civil Investigative Demand to Francesca Giampiccolo
February 17, 2015 – Page 2



The CFPB's CID is unduly burdensome, especially in light of the fact there are several other employees who performed the same job, which the CFPB could depose.

Accordingly, Fran requests the CFPB withdraw its CID. If the CFPB will not withdraw the CID, Fran will seek appropriate relief. We look forward to your response.

Sincerely,

Whitney L. White

SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.C.
Attorneys for Francesca Giampiccolo

WLW:ep

cc: David Israel -- via E-mail
Bryan Shartle -- via E-mail