

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>STATE OF COLORADO, <i>ex rel.</i> PHILIP J. WEISER, ATTORNEY GENERAL, AND ADMINISTRATOR, COLORADO FAIR DEBT COLLECTION PRACTICES ACT,</p> <p>Petitioners,</p> <p>v.</p> <p>NAVIENT SOLUTIONS, LLC, AND PIONEER CREDIT RECOVERY, INC.</p> <p>Respondents.</p>	<p style="text-align: center;">^ COURT USE ONLY ^</p>
<p>PHILIP J. WEISER, Attorney General JENNIFER HUNT, 29964* First Assistant Attorney General JENNIFER MINER DETHMERS, 32519* Senior Assistant Attorney General NATALIE R. KLEE, 51223* Assistant Attorney General Ralph L. Carr Colorado Judicial Center 1300 Broadway, Floor Denver, CO 80203 Phone Number: (720) 508-6000 FAX Number: (720) 508-6040 Emails: jennifer.hunt@coag.gov jennifer.dethmers@coag.gov natalie.klee@coag.gov *Counsel of Record</p>	<p>Case No.</p>
<p style="text-align: center;">APPLICATION FOR RELIEF TO ENFORCE SUBPOENAS TO PRODUCE DOCUMENTS</p>	

Petitioners, the State of Colorado *ex rel.* Philip J. Weiser, Attorney General
for the State of Colorado, and the Administrator, Colorado Fair Debt Collection

Practices Act (collectively, “Attorney General” or “State”), by and through undersigned counsel, respectfully apply for an order pursuant to C.R.S. §§ 5-16-127(7) and 6-1-109 to remedy the refusal of Navient Solutions, LLC and Pioneer Credit Recovery, Inc. (collectively, “Respondents”) to comply with subpoenas to produce documents.

RESPONDENTS DO NOT OBJECT TO THE RELIEF REQUESTED

Counsel for the State has conferred with counsel for Respondents numerous times in an effort to resolve this matter. Respondents do not object to the relief requested in this Petition; in fact, they take the position that, in the absence of borrower authorization, they *must* have a court order prior to producing requested documents relating to federal student loans. In Respondents’ responses and objections to the State’s subpoenas, Respondents claim the Privacy Act of 1974, 5 U.S.C. § 552a, *et seq.*, prohibits them from providing data and other information relating to Federal Direct Loans to the State without borrower authorization. The Privacy Act allows disclosure of otherwise restricted materials “pursuant to an order of a court of competent jurisdiction.” 5 U.S.C. § 522(a)(b)(11).¹ The State therefore seeks an order from this Court ordering Respondents to produce data and documents related to federal student loans.

¹ The State does not necessarily agree with Navient’s interpretation of 5 U.S.C. § 522(a)(b)(11). Nevertheless, the State is willing to file this Petition in order to obtain documents and data needed to continue its investigation.

INTRODUCTION

The Attorney General is investigating Navient Solutions, LLC (“Navient”) for potential violations of the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101, *et seq.* (CCPA), the Uniform Consumer Credit Code, C.R.S. §§ 5-1-101, *et seq.* (UCCC), and the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531 & 5536(a)(1), relating to its servicing and collecting of private and federal student loans. The Attorney General and the Administrator are also investigating Pioneer Credit Recovery, Inc. (“Pioneer”) for possible violations of the Colorado Fair Debt Collection Practices Act, C.R.S. §§ 5-16-101, *et seq.* (CFDCPA), and the UCCC. The Attorney General has received numerous complaints from Colorado borrowers about Respondents’ student loan servicing and collection practices and has interviewed many of these borrowers. Additionally, the Consumer Financial Protection Bureau (“Bureau”) and five states have sued Navient and, in some cases, Pioneer for violating consumer protection laws. The Attorney General has reasonable cause to believe that Navient and Pioneer might be engaging in misleading and deceptive practices in violation of state and federal law based on his review of consumer complaints, interviews with Colorado consumers, documents received from Respondents, and litigation pending in state and federal courts.

On January 29, 2018, the Attorney General served Navient with a civil law enforcement investigative subpoena pursuant to C.R.S. § 6-1-108. Ex. A, Subpoena (Jan. 29, 2018). On December 10, 2018, the Attorney General served Navient with a

second subpoena. Ex. B, Subpoena (Dec. 10, 2018). The Administrator served Pioneer with an administrative subpoena on December 21, 2018, pursuant to C.R.S. § 5-16-127(1), (2), (5), & (7). Ex. C, Administrative Subpoena to Pioneer (Dec. 21, 2018).

Respondents have made rolling productions of documents in response to the subpoenas. However, Respondents refuse to produce documents, data, and other information regarding borrowers with Federal Direct Loans without a court order or authorization from every single borrower.

VENUE AND AUTHORITY

The Attorney General is investigating Respondents under his express statutory authority in C.R.S. §§ 6-1-103 and 6-1-108. Venue is proper in the City and County of Denver under C.R.S. § 6-1-103, because the alleged deceptive trade practices occurred in this county.

BACKGROUND

A. Respondents

Navient Corporation is a Delaware corporation with its principal offices in Wilmington, Delaware. Navient is a wholly owned subsidiary of Navient Corporation. It is one of the largest student loan servicers in the United States. Navient services the loans of more than 12 million borrowers with more than \$300 billion in federal and private student loans.

Pioneer is a wholly owned subsidiary of Navient Corporation. It is a Delaware corporation with its offices based in Arcade, New York. Pioneer mainly engages in debt collection activities related to outstanding and delinquent federal student loans. Pioneer is a licensed debt collection company in Colorado and collects loans owed, or alleged to be owed, by residents of Colorado.

B. Types of student loans

Federal student loans are either funded or guaranteed by the federal government. Over 90% of all student loans are federal loans. Federal loans are primarily need-based, meaning they are given to borrowers regardless of their credit history. The federal government caps interest rates for federal loans, which can be either subsidized or unsubsidized. For subsidized loans, the government generally pays the interest while the borrower is in school. For unsubsidized loans, the borrower is responsible for paying the interest.

Until 1994, private lenders originated and funded federal loans to students. Guaranty agencies—typically state or private nonprofit organizations—insured those funds, which were, in turn, reinsured by the federal government pursuant to the Federal Family Education Loan Program, commonly referred to as “FFEL” or “FFELP” loans. In 1994, the William D. Ford Direct Student Loan Program was enacted. Under this program, eligible students and parents borrow directly from the U.S. Department of Education by taking out “Direct Loans.”

In contrast to federal loans, the federal government does not make or guarantee private student loans. Instead, private institutions offer loans to borrowers based on their credit history and ability to pay back their loans. Private loans comprise only 8-10% of the student loan market.

C. Respondents' alleged conduct relating to the servicing and collection of student loans

Approximately 734,000 Coloradans have student loans, with an outstanding total debt of \$26.5 billion. More than half of Colorado students graduate from institutions of higher education with student loan debt, averaging \$26,530 per student. As one of the largest student loan servicers in the country, Navient services student loans for a significant number of Colorado borrowers. Since 2015, Colorado consumers have filed nearly 700 complaints against Respondents with the Attorney General, the Administrator, federal agencies, and others regarding Respondents' student loan servicing and collection practices. The most common complaints concern cosigner releases, payment misapplication and misallocation, income-based repayment plans, forbearance, deferment, loan forgiveness, harassing collection calls, and improper debt collection. The Attorney General has closely followed the lawsuits against Respondents filed by the Bureau and state attorneys general in California, Illinois, Mississippi, Pennsylvania, and Washington as Respondents' servicing and collection practices alleged in those complaints may

have occurred in Colorado.² The consumer complaints and Attorney General’s initial investigation, coupled with the issues raised by other law enforcement agencies, led the Attorney General to initiate an investigation into Respondents’ servicing and collecting practices.

The Attorney General’s subpoenas seek information about Respondents’ servicing and collection of private and federal loans. Although Respondents’ have produced information related to FFELP and private loans, Respondents have refused to produce Colorado borrower information – including but not limited to correspondence logs, written correspondence, account histories, collection notes, call recordings, and data relating to forbearances and income-driven repayment (IDR) plans – for federal student loan borrowers without individual borrower authorization or a court order. As 92% of student loans outstanding are owned or guaranteed by the federal government, Respondents’ refusal to provide documents and information on federal student loans is severely hampering the State’s

² *Pennsylvania v. Navient Corp.*, No. 3:17-cv-1814 (M.D. Pa. Oct. 5, 2017); *CFPB v. Navient Corp.*, No. 3:17-cv-101 (M.D. Pa. Jan. 18, 2017); *Mississippi v. Navient Corp.*, No. G2018-982 (Ch. Ct., Hinds Cnty. July 17, 2018); *California v. Navient Corp.*, CGC-18567732 (Super. Ct., San Francisco Cnty. June 29, 2018); *Illinois v. Navient Corp.*, No. 17 CH761 (Cir. Ct. of Cook Cnty., IL Cnty. Dep’t, Ch. Div Jan. 18, 2017); *Washington v. Navient Corp.*, No. 17-2-01115-1 SEA (King Cnty. Super. Ct. Jan. 18, 2017).

investigation.³ Without access to information about federal student loans, the State cannot investigate Respondents' servicing and collection practices in Colorado for a vast majority of student loans.

D. Subpoena requests relating to federal loans

In its subpoenas, the State requested borrower information, data, documents, and call recordings for Colorado consumers who have student loans serviced by Navient or collected by Pioneer. Ex. A, Req. for Produc. Nos. 1, 2, 4, 5, 14, and 15; Ex. B, Req. for Produc. Nos. 8, 9, 11, 12, 13, 15, and 16; Ex. C, Req. for Produc. Nos. 1, 5, 6, 8 and 9. Navient lodged general objections to each subpoena, stating that they “object[] to the subpoena to the extent it demands any production of documents or other information that would violate the Higher Education Act; the Higher Education Opportunity Act; the U.S. Department of Education’s regulations, policies, or guidelines; or any other federal or state law or regulation or privacy requirements.” See Ex. D, Navient’s Initial Resps. & Objections to the Jan. 29, 2018 Subpoena, 4 (Mar. 7, 2018); Ex. E, Navient’s Initial Resps. & Objections to the Dec. 10, 2018 Subpoena, 4 (Jan. 21, 2019). Pioneer also lodged a general objection to the subpoena stating, “Pioneer objects to the subpoena to the extent it demands any production of documents or other information that would violate the Higher

³ Navient, *2018 4th Quarter and Full Year Investor Deck*, 15 (February 26, 2019), <https://navient.com/assets/about/investors/webcasts/2018-Q4-Investor-Slides-vFINAL.pdf>.

Education Act; the Higher Education Opportunity Act; the Privacy Act; the U.S. Department of Education’s regulations, policies, or guidelines; or any other federal or state law or regulation or privacy requirements.” Ex. F, Pioneer’s Navient’s Initial Resps. & Objections to Subpoena, 4 (Feb. 11, 2019). In response to the State’s January 29, 2018 Subpoena, Navient specifically objected to Request for Production Nos. 1, 2, 4, and 5 as the requests “purport[] to seek information from the Department of Education’s system of records regarding borrowers with Federal Direct Loans, which is protected by the Privacy Act. Under the Privacy Act, Navient Solutions is unable to provide information from the Department of Education’s system of records to third parties.” Ex. D at 9–10, 12–13, 21. Pioneer lodged the identical objection in response to Request for Production Nos. 1 and 8. Ex. F at 6, 9–10.

E. The parties’ attempts to resolve Respondents’ Privacy Act objections

The parties have met and conferred about Respondents’ Privacy Act objections multiple times. In early 2019, Respondents said they were willing to produce an extraction of information of consumer data from Respondents’ servicing and collection systems, but only if the State agreed to amend the confidentiality agreement and not to share this information with other state attorneys general investigating Respondents. *See* Ex. G, Email from M. Kilgarriff to J. Dethmers of Feb. 20, 2019, at 2:00 PM. On February 27, 2019, the parties further discussed the

suggested amendments to the confidentiality agreement. On March 5, 2019, the State informed Respondents' counsel that it would not agree to limit its ability to share information with other state attorneys general. The parties continued to confer about these issues and, in August 2019, Respondents informed the State that they had updated their position. Respondents proposed a rider to the confidentiality agreement that allowed the Attorney General to share attorney work product and analysis of the data with other state attorneys general. Ex. H, Confidentiality Rider. Because it is unknown if other state attorneys general will request access to Colorado borrower data, documents, and call recordings, the State and Respondents agreed to further meet and confer if and when other state attorneys general request Colorado disclose the documents. *Id.* However, even with these protections, Respondents take the position that they must have a court order or individual borrower authorization before they can produce federal student loan borrower data and documents pursuant to 5 U.S.C. § 552a(b)(11)—even if the data is de-identified and aggregated. Because it is impractical to obtain authorization for every Colorado borrower who has a loan serviced or collected by Respondents, the parties are seeking a court order.

Respondents already produced complete individual federal loan files for approximately 50 Colorado borrowers who provided authorization and provided call recordings for 18 of these borrowers. Respondents have agreed to produce complete individual federal loan borrower files and call recordings for an additional 41

borrowers within 21 days of entry of a court order. While Respondents will provide notice to borrowers, they will not require borrower authorization. The State reserves the right to request that Respondents produce additional borrower files and call recordings.

Respondents also agreed to produce federal loan data for Colorado borrowers within 21 days of entry of a court order. Respondents will produce data for all Colorado borrowers with one or more federal loans enrolled in any type of prospective forbearance or IDR plan at any point from January 1, 2015, to August 31, 2019. As part of this production, Respondents will produce loan terms and de-identified borrower information captured at loan origination and at the outset of repayment; a complete history of all payments, transactions, and status changes (including but not limited to delinquencies, defaults, acceptances into IDR, recertifications or missed recertifications in IDR, and granting of forbearances and deferments); information relating to transfers to or from other servicers; information captured on forbearance, deferment, and IDR request/application forms; information, notes, and metadata captured from borrower communications with Respondents' representatives, including but not limited to applications, letters, emails, text messages, and phone calls; information contained in the correspondence history screens within Respondents' systems of record; and data contained in month-end reports and snapshots.

ARGUMENT

A. The Attorney General's statutory authority to issue and enforce the subpoenas

As a remedial statute, the CCPA is intended to deter and punish deceptive trade practices committed by businesses in dealing with the public. *Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47, 50–51 (Colo. 2001). The CCPA's broad purpose is “to provide prompt, economical, and readily available remedies against consumer fraud.” *Id.* (quoting *W. Food Plan, Inc. v. Dist. Court*, 598 P.2d 1038, 1041 (Colo. 1979)). The Attorney General has the authority to enforce the CCPA. C.R.S. § 6-1-103. When the Attorney General has reasonable cause to believe that a person has engaged or is engaging in deceptive trade practices, he may investigate by (1) examining any property, record, document, account, or paper he deems necessary; and (2) issuing subpoenas to require the attendance of witnesses or the production of documents in aid of any investigation. *See* C.R.S. §§ 6-1-107(1) & 6-1-108(1); *see also* C.R.S. § 5-16-127(7) (providing that Administrator “may subpoena witnesses and compel them to give testimony under oath” under CFDCPA).

C.R.S. § 6-1-108 requires that “the subpoena be necessary to administer the provisions of the Consumer Protection Act,” including the Attorney General's “duties of investigation and enforcement.” *People v. Am. Banco Corp.*, 570 P.2d 825, 829, 830 (Colo. 1977). The subpoena must be definite, not overbroad, and relevant to

the investigation. *Id.* The Colorado Supreme Court has clarified that these definiteness and overbroad requirements are “satisfied by a showing that the subpoena’s language exhibit such particularity of description that the person subpoenaed be able to know what he is being asked to produce and that there be such particularity of breadth that good faith compliance would not be unduly burdensome.” *Id.* at 830 (citing *United States v. Reno*, 522 F.2d 572 (10th Cir. 1975)). A subpoena is relevant if the Attorney General can show that “a relationship exists between the documents which must be produced and the purposes of the inquiry.” *Id.*; see also *Benson v. People*, 703 P.2d 1274, 1279 (Colo. 1985) (determining that the Attorney General meets the relevancy requirement if he “makes a prima facie showing that the requested documents bear some general relationship to the subject matter of the investigation”).

If any person fails to cooperate with an investigation or fails to obey a subpoena issued by the Attorney General, he or she may apply to the district court for relief under C.R.S. § 5-16-127(7) and § 6-1-109(1). The application “shall state that there are reasonable grounds to believe that the order applied for is necessary to investigate a deceptive trade practice.” C.R.S. § 6-1-109(1).. If reasonable grounds exist to enforce the subpoena, the court may: “a) Grant injunctive relief restraining the sale or advertisement of any property by such person; b) Require the attendance of or the production of documents by such person, or both; c) Grant such other or further relief as may be necessary to obtain compliance by such person.” *Id.*

B. The Attorney General believes that the subpoenas are necessary to investigate, terminate, or prevent a deceptive trade practice

The Attorney General's review of consumer complaints and interviews, lawsuits by the Bureau and state attorneys general, documents produced by the Respondents in response to the subpoenas thus far, and news reports provide ample grounds for his belief that the subpoenas are necessary to terminate or prevent a deceptive trade practice. The Attorney General's subpoenas request for individual federal loan borrower files and aggregate data are definite and not overbroad. Indeed, Respondents understand what the State is asking and have agreed to produce the requested information pursuant to a court order. The requested documents and data are relevant to the State's investigation because federal loans comprise a majority of Respondents' student loan servicing and collection business. Without the requested federal loan information, the Attorney General is unable to investigate Respondents and effectively discharge his "duties of investigation and enforcement." *See Am. Banco Corp.*, 570 P.2d at 829. Accordingly, reasonable grounds exist to believe the subpoenas are necessary to terminate or prevent a deceptive trade practice. As a result, this Court should order Respondents to provide the requested documents within 21 days of entry.

CONCLUSION AND RELIEF REQUESTED

The Attorney General respectfully requests an order from the Court requiring Respondents to produce federal loan borrower data, documents, and call recordings in response to the subpoenas within 21 days of entry of the order.

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