

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

ADMINISTRATIVE PROCEEDING

File No. 2016-CFPB- 0006

In the Matter of:

**FALONI & ASSOCIATES, LLC**

**CONSENT ORDER**

The Consumer Financial Protection Bureau (Bureau) has reviewed the debt collection practices of Faloni & Associates, LLC (Respondent, as defined below) and has identified the following law violations: Respondent violated the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692e, by using false, deceptive, and misleading representations or means to collect consumer financial debt by altering Declarations to change the date of execution or the balance owed on the debt, or both, and then filing those Declarations in Collections Litigation in the New Jersey courts. Respondent's conduct also violated the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531 and 5536. Under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

**I**

**Jurisdiction**

1. The Bureau has jurisdiction over this matter under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, and under the FDCPA, 15 U.S.C. § 1692.

## II Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated February 9, 2016 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any of the findings of fact or conclusions of law; except that Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

## III Definitions

3. The following definitions apply to this Consent Order:
  - a. “Account” means an extension of credit to a Consumer in the United States, primarily for personal, family, or household purposes, and established or maintained for a Consumer pursuant to a credit card program.
  - b. “Affected Consumers” are Consumers who were defendants in Collections Litigation filed by Respondent on behalf of Citi identified in an order dated June 10, 2014, entered by the Superior Court of New Jersey (Law Division – Mercer County) in *In re Application by Citibank, N.A., Department Stores National Bank, and CitiFinancial Servicing, LLC, to Take Curative Action in Certain Pending Unsecured Consumer Debt Collection Actions*, Docket No.: L-355-14.

- c. “Affiant” means any signatory to a Declaration, other than one signing solely as a notary or witness to the act of signing, signing in his or her capacity as an employee or agent of Citi.
- d. “Citi” means Citibank, N.A., Department Stores National Bank, and CitiFinancial Servicing, LLC and their predecessors, successors, and assigns, individually, collectively, or in any combination.
- e. “Collections Litigation” means attempts by Respondent, through judicial processes in the State of New Jersey, to collect or establish a Consumer’s liability for a Debt allegedly owed to Citi. Collections Litigation does not include processes or proceedings initiated by Respondent in bankruptcy or probate matters involving a Consumer.
- f. “Competent and Reliable Evidence” means documents and/or records created by Citi in the ordinary course of business, which are capable of supporting a finding for the proposition for which the evidence is offered, is true and accurate, and which comport with applicable laws and court rules.
- g. “Consumer” means any natural person obligated or allegedly obligated to pay any Debt.
- h. “Debt” means, coterminous with the meaning of “debt” as defined in the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a(5), any obligation or alleged obligation of a Consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

- i. “Declaration” means any affidavit, sworn statement, certification of proof, or declaration, whether made under penalty of perjury or otherwise signed by an Affiant for purposes of affirming its accuracy and veracity, submitted to a court by Respondent in a Collections Litigation matter for the purpose of collecting a Debt, but does not include affidavits, sworn statements, certifications of proof, or declarations signed by counsel based solely on counsel’s personal knowledge and not based on a review of Citi’s books and records (such as affidavits of counsel relating to service of process, extensions of time, or fee petitions).
- j. “Effective Date” means the date on which the Consent Order is issued.
- k. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his/her delegate.
- l. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in Section IV of this Consent Order.
- m. “Respondent” means Faloni & Associates, LLC, and its successors and assigns.



#### IV

#### **Bureau Findings and Conclusions**

The Bureau finds the following:

4. Respondent is a law firm in Fairfield, New Jersey, that is engaged in the collection of consumer debt through litigation. Respondent is organized as a limited liability corporation.
5. Respondent is a “covered person” as that term is defined by 12 U.S.C. § 5481(6) because, among other reasons, it collects debt related to a consumer financial product or service.
6. Respondent is a “debt collector” as defined in Section 803(6) of the FDCPA. 15 U.S.C. § 1692a(6).
7. Citi is a “covered person” as that term is defined by 12 U.S.C. §§ 5481(6) and (15)(A)(i) because, among other reasons, it extends credit and collects debt related to a consumer financial product or service.
8. Respondent is a “service provider” as that term is defined by 12 U.S.C. § 5481(26) because it provided material service to Citi in connection with the offering or provision by Citi of consumer financial products or services by, among other things, collecting Debt allegedly owed to Citi in connection with Citi’s extension of credit to Consumers.
9. Respondent filed Collections Litigation in the New Jersey courts to collect credit card Debt allegedly owed to Citi by Consumers.
10. Affiants executed Declarations for Respondent to file with the New Jersey courts in Collections Litigation.

11. In cases filed by Respondent to collect Debt allegedly owed to Citi, the Affiant to a Declaration attested to the accuracy of the amount of the Debt owed by a Consumer as of the date of the Declaration's execution. The Affiant also attested to having personal knowledge of the facts of the Debt that formed the basis of the statements made in the Declaration.
12. Respondent altered and filed several hundred Declarations in cases pending as of September 12, 2011.
13. By altering the dates of the Declarations or the amount of the Debts owed or both after the Affiants executed the Declaration, Respondent misrepresented the facts to which the Affiant had attested and that had formed the basis of the statements made in the Declarations. Further, these misrepresentations meant that the Declarations, as filed with the New Jersey courts, were not Competent and Reliable Evidence to prove the Debts Respondent collected or attempted to collect on Citi's behalf.
14. Section 807 of the FDCPA prohibits the "false representation of . . . the character, amount, or legal status of any debt," 15 U.S.C. § 1692e(2)(A), and the use of "any false or deceptive means to collect or attempt to collect any debt," 15 U.S.C. § 1692e(10).
15. Section 1036(a)(1)(B) of the CFPB prohibits "unfair, deceptive, or abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B).
16. As described in Paragraphs 12-13, in connection with the collection or attempt to collect Debt, in numerous instances, Respondent represented, expressly or impliedly, that the Debt allegedly owed to Citi in each Collections Litigation in

which an altered Declaration was filed was supported by Competent and Reliable Evidence.

17. In fact, the altered Declarations were not valid legal documentation and did not constitute Competent and Reliable Evidence of the Debts allegedly owed to Citi.
18. Thus, Respondent's representations as described above constitute false representations of the legal status of debts in violation of section 807(2) of the FDCPA, 15 U.S.C. § 1692e(2), false or deceptive means to collect or attempt to collect debts in violation of section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10), and deceptive acts or practices in violation of sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

### **ORDER**

#### **V**

#### **Conduct Provisions**

**IT IS ORDERED**, under sections 1053 and 1055 of the CFPA, that:

19. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate section 807 of the FDCPA, 15 U.S.C. § 1692e, and sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536, in connection with the collection or attempt to collect any Debt.
  - a. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with the collection or attempt to collect any Debt, may not misrepresent, or assist others in misrepresenting, expressly or impliedly:



- i. The date of execution of any affidavit, sworn statement, certification of proof, or declaration;
  - ii. The amount of the Debt owed that is listed in any affidavit, sworn statement, certification of proof, or declaration;
  - iii. That the Debt that Respondent is attempting to collect is supported by Competent and Reliable Evidence; or
  - iv. Any other fact material to consumers.
- b. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with the collection or attempt to collect any Debt, may not alter or file with a court any affidavit, sworn statement, certification of proof, or declaration altered after execution, or assist others in altering or filing with a court any affidavit, sworn statement, certification of proof, or declaration altered after execution.
- c. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with the collection or attempt to collect any Debt, must comply with any remaining obligations under the order dated June 10, 2014, entered by the Superior Court of New Jersey (Law Division – Mercer County) in *In re Application by Citibank, N.A., Department Stores National Bank, and CitiFinancial Servicing, LLC, to Take Curative Action in Certain Pending Unsecured Consumer Debt Collection Actions*, Docket No.: L-355-14, including:



- i. Vacating all final judgments in actions filed by Respondent as identified in the June 10 order;
  - ii. Dismissing with prejudice all actions filed by Respondent as identified in the June 10 order;
  - iii. Ceasing acceptance of payments in all actions filed by Respondent as identified in the June 10 order; and
  - iv. Returning to Affected Consumers all amounts collected in actions filed by Respondent as identified in the June 10 order.
20. Respondent must correct all violations of law, to the extent not already corrected, as described herein.

## **MONETARY PROVISIONS**

### **VI**

#### **Order to Pay Civil Money Penalties**

**IT IS FURTHER ORDERED** that:

21. Under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$15,000 to the Bureau.
22. To the extent that Respondent lacks the financial resources to pay the full civil money penalty, Respondent must obtain contributions from Respondent's individual owners sufficient to pay the full penalty.
23. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

24. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
25. Respondent must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondent may not:
  - a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or
  - b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.
26. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action (Penalty Offset). If the court in any Related Consumer Action grants such a Penalty Offset, Respondent must, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty Offset to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.
27. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended,

- will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.
28. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.
  29. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
  30. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.
  31. Under section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency may furnish a consumer report concerning Respondent or any of Respondent's individual owners to the Bureau, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

## COMPLIANCE PROVISIONS

### VII

#### Reporting Requirements

**IT IS FURTHER ORDERED** that:

32. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent must provide this notice, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.
33. Within 7 days of the Effective Date, Respondent must designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with Respondent.
34. Respondent must report any change in the information required to be submitted under Paragraph 32 at least 30 days before the change or as soon as practicable after learning about the change, whichever is sooner.



35. Within 60 days of the Effective Date, and again one year after the Effective Date, Respondent must submit to the Enforcement Director an accurate written compliance progress report (Compliance Report), which, at a minimum:
  - a. Describes in detail the manner and form in which Respondent has complied with this Order; and
  - b. Attaches a copy of each Order Acknowledgment obtained under Section VIII, unless previously submitted to the Bureau.

## VIII

### Order Distribution and Acknowledgment

**IT IS FURTHER ORDERED** that,

36. Within 7 days of the Effective Date, Respondent must submit to the Enforcement Director an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.
37. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its officers, as well as to any partners, attorneys, managers, employees, Service Providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.
38. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section VII, any future officers, as well as to any partners, attorneys, managers, employees, Service Providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.

39. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

**IX**  
**Recordkeeping**

**IT IS FURTHER ORDERED** that

40. Respondent must create, or if already created, must retain for at least 5 years from the Effective Date, the following business records:
  - a. All documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau.
  - b. All documents and records necessary to establish a factual basis for any Declaration.
41. Respondent must retain the documents identified in Paragraph 40 for the duration of the consent order.
42. Respondent must make the documents identified in Paragraph 40 available to the Bureau upon the Bureau's request.

**X**  
**Notices**

**IT IS FURTHER ORDERED** that:

43. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, “*In re Faloni & Associates, LLC*, File No. 2016-CFPB-0006,” and send them either:

a. By overnight courier (not the U.S. Postal Service), as follows:

Assistant Director for Enforcement  
Consumer Financial Protection Bureau  
ATTENTION: Office of Enforcement  
1625 Eye Street, N.W.  
Washington D.C. 20006; or

b. By first-class mail to the below address and contemporaneously by email to

Enforcement\_Compliance@cfpb.gov:

Assistant Director for Enforcement  
Consumer Financial Protection Bureau  
ATTENTION: Office of Enforcement  
1700 G Street, N.W.  
Washington D.C. 20552

**XI**  
**Cooperation with the Bureau**

**IT IS FURTHER ORDERED** that:

44. Respondent must cooperate fully with the Bureau in this matter and in any investigation related to or associated with the conduct described in Section IV. Respondent must provide truthful and complete information, evidence, and testimony. Respondent must cause Respondent’s partners, attorneys, officers,

employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as the Bureau may designate, without the service of compulsory process.

## **XII Compliance Monitoring**

**IT IS FURTHER ORDERED** that, to monitor Respondent's compliance with this Consent Order:

45. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.
46. For purposes of this Section, the Bureau may communicate directly with Respondent, unless Respondent retains counsel related to these communications.
47. Respondent must permit Bureau representatives to interview any partner, attorney, employee, or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.
48. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.
49. For the duration of the Order in whole or in part, Respondent agrees to be subject to the Bureau's supervisory authority under 12 U.S.C. § 5514. Consistent



with 12 C.F.R. § 1091.111, Respondent may not petition for termination of supervision under 12 C.F.R. § 1091.113.

### **XIII**

#### **Modifications to Non-Material Requirements**

**IT IS FURTHER ORDERED** that:

50. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Enforcement Director.
51. The Enforcement Director may, in his/her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he/she determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

### **ADMINISTRATIVE PROVISIONS**

#### **XIV**


#### **Administrative Provisions**

52. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondent.
53. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.

54. This Consent Order will terminate 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondent. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.
55. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
56. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.
57. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.

58. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.
59. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing the Respondent, officers, or employees to violate any law, rule, or regulation.

**IT IS SO ORDERED**, this 22<sup>d</sup> day of February, 2016.

  
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Richard Cordray  
Director  
Consumer Financial Protection Bureau