UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: SACV 13-01267-JLS (JEMx) Date: October 9, 2015
Title: Consumer Financial Protection Bureau v. Morgan Drexen Inc. et al.

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero	N/A
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER HOLDING VINCENT HOWARD, LAWRENCE WILLIAMSON, HOWARD LAW, P.C., THE WILLIAMSON LAW FIRM, LLC, AND WILLIAMSON & HOWARD, LLP IN CONTEMPT

On August 21, 2015, the Court ordered Vincent Howard, Lawrence Williamson, Howard Law, P.C., the Williamson Law Firm, LLC, and Williamson & Howard, LLP (collectively, the "Attorneys") to show cause "why they should not be held in contempt for violating the Court's previous Orders, including the Court's 'Order Re: Permanent Injunction' and 'Order Regarding (1) Attorneys' Ex Parte Motion for Clarification or Modification of Injunction; (2) Chapter 7 Trustee's Ex Parte Application for Order Clarifying Order Re: Permanent Injunction; and (3) Chapter 7 Trustee's and CFPB's Joint Report." (Attorneys' OSC at 1, Doc. 351.) On August 26, 2015, the Attorneys filed a Response to the Court's Order to Show Cause.[1] (Attorneys' Response, Doc. 356.) On August 31, 2015, Plaintiff Consumer Financial Protection Bureau ("CFPB") filed a Reply, and Jeffrey I. Golden, the Chapter 7 Trustee ("Trustee"), filed a Declaration. (Attorneys' Reply, Doc. 360; Golden Decl., Doc. 361.) The Court held a hearing on the OSC directed to the Attorneys on September 4, 2015.

[1] Defendant Walter Ledda also filed a Response to the Court's Order to Show Cause on August 26, 2015. (Doc. 355.)

In addition, on September 14, 2015, the Court, on its own motion, ordered Jeffrey Katz, who was Morgan Drexen's General Counsel during the underlying litigation, and Avi Gupta, who was Morgan Drexen's Chief Technology Officer during the underlying litigation, to show cause why they should not be held in contempt for violating the same Court Orders. (Katz and Gupta OSC, Doc. 373.) On September 28, 2015, Katz and Gupta filed separate Oppositions. (Katz Opposition, Doc. 381; Gupta Opposition, Doc. 382.) On October 1, 2015, CFPB replied. (Katz and Gupta Reply, Doc. 383.) The Court held a hearing on the OSC directed to Katz and Gupta on October 2, 2015.[2]

Having considered the parties' briefing and evidence submitted to the Court, heard oral argument, and taken the matter under submission, the Court holds the Attorneys in contempt.[3]

[2] The hearing originally was scheduled for September 23, 2015. (Katz and Gupta OSC.) However, after reviewing the Affidavit filed by Jeffrey Katz, (*see* Doc. 376), the Court continued the hearing to October 2, 2015, and provided Katz and Gupta with additional time to respond to the Court's Order to Show Cause. (Doc. 378.)

[3] The Court has by separate minute order discharged the Order to Show Cause as directed to Katz and Gupta because there was not clear and convincing evidence they had received actual notice of the Injunction. (Minutes, Doc. 384; Katz and Gupta OSC.) Nonetheless, as detailed in the Court's Order granting CFPB's request for terminating sanctions against Morgan Drexen, and as detailed in this Order below, Katz was a central figure in Morgan Drexen's falsification of evidence, which caused the Court to issue terminating sanctions, freeze Morgan Drexen's assets, issue the Injunction, and ultimately hold these contempt proceedings. The clear and convincing evidence discussed in detail below reflects that, as soon as Katz was terminated from his position at Morgan Drexen, he became a partner of one of the Attorneys' law firms and also began billing the Attorneys for "legal advisory services" in order to continue Morgan Drexen's debt relief business and collect fees from Affected Consumers. Further, the clear and convincing evidence discussed in detail below reflects that Gupta developed software for the Attorneys so that they could have unfettered access to Morgan Drexen's consumer files despite the Court's Orders otherwise.

I. Background[4]

A. History of Morgan Drexen[5]

Defendant Morgan Drexen, Inc. was founded in 2007. Morgan Drexen provided debt settlement and bankruptcy services to attorneys and consumers. Specifically, Morgan Drexen worked with attorneys to service clients who were subject to actions and lawsuits by organizations within the debt collection industry. Defendant Walter Ledda served as President and Chief Executive Officer of Morgan Drexen and was a member of the Board of Directors.

In 2009, Morgan Drexen became aware of proposed amendments to the Telemarketing Sales Rule ("TSR") that would ban advance fees for debt settlement services. As a result, Morgan Drexen began contracting with attorneys to bundle bankruptcy services with the debt relief services already offered by Morgan Drexen. Consumers who wished to engage debt settlement and/or bankruptcy attorneys were provided with attorney contracts to sign.

Between October 27, 2010, and August 31, 2014, 95% of Morgan Drexen's customers (the "consumers") signed up for both debt settlement and bankruptcy services. Under the bankruptcy services contract, the consumer was required to pay an up-front engagement fee and a monthly maintenance fee. Approximately 93% of those enrolled in both services were charged an up-front fee. These consumers paid up-front fees in the range of $1,000.00 to $3,250.00. Morgan Drexen received 85% to 95% of the fees paid

[4] The Court recognizes that the Attorneys are not parties to this case and were not involved in this litigation until they filed their Ex Parte Motion for Clarification or Modification of Injunction on June 26, 2015. (Clarification Mot., Doc. 309.) Nevertheless, the Court discusses events that occurred prior to July 26, 2015, in order to provide a thorough factual and procedural history of this case.

[5] Unless otherwise noted, all facts in this section were undisputed by Defendants Morgan Drexen, Inc. and Walter Ledda in their Statement of Genuine Issues in Dispute. (Doc. 188-1.)

by the consumer, and the attorneys with whom Morgan Drexen contracted received 5% to 15% of these fees.

Many of these consumers signed up for Morgan Drexen's services as a result of advertisements that Morgan Drexen prepared for the attorneys. Once a customer signed up for debt settlement services, Morgan Drexen communicated and negotiated directly with creditors in an effort to settle consumers' debts. Through its platform, Morgan Drexen notified the contracted attorneys of any settlement offers received from creditors. Morgan Drexen maintained the consumer files within its platform and database software.

B. Issuance of Terminating Sanctions Against Morgan Drexen

On August 20, 2013, CFPB filed suit against Morgan Drexen and Ledda. (Compl., Doc. 1.) CFPB alleged, *inter alia*, that Morgan Drexen and Ledda violated the TSR and the Consumer Financial Protection Act ("CFPA") by (1) requesting or receiving up-front fees for debt relief services, and (2) representing to consumers that they would not be charged advance fees for debt relief services, but in fact charging such fees. (Id.) In short, CFPB claimed that Morgan Drexen and Ledda bundled unnecessary bankruptcy services together with debt relief services to disguise the fact that they continued to charge an upfront fee for what were essentially debt relief services. (Id.) In its motion for summary judgment, CFPB asserted that Morgan Drexen and Ledda unlawfully charged nearly 60,000 customers improper up-front fees totaling $90.7 million, because little if any bankruptcy services were actually performed for the customers.[6] For that reason, a central issue in the case was whether Morgan Drexen could show that bankruptcy services were actually being provided. Of course, the key evidence would be the bankruptcy petitions themselves.

[6] For a more thorough discussion of CFPB's claims against Morgan Drexen and Ledda, see the Court's Order (1) Denying Defendants' Motion for Partial Summary Judgment and (2) Denying Plaintiff's Motion for Summary Judgment. (MSJ Order, Doc. 198.)

Prior to trial, on January 23, 2015, CFPB filed a Motion for Sanctions. (Docs. 255-2, 274.) CFPB asserted that during the discovery process Morgan Drexen had manufactured bankruptcy petitions that did not previously exist, and manipulated, altered, and destroyed evidence. (Id.)

Based on the evidence submitted to the Court, and after holding an evidentiary hearing, the Court issued terminating sanctions against Morgan Drexen.[7] (Terminating Sanctions Order, Doc. 284.) In granting the motion, the Court held that Morgan Drexen acted willfully and in bad faith by falsifying evidence and undermined the integrity of the judicial proceedings. (Id. at 17.) Specifically, the Court found that Morgan Drexen delayed production of requested discovery in order to create hundreds of new bankruptcy petitions to make it seem that more substantive and complete bankruptcy work had been performed on certain consumer files. (Id. at 18, 20.) The Court also found that Morgan Drexen intended to mislead the Court and CFPB by attempting to pass off bankruptcy petitions as if they had been created in the normal course of business. (Id. at 19.)

On April 30, 2015, the Court issued an Order Temporarily Freezing Morgan Drexen Inc.'s Assets Pending Resolution of This Litigation. (Freeze Order, Doc. 289.) Hours later, Morgan Drexen filed for bankruptcy. (Doc. 290.) The Bankruptcy Court later appointed Jeffrey I. Golden as the Chapter 7 Trustee for Morgan Drexen.[8] (*See* Doc. 308.)

C. Permanent Injunction

On June 18, 2015, the Court issued its Order Re: Permanent Injunction ("Injunction"). (PI Order, Doc. 306.) The Court explained that Morgan Drexen was

[7] Though the Court denied CFPB's motion for terminating sanctions against Ledda, the Court issued significant evidentiary sanctions against Ledda. (Doc. 328.) CFPB and Ledda have reached a settlement regarding CFPB's claims against Ledda. (Doc. 367.)

[8] On June 19, 2015, the Bankruptcy Court converted Morgan Drexen's bankruptcy from a Chapter 11 bankruptcy to a Chapter 7 bankruptcy, and replaced John Hueston, the Chapter 11 Trustee, with Golden, the Chapter 7 Trustee. (Doc. 308.)

found to have falsified evidence going to the substantive heart of this case. (Id. at 2.) Because the Court had issued terminating sanctions against Morgan Drexen, "the factual allegations of the Complaint, save for those concerning damages, [were] deemed to have been admitted by [Morgan Drexen]." (Id. at 2 (citing Fed. R. Civ. P. 8(b)(6); *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977).) Of particular relevance, the Court found that Morgan Drexen had violated the CFPA and the TSR because Morgan Drexen had, *inter alia*, (1) "requested or received fees from consumers before renegotiating, settling, reducing, or otherwise altering the terms of at least one of such consumers' debts[;]" (2) "requested or received payment of these fees prior to consumers making at least one payment pursuant to any settlement agreement, debt-management plan, or other valid contractual agreement between consumers and their creditors[;]" (3) "required consumers to place up-front fee payments in an account and failed to hold these payments such that consumers own the funds or to allow consumers to withdraw from the debt relief program without penalty and receive all funds held in the account[;]" and (4) "in the course of advertising, marketing, promoting, offering for sale, or the sale of debt relief services from April 26, 2011 to April 11, 2014, . . . represented, directly or indirectly, expressly or by implication, that consumers are not charged an advance fee for Morgan Drexen's debt relief services when, in fact, consumers are charged advance fees for Morgan Drexen's debt relief services." (PI Order at 2.) The Court also stated "that a permanent injunction restraining and enjoining Morgan Drexen from collecting any additional fees from Affected Consumers[9] [was warranted and] in the public interest." (Id. at 3.) The Court explained that it was "not convinced that any benefit to consumers would result if the Court allow[ed] Morgan Drexen to continue to charge Affected

[9] "Affected Consumer" means consumers who: (a) from October 27, 2010 to the present, have paid advance ("up-front") fees to Morgan Drexen prior to Morgan Drexen renegotiating, settling, reducing, or otherwise altering the terms of at least one of such consumers' debts; or (b) enrolled in a debt relief service with Morgan Drexen in response to Morgan Drexen's deceptive advertisements. (PI Order at 4.)

Consumers fees, when they are the very same consumers who have already paid Morgan Drexen an illegal upfront fee." (Id.)

The Court thus permanently restrained and enjoined Morgan Drexen from collecting any further fees from consumers who had paid up-front fees to Morgan Drexen prior to Morgan Drexen renegotiating, settling, reducing, or otherwise altering the terms of at least one of such consumers' debts, or from consumers who had enrolled in a debt relief service with Morgan Drexen in response to Morgan Drexen's deceptive advertisements. (Id. at 4, 10.) The Court also permanently restrained and enjoined "Morgan Drexen and its officers, agents, servants, and employees who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or indirectly," from "[d]isclosing, using, or benefitting from customer information," or "[a]ttempting to collect, collecting, selling, or assigning, or otherwise transferring any right to collect payment from any consumer who purchased or agreed to purchase a debt relief product or service from Morgan Drexen." (Id. at 9-10.) Finally, the Court permanently restrained and enjoined "Morgan Drexen and its officers, agents, servants, and employees, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or indirectly in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any consumer financial product or service" from "misrepresenting, or assisting others in misrepresenting, expressly or by implication" any material facts concerning any consumer financial product or service. (Id. at 8.)

D. Clarification Order

On June 26, 2015, the Attorneys filed an Ex Parte Motion for Clarification or Modification of Injunction. (Clarification Mot., Doc. 309.) Vincent Howard is the president and owner of all shares of Howard Law, P.C. (Howard Decl. ¶ 4, Doc. 356-1.) Lawrence Williamson is the manager of the Williamson Law Firm, LLC. (Williamson Decl. ¶ 4, Doc. 356-2.) Williamson and Howard both own 50% of Williamson &

Howard, LLP. (Howard Decl. ¶ 6-7.) In the motion, the Attorneys assert that approximately 10,000 consumers who would be affected by the Injunction are their clients, and that Morgan Drexen was simply providing those clients with "certain secretarial, administrative, accounting and paralegal services." (Clarification Mot. at 4; Doc. 309)

The Attorneys requested access to consumer files that Morgan Drexen retained on its computers and servers and a copy of the MDIS case management software that Morgan Drexen had used to store and access these consumer files. (Clarification Mot. at 1-2.)[10] In support of their request, the Attorneys submitted a declaration from Vincent Howard, which claimed that, "[a]bsent immediate relief from this Court confirming that the Injunction does not bar the [Attorneys] from obtaining their Clients' files and a copy of the MDIS Software, and absent relief confirming that no one other than the [Attorneys] or the Clients themselves can access the attorney-client privileged material in these files, the rights of the [Attorneys] and the Clients will be irreparably harmed." (Howard Decl. ¶ 18, Doc. 309.)

The Trustee, on the other hand, recommended that the Court not permit the Attorneys to access consumer files through the use of Morgan Drexen's software because the Trustee had concerns that the Attorneys would misuse the information on the software. (Golden Decl. ¶ 4-5, Doc. 314; *see also* Trustee Opp'n at 3-4, Doc. 311.) The Trustee, however, believed that providing the Attorneys with copies of consumer files would "assist the consumers and ensure continuity" because the Attorneys "need data on the consumers' debts to be able to respond to their clients' inquiries." (Golden Decl. ¶ 6, Doc. 314.)

On July 6, 2015, the Court issued an Order Regarding (1) Attorneys' Ex Parte Motion for Clarification or Modification of Injunction; (2) Chapter 7 Trustee's Ex Parte

[10] The Court later learned that before filing the motion, the Attorneys had already obtained the consumer files and had hired a former high-level Morgan Drexen IT executive, Avi Gupta, to develop software to access those files. The Attorneys withheld this information from the Court at the time they filed their Motion for Clarification.

Application for Order Clarifying Order Re: Permanent Injunction; and (3) Chapter 7 Trustee's and CFPB's Joint Report. ("Clarification Order," Doc. 326.) The Court found that the Attorneys had actual notice of the Injunction, as evidenced by the filing of their ex parte motion requesting a modification or clarification of the Court's permanent injunction order. (Id. at 9.) The Court then explained that, "[t]hough the Court's permanent injunction order restrained only Morgan Drexen from collecting additional fees from Affected Consumers, this portion of the Court's permanent injunction order was based on the Court's more fundamental concern that consumers had been victimized by Morgan Drexen's conduct and no 'benefit to consumers would result if the Court allow[ed] Morgan Drexen to continue to charge Affected Consumers fees, when they are the very same consumers who have already paid Morgan Drexen an illegal upfront fee.'" (Id. at 9-10 (citation omitted).) The Court recognized "that the Attorneys are not parties in this action . . . [and] [t]he Court's permanent injunction order also does not specifically name or enjoin the Attorneys." (Id. at 10.) However, the Court stated that it was undisputed "that Morgan Drexen received 85% to 95% of the fees paid by consumers, and attorneys who contracted with Morgan Drexen, such as the Attorneys, received 5% to 15% of these fees." (Id.) In addition, the Court discussed how, "though Morgan Drexen seem[ed] to have performed the majority of debt relief work for consumers, played a predominant role in the creation of marketing materials for the Attorneys, and controlled and managed the consumer files while in business, the Attorneys contend[ed] that marketing and debt relief materials and the consumer files 'were prepared under the [Attorneys]' direction and control.'" (Id. (citation omitted).)

The Court thus found that, "[a]s a result of the fee-sharing arrangement and contractual relationship between the Attorneys and Morgan Drexen, it appears to the Court that the Attorneys were in 'active concert or participation with' Morgan Drexen while Morgan Drexen was collecting illegal up-front fees from Affected Consumers." (Id.) The Court further stated that "[t]he majority of the [I]njunction not only binds Morgan Drexen, but also those 'in active concert or participation with' Morgan Drexen." (Id.) The Court therefore held that, "because the Attorneys appear to have been in 'active

concert or participation' with Morgan Drexen and thus fit within one of Rule 65's categories of non-parties that are bound by a permanent injunction, the majority[11] of the Court's permanent injunction order applies equally to the Attorneys as it does to Morgan Drexen." (Id.)

In addition, the Court stated the following:

> This case involves consumers whose relationships with Morgan Drexen, and, as a result, their relationships with the Attorneys, have already been tainted by Morgan Drexen's false advertising and illegal fee collection. The Court's permanent injunction was based on the concern that any additional collection of fees from Affected Consumers would only further victimize consumers who have already paid illegal up-front fees for services that they may never have received. Both the Trustee and CFPB have expressed concerns that providing the Attorneys with access to their purported clients' consumer files could result in further victimization of Affected Consumers. Based on these concerns, and for the reasons stated above, the Court believes that the Court's goal of protecting consumers from being further victimized by Morgan Drexen and those who acted in concert or participation with Morgan Drexen would be better served by ensuring that the Attorneys do not have unfettered access to the consumer files for their purported clients.

[11] The Attorneys contend that the Court's use of the word "majority" in its Clarification Order signifies the Court's desire to make only those sections of the Injunction that include "in concert" or similar language binding on the Attorneys. Not so. The Court's use of the word "majority" simply signified that the section of the Injunction detailing certain reporting requirements applied only to Morgan Drexen. (*See* PI Order § VI.) Further, the Court specifically ordered CFPB and the Chapter 7 Trustee to take certain actions, which obviously would not apply to the Attorneys. (*See* id. § VII.)

(Id. at 10-11.) As a result, the Court denied the Attorneys' requests for unfettered access to the consumer files, use of Morgan Drexen's software, and a 30-day stay of the Injunction. (Id.) Nevertheless, because the website created by the Trustee and the letters that the Court ordered sent to consumers would direct consumers to contact the Attorneys to request refunds, the Court permitted the Trustee to provide the Attorneys' with copies of their purported clients' files and information. (Id. at 11.) The Court, however, explicitly warned the Attorneys that they are bound by the Injunction, and that any violation of the terms of the Injunction could subject the Attorneys to contempt proceedings before this Court. (Id.)

Finally, the Court previously had required Morgan Drexen and CFPB jointly to submit a brief report to the Court that included a template of the final version of a publicly available website, a letter to be sent to Affected Consumers, and a letter to be sent to creditors with whom Affected Consumers entered into a debt relief payment plan. (PI Order at 11-14.) In its Clarification Order, the Court approved the templates that the Chapter 7 Trustee and CFPB attached to their Joint Report, and made a few changes and modifications to the letters and website. (Clarification Order at 12-13.) The Court also ordered the Chapter 7 Trustee and CFPB to "delay disseminating any information to Affected Consumers until the Attorneys have had a sufficient opportunity to obtain copies of the relevant consumer files, if they choose[, because t]he Court believe[d] that providing the Attorneys with seven days to request and obtain copies of the relevant consumer files w[ould] best serve the public interest." (Id. at 13.)

E. The Attorneys' Actions Following the Injunction

1. Ninth Circuit Appeal

On July 14, 2015, the Attorneys' appealed the Injunction and Clarification Order. (Notice of Appeal, Doc. 330.) On July 15, 2015, the Ninth Circuit temporarily stayed the Injunction and Clarification Order until it could decide the

emergency motion to stay that the Attorneys also had filed in the Ninth Circuit. (Doc. 332.) On July 17, 2015, the Ninth Circuit denied the Attorneys' emergency motion to stay, and thus the stay of the Injunction and Clarification Order was lifted. (Doc. 334.)

2. Chapter 7 Trustee's Evidence

On August 14, 2015, the Chapter 7 Trustee filed a declaration regarding his compliance with the Court's Orders and the dissemination of notices to Affected Consumers. (Golden Decl., Doc. 347.) The Chapter 7 Trustee detailed how, after the Ninth Circuit dissolved the stay of the Court's Orders, on July 17, 2015, and July 18, 2015, he successfully sent letters to approximately 90% of the 14,076 Affected Consumers that needed to be reached. (Id. at 5.) Also on July 18, 2015, the Chapter 7 Trustee activated the website that the Court had previously approved, at www.morgandrexen.com. (Id. at 6.) On July 20, 2015, the Chapter 7 Trustee sent the remaining letters to the Affected Consumers.[12] (Id. at 5.)

The Chapter 7 Trustee also informed the Court of certain actions that the Attorneys had taken since the Court issued the Injunction. (Id. at 7-9.) The Chapter 7 Trustee asserted that the Attorneys had "retrieved a copy of [Morgan Drexen's] MDIS . . . data backup from the offsite storage company called Legal Soft, Inc. [sic] on June 21, 2015 without [the Chapter 7 Trustee's] knowledge or consent." (Id. at 7.) Ledda is the sole owner and President of Legalsoft, Inc., a company that provides computer backup support services for attorneys using Morgan Drexen's MDIS system. (Ledda Decl. ¶¶ 1-2, Doc. 355-1.) Prior to Morgan Drexen's bankruptcy, the Attorneys had paid Legalsoft approximately $25,000 per month for Legalsoft's backup services. (Id. ¶ 3.)

[12] The Chapter 7 Trustee also sent e-mails to all Affected Consumers for whom he had an e-mail address. (Golden Decl. at 5, Doc. 347.)

In addition, the Chapter 7 Trustee stated that he believed that the Attorneys had "wired around the MD network to gain access to the [Morgan Drexen] internet connection." (Golden Decl. at 9, Doc. 347.) The Chapter 7 Trustee concluded that, "[b]ecause of the structure of the MDIS data, it is highly likely that the [Attorneys are] using some version of MDIS to access the data and process transactions." (Id. at 8.)

Further, the Chapter 7 Trustee informed the Court that the Attorneys had sent a letter to consumers on July 10, 2015, "cautioning them to not communicate with Morgan Drexen representatives." (Id. at 8.) The Chapter 7 Trustee attached a copy of this letter from Howard Law, P.C., which states, in relevant part:

> In June 2015, Morgan Drexen filed a Chapter 7 bankruptcy petition. Because of the bankruptcy filing, your attorney will no longer use Morgan Drexen to service your accounts. Your attorneys are all licensed with their respective state bars and are in good standing. **Rest assured, none of your money is affected by Morgan Drexen's bankruptcy because your lawyers, not Morgan Drexen, are responsible for ACHing your account and holding your money in trust.** This change will have no effect on your monthly ACH payment or fees – these items will remain the same.
>
> . . .
>
> Your law firm **is** continuing to send out payments on your negotiated settlement agreements. Morgan Drexen is no longer assisting your law firm with sending out these payments. As always, your attorney continues to solicit settlement offers for any of your remaining accounts.
>
> . . .

> Your law firm's staff continues to prepare bankruptcy petitions under your attorney's supervision and direction. ***If*** you have directed your attorney to move forward with the filing of your petition, rest assured, that the law firm continues to work diligently towards that goal.
>
> . . .
>
> As Morgan Drexen is no longer working for the law firm, we will no longer be sharing any of your information with them. Likewise, we have asked for the return of **your** information.
>
> **Because Morgan Drexen is NO LONGER working for the law firm, we caution you NOT to speak to any Morgan Drexen representatives because your communications will not be considered confidential and you may receive the wrong information.**

(Golden Decl., Ex. 1, Doc. 347; *see also* Felder Decl., Ex. 1, Doc. 348-2 (emphasis in original).) Nowhere in this letter does Howard Law, P.C. inform the Affected Consumers of the CFPB's lawsuit against Morgan Drexen and Ledda, the Court's Order issuing terminating sanctions against Morgan Drexen, the Injunction or Clarification Order, the fact that the Court specifically ordered the Chapter 7 Trustee and CFPB to send letters to the Affected Consumers, or that the Court ordered that no fees be charged to Affected Consumers. (Id.)

In addition, the Chapter 7 Trustee informed the Court of the website www.morgandrexenbankruptcy.com, which the Attorneys had created to further communicate with Affected Consumers. (Golden Decl. at 8 (explaining that the physical address listed on the "Contact Us" section of the website was "where the

Howard Law Firm had been conducting business").)[13] The website states, in relevant part:

> 1. Do NOT contact your creditors directly, as you may jeopardize your legal rights, and may even create a situation where any negotiated debt reduction [may] be lost.
>
> 2. Contact the attorney or law firm who has been continuously working on your behalf. You should not make payments directly to your creditors. Your attorney is continuing to make payments on your behalf pursuant to your negotiated settlement agreements.
>
> . . .
>
> 5. Do NOT talk with anyone claiming to be from Morgan Drexen – that company is no longer in business and any communication will not be confidential
>
> . . .
>
> You received this letter to notify you that Morgan Drexen, your attorney's previous service provider, is no longer in business. The Trustee and the government wrongfully assumed that without Morgan Drexen's support, your attorney would be incapable of handling your debts. THIS WAS WRONG! Your representation is unaffected and your attorney continues to work hard on your file to help you reach your goals.

[13] The Attorneys have not disputed that they created this website.

. . .

> Morgan Drexen was breaking the law by charging upfront fees before reaching settlements. We will investigate whether Morgan Drexen was charging you upfront fees separate from any fees charged by your attorney. If this is true, we will submit a claim on your behalf to get the funds returned.

(Golden Decl., Ex. 2, Doc. 347.) The information on the website directly contradicts the instructions included in the Court-approved letter that was sent to Affected Consumers regarding how they should contact their creditors, make payments directly to creditors, and request refunds of their settlement accounts. (Id.) In fact, the website states that the Court-ordered letter "may not apply to you and in fact, may actually be putting your legal rights in jeopardy." (Id.) Finally, the FAQ portion of the website concludes by again informing consumers that "[y]our law firm's staff continues to prepare bankruptcy petitions under your attorney's supervision and direction" and urges consumers "NOT to speak to any Morgan Drexen representatives." (Id.)

In sum, the website offers extremely misleading information concerning Morgan Drexen's bankruptcy and the reasons why the Attorneys are no longer contracting with Morgan Drexen. The website also omits any discussion of the terms of the Injunction and Clarification Order and directly contradicts the specific directives and information found in the Court-approved letter that the Chapter 7 Trustee and CFPB sent to Affected Consumers.

3. CFPB's Evidence

On August 19, 2015, CFPB filed an Ex Parte Application for an Order to Show Cause Why [the Attorneys] Should Not Be Held in Contempt. (OSC Mot., Doc. 348.) CFPB claimed that the Attorneys violated various sections of the

Injunction and Clarification Order. (Id. at 1.) CFPB asserted that, "[r]ather than comply with the Court's Injunction and Clarification Orders and the Ninth Circuit's denial of their emergency motion to stay, the Attorneys have engaged in conduct that blatantly violates this Court's Orders and undermines the notices the Court ordered to ensure that consumers would be apprised of their rights in connection with the cessation of Morgan Drexen's debt relief services." (Id. at 7.)

In support of their ex parte application, CFPB submitted a transcript of sworn testimony from David Walker, who was the Chief Financial Officer of Morgan Drexen prior to its cessation of operations, and who then became an employee at Howard Law, P.C.[14] (O'Malley Decl., Ex. A., Walker Tr. at 7:6-9, 57:17-20, Doc. 348-2.) Walker testified that the Attorneys had hired 50-60 former Morgan Drexen employees, including Gupta, to perform the same debt relief and administrative services that Morgan Drexen had previously performed. (Id. at 60:3-9, 65:10-12, 73:9-10.) Walker stated that the Attorneys were attempting to keep Affected Consumers in the debt relief program and provide them with the same services that they had received while Morgan Drexen was in business. (Id. at 66:24-67:2.) Walker further testified that Howard had obtained all of the information that had previously been stored in Morgan Drexen's MDIS case management system in order to gain access to the files of Affected Consumers. (Id. at 38:16-20, 77:3-5, 77:16-19, 78:18-20.) Walker also stated that, since June 2015, the Attorneys had collected "a couple hundred thousand dollars" in fees from consumers who were formerly serviced by and enrolled in the debt relief programs of Morgan Drexen. (Id. at 69:15-71:12.) Finally, Walker testified that Jeffrey Katz recently had formed The Kesher Law Group, and was invoicing the Attorneys for "legal advisory services" in connection with the Attorneys' attempts to continue Morgan Drexen's debt relief services. (Id. at 71:22-72:25.)

[14] On August 26, 2015, the Attorneys filed a motion to strike Walker's testimony. (Doc. 357.) However, at the hearing held on September 4, 2015, the Court denied the Attorneys' motion to strike, finding Walker's testimony admissible as non-hearsay.

According to CFPB, "despite their knowledge of the Injunction and Clarification Orders, the Attorneys intentionally stepped into the shoes of Morgan Drexen to collect unlawful upfront fees from Affected Consumers for debt relief services. Even worse, the Attorneys took measures designed to ensure Affected Consumers would be confused—if not outright misled—about their rights in the wake of Morgan Drexen's shut-down." (OSC Mem., Doc. 348-1 at 12.) On August 21, 2015, the Attorneys filed an Opposition to CFPB's OSC Motion.[15] (Doc. 350.)

F. Contempt Proceedings

On August 21, 2015, the Court ordered the Attorneys "to show cause why they should not be held in contempt for violating the Court's previous Orders, including the Court's 'Order Re: Permanent Injunction' and 'Order Regarding (1) Attorneys' Ex Parte Motion for Clarification or Modification of Injunction; (2) Chapter 7 Trustee's Ex Parte Application for Order Clarifying Order Re: Permanent Injunction; and (3) Chapter 7 Trustee's and CFPB's Joint Report.'" (Attorneys' OSC, Doc. 351.) The Court provided the Attorneys with an opportunity to file a Response to the Court's Order to Show Cause,[16] and permitted the CFPB and Chapter 7 Trustee to file a Reply. (Id. at 1-2.)

[15] The arguments and evidence set forth in the Attorneys' Opposition are the same as the arguments and evidence set forth in the Attorneys' later filed Response to Order to Show Cause Re Contempt. (*See* Response, Doc. 356.) Because the Court discusses the Attorneys' Response in detail below, the Court will not discuss and cite each argument made by the Attorneys in their earlier filed Opposition.

[16] The Court also allowed Ledda to file a Response to the Court's Order to Show Cause, which he filed on August 26, 2015. (Doc. 355.) Because the Court does not hold Ledda in contempt, the Court will discuss Ledda's Response and supporting declaration only to the extent that it is relevant to the contempt proceedings against the Attorneys.

On August 26, 2015, the Attorneys filed a Response to Order to Show Cause Re Contempt. (Attorneys' Response, Doc. 356.) In support of their Response, the Attorneys submitted declarations from Vincent Howard and Lawrence Williamson. (Howard Decl., Doc. 356-1; Williamson Decl., Doc. 356-2.)

Howard and Williamson admit that they "thoroughly read the Injunction." (Howard Decl. ¶ 47; Williamson Decl. ¶ 36.) Howard and Williamson also admit that the Attorneys are continuing to provide debt relief and bankruptcy services to Affected Consumers. (Howard Decl. ¶ 50; Williamson Decl. ¶ 45.) Howard further admits that the Attorneys hired David Walker and Gupta to assist "with trust accounting work, and to develop a software program that would enable the [Attorneys] to read their own clients files." (Howard Decl. ¶ 51.) Rather than obtain copies of the client files from the Chapter 7 Trustee pursuant to the Court's Clarification Order, Howard admits that the Attorneys obtained "their files directly from the Legalsoft server" and "hired programmers to write software programs that would enable them to read the client files." (Id. ¶¶ 62, 63.)

Howard further admits that the Attorneys continued to provide bankruptcy services to Affected Consumers, and hired 50-60 employees from Morgan Drexen to help the Attorneys do so. (Id. ¶¶ 64, 65.) Howard, however, contends that "[m]ost of the people who were hired after Morgan Drexen closed were low level employees that performed administrative or paralegal functions." (Id. ¶ 51.)

In addition, Howard admits that the Attorneys "transmitted their own clarifying communications to clients," claiming that "[w]ithout these clarifying communications, the clients of the [Attorneys] would have directly contacted their creditors, at the urging of the Trustee, when many of these same clients were in the midst of litigation with these same creditors, and where these clients were, in many instances represented by counsel." (Id. ¶ 75.)

Finally, the Attorneys claim that they have not charged consumers for bankruptcy services since the Court issued its Injunction. (*See, e.g.*, Doc. 358 ¶

14.) However, the evidence shows that the Attorneys are continuing to charge fees to Affected Consumers under the same contracts that were in place when Morgan Drexen was operating. (*See* Howard Decl. ¶ 77 (explaining that the Attorneys "would no longer be able to represent these clients if they were barred from receiving compensation for the services rendered to these clients"); *see also* Walker Tr. 69:15-71:12 (noting that the Attorneys continue to collect fees from consumers); O'Malley Decl., Ex. C, Bracey Decl., Ex. 1, Doc. 360-1 (showing consistent $410.00 ACH withdrawals on a monthly basis from an Affected Consumer's account by Howard Law from December 2013, to July 2015).)

On August 31, 2015, CFPB filed a Reply. (Attorneys' Reply, Doc. 360.) In support of its Reply, CFPB submitted *Statement of Qualification* and *Annual Report* filings with the Kansas Secretary of State, which lists, as of August 27, 2015, Jeffrey Katz as a partner of Williamson & Howard, LLP. (O'Malley Decl., Ex. A, Doc. 360-1.) Further, CFPB submitted a copy of the Kesher Law Group, P.C. information page on the California Secretary of State's website, which states that Kesher Law was formed on April 3, 2015, and is located at the same address that formerly housed Morgan Drexen, Howard Law, P.C., and Williamson & Howard, LLP. (O'Malley Decl., Ex B, Doc. 360-1.)

The Chapter 7 Trustee also filed a Declaration on August 31, 2015. (Golden Decl., Doc. 361.) The Chapter 7 Trustee asserts that, despite the Attorneys' contentions that the Trustee did not provide the Attorneys with copies of the consumer files when they were requested, the Attorneys "never requested a copy of the software from the Trustee, even though they were aware of the opportunity. In fact, even after the ex parte Motion, additional correspondence was sent to them inquiring as to whether they would wish to purchase the software from the estate, but no response was received." (Id. ¶ 6.)

Finally, on September 3, 2015, CFPB filed a Supplement to their Reply. (Suppl. Reply, Doc. 363.) On September 2, 2015, CFPB took sworn testimony

from Ledda.[17] (Id.; Singelmann Decl., Ex. A., Ledda Tr., Doc. 363-1.) Ledda testified that Nancy Jin, whom the Court had found played a major role in Morgan Drexen's falsification of evidence, was a Williamson & Howard, LLP employee who had supervised Morgan Drexen employees. (Ledda Tr. at 61:16-62:8; *see also generally* Terminating Sanctions Order.) Ledda further testified that the entire Morgan Drexen Creditor Relations department, including Desmond Adams, the head of the Creditor Relations department, had switched over to become Williamson & Howard, LLP employees in 2014. (Ledda Tr. at 62:9-15, 63:5-64:19.) Ledda asserted that, in the last few months before Morgan Drexen filed for bankruptcy, Williamson & Howard, LLP took over Morgan Drexen's intake services, the Preferred Creditor department, and the Quality Control department. (Id. at 65:3-68:6.) Ledda testified that the Morgan Drexen employees who became Williamson & Howard, LLP employees performed the same work that they had while employed by Morgan Drexen, and some even stayed in the same offices that they had occupied when they had worked for Morgan Drexen. (Id. at 68:7-68:22.) In fact, Ledda testified that in the final few months before Morgan Drexen filed for bankruptcy he could not tell whether people working in the Morgan Drexen building were Morgan Drexen or Williamson & Howard, LLP employees. (Id. at 69:17-70:6.)

Finally, Ledda testified that he had a conversation with Vincent Howard when Ledda was resigning from Morgan Drexen. (Id. at 71:18-72:13.) Howard explicitly told Ledda that Williamson & Howard, LLP would be continuing Morgan Drexen's debt relief program and essentially stepping into the shoes of Morgan Drexen: "My last conversation with Howard was in the parking lot when I was resigning, and he told me that, you know, that he was going to continue with his – with his program, without Morgan Drexen. And my understanding was that

[17] The Attorneys did not object to the admission of this evidence, either in writing or at the hearing held on September 4, 2015, despite this evidence being discussed in detail by all parties and the Court at the hearing.

was what Williamson & Howard was going to do. So, where Morgan Drexen could no longer operate, the law firm w[ould] continue without Morgan Drexen." (Id. at 71:18-72:13.)

On September 4, 2015, the Court held a hearing to provide the Attorneys with an opportunity to refute the evidence submitted by CFPB and the Chapter 7 Trustee and argue why they should not be held in contempt. On October 2, 2015, the Court held a hearing to provide Katz and Gupta with that same opportunity.

II. Legal Standard

A. Rule 65

Federal Rule of Civil Procedure 65(d)(2) provides that a permanent injunction "order binds only the following who receive actual notice of it by personal service or otherwise: (A) the parties; (B) the parties' officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with" the parties or the parties' officers, agents, servants, employees, and attorneys. Fed. R. Civ. Proc. 65(d)(2). "An injunction covers these persons/entities even if they are not expressly mentioned in the text of the order" or named as parties to the litigation. *Washington Metro. Area Transit Comm'n v. Reliable Limousine Serv., LLC*, 776 F.3d 1, 9 (D.C. Cir. 2015); Fed. R. Civ. P. 65(d)(2)(B).

"The common-law rule . . . essentially codified in Rule 65(d) of the Federal Rules of Civil Procedure [] holds that an injunction is binding on the parties to the proceeding; their officers, agents, and employees (acting in that capacity); and nonparties with notice who are either legally identified with a party or who aid and abet a party's violation of the injunction." *Nat'l Spiritual Assembly of Baha'is of U.S. Under Hereditary Guardianship, Inc. v. Nat'l Spiritual Assembly of Baha'is of U.S., Inc.*, 628 F.3d 837, 840 (7th Cir. 2010). "[A]n injunction does not enjoin nonparties acting in their separate capacities; but a nonparty may be held in contempt of an injunction after an assessment of the nonparty's behavior and relations to the enjoined party." *LifeScan Scotland, Ltd. v.*

Shasta Techs., LLC, No. 11-CV-04494-WHO, 2013 WL 4604746, at *5 (N.D. Cal. Aug. 28, 2013). "To hold a nonparty bound by an injunction it is thus essential to prove either that the nonparty participated in the contumacious act of a party or that the nonparty was subject to the injunction because legally identified with a party." *G. & C. Merriam Co. v. Webster Dictionary Co.*, 639 F.2d 29, 35 (1st Cir. 1980).

"[T]he extraordinary remedy of enjoining non-parties must be reserved for extraordinary cases, in which the activities of third parties threaten to undermine the court's ability to render a binding judgment in the case before it." *Additive Controls & Measurement Sys., Inc. v. Flowdata, Inc.*, 96 F.3d 1390, 1396 (Fed. Cir. 1996) (citing *United States v. Hall*, 472 F.2d 261 (5th Cir. 1972)). "When an order . . . may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party." Fed. R. Civ. P. 71. "Hence, when an injunction is addressed to a non-party and he is given notice of the injunction, Rule 71 permits a district court to use 'the same processes for enforcing obedience to the order as if[he were] a party,' such as holding him in contempt for violating it." *Irwin v. Mascott*, 370 F.3d 924, 931 (9th Cir. 2004).

B. Contempt

"Absent a stay, all orders and judgments of courts must be complied with promptly." *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983) (internal quotation marks and citation omitted). Courts "have [the] inherent power to initiate contempt proceedings" for disobedience to their orders. *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y*, 774 F.3d 935, 944 (9th Cir. 2014).

A non-party must be provided with the "opportunity to contest whether he acted in concert with a party contemnor or was in privity and therefore bound by the injunction." *Nat'l Spiritual Assembly*, 628 F.3d at 853. "Although corporate officers and successors must obey an injunction against the corporation, any person charged with contempt is entitled to his own opportunity to defend." *Reich v. Sea Sprite Boat Co.*, 50 F.3d 413, 418 (7th Cir. 1995).

"If after an appropriate hearing the court concludes that the nonparty was in privity with the enjoined party, [the Supreme Court] does not require relitigation of the underlying controversy." *Nat'l Spiritual Assembly*, 628 F.3d at 853 (citing *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100 (1969)). "Ordinarily the validity and terms of an injunction are not reviewable in contempt proceedings." *G. & C. Merriam Co.*, 639 F.2d at 34. "They may be challenged only on appeal in the original proceeding and not by collateral attack." *Id.*

"Civil contempt . . . consists of a party's disobedience to a specific and definite court order by failure to take all reasonable steps within the party's power to comply. The contempt need not be willful, and there is no good faith exception to the requirement of obedience to a court order." *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993) (internal quotation marks and citation omitted). "The standard for finding a party in civil contempt is well settled: 'The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply.'" *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999) (quoting *Stone v. City and Cty of S.F.*, 968 F.2d 850, 856 n.9 (9th Cir. 1992)). Thus, to hold a non-party in civil contempt, the Court must "determine (1) that [the non-party] violated [a] court order, (2) beyond substantial compliance, (3) not based on a good faith and reasonable interpretation of the order, (4) by clear and convincing evidence." *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d at 695.

III. Discussion

CFPB alleges that "the Attorneys have flagrantly thwarted this Court's efforts to protect consumers from Morgan Drexen's nationwide debt relief scheme." (Attorneys' Reply at 22.) CFPB claims that "the Attorneys have continued Morgan Drexen's business enterprise – using the *same* employees and *same* customer files to collect the *same* unlawful fees from the *same* consumers pursuant to the *same* contracts." (Id. at 14.)

CFPB urges the Court to hold the Attorneys in contempt because "the [Attorneys] have taken over Morgan Drexen's business operations wholesale," (CFPB Reply at 18), and "eviscerated the vital consumer protections this Court built into its Orders." (Id. at 2.) According to CFPB, "[t]he undisputed evidence is clear: for over two months, the Attorneys have ignored the Court's Orders and have kept an unlawful debt relief scheme alive so they could continue to collect[] fees from the already-victimized Affected Consumers." (Id. at 14.)

The Court agrees with CFPB's characterization of the evidence. The Court will not permit the Attorneys to circumvent the Court's Orders by continuing essentially the same activities that were performed at Morgan Drexen and which the Court found victimized thousands of consumers. *See G. & C. Merriam Co.*, 639 F.2d at 40 ("A party and his privies cannot circumvent a court's injunction against the activities they had effectuated before the injunction, through one legal entity, by the creation of another entity through which they, or some of them, continue essentially the same activity."). Because the clear and convincing evidence shows that the Attorneys fall within the parameters of Rule 65(d), are "legally identified" with Morgan Drexen, and violated numerous clear and specific sections of the Injunction, the Court finds the Attorneys in contempt.

A. The Attorneys Fall Within the Parameters of Rule 65(d)

As an initial matter, the Court finds that the Attorneys had actual notice of the Court's Orders. As the Court stated in its Clarification Order, the Attorneys had actual notice of the Court's Permanent Injunction Order, as evidenced by the filing of their Ex Parte Motion requesting a modification or clarification of the Injunction. (*See* Clarification Order at 9.)

Further, because the Ninth Circuit denied the Attorneys' emergency motion to stay the Injunction, all parties bound by the Injunction under Rule 65(d) were required to comply with it "promptly." *Donovan*, 716 F.2d at 1240 (internal quotation marks and citation omitted). Though the Attorneys contend that they "were never granted even the

opportunity to seek, never mind obtain, their day-in-court," (Attorneys' Response at 22), the Attorneys now have had the opportunity to refute the evidence that CFPB and the Chapter 7 Trustee submitted to the Court in their Opposition to CFPB's Ex Parte Application for an Order to Show Cause, in their Response to the Court's Order to Show Cause, and at the Order to Show Case hearing on September 4, 2015. Thus, the Court has provided the Attorneys with numerous "opportunit[ies] to contest whether [t]he[y] acted in concert with a party contemnor or w[ere] in privity and therefore bound by the injunction." *Nat'l Spiritual Assembly*, 628 F.3d at 853.

The Attorneys also argue that they cannot be held in contempt because "the very 'in concert' language [] CFPB seeks to use as a sword against the [Attorneys] does not appear in the sections that the [Attorneys] are alleged to have violated." (Attorneys' Response at 21.) However, as stated above, Federal Rule of Civil Procedure 65(d)(2) provides that a permanent injunction binds "the following who receive actual notice of [the injunction] by personal service or otherwise: (A) the parties; (B) the parties' officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with" the parties or the parties' officers, agents, servants, employees, and attorneys. Fed. R. Civ. Proc. 65(d)(2). "An injunction covers these persons/entities even if they are not expressly mentioned in the text of the order" or named as parties to the litigation. *Reliable Limousine Serv., LLC*, 776 F.3d at 9; Fed. R. Civ. P. 65(d)(2)(B). Thus, even if certain sections of the Injunction do not explicitly include the language "in active concert or participation with," Rule 65(d) nevertheless requires the individuals and entities falling within one of the three categories set forth in Rule 65(d) to comply with the Injunction. As a result, though the Attorneys may not have been explicitly named in certain sections of the Injunction and are not parties to this case, the Injunction was and "is binding on . . . nonparties with notice who are either 'legally identified' with a party or who aid and abet a party's violation of the injunction." *Nat'l Spiritual Assembly*, 628 F.3d at 840.

The Attorneys nevertheless contend that, "[i]n construing the language in Federal Rule of Civil Procedure 65(d), the CFPB conflates the issue of *who can be enjoined*,

which implicates both due process and jury trial rights, with the issue of *who can be held in contempt*, which addresses post-injunction conduct and relationships." (Attorneys' Response at 10 (emphasis in original).) The Attorneys argue that they "cannot be placed within the parameters of Rule 65(d) based upon either an abetting contention, or on the basis of a 'legally identified' contention." (Id. at 11.) Specifically, the Attorneys claim that "a finding of 'legal identity' is untenable" because the Attorneys "were independently in the business of providing certain legal services to their clients prior to the filing of the Action and prior to the entry of the Injunction." (Id. at 18.) Despite the Attorneys' contentions to the contrary, the Court finds that the Attorneys, though not parties to this case, are bound by the Injunction under Rule 65(d).

The Court finds that the Attorneys are "legally identified" with Morgan Drexen based on the Attorneys' actions after the Court issued its Injunction. Rule 65(d) codifies the common law principle that "[a]n injunction applies only to a party, those who aid and abet a party, and those in privity with a party." *Saga Int'l, Inc. v. John D. Brush & Co.*, 984 F. Supp. 1283, 1286 (C.D. Cal. 1997). "Generally speaking, privity exists when a third party's interests are so intertwined with a named party's interests that it is fair under the circumstances to hold the third party bound by the judgment against the named party." *Id.* at 1287. "Privity can arise if a third party had control over the litigation conducted by the named party, if his interests were adequately represented by the named party, or if some other implied or in-fact representation or alignment of interests existed between the parties. *Id.* (internal citations omitted). "Another basis for privity would be a showing that [the third party] is somehow a successor in interest to [the enjoined party]." *Id.*; *see also Richards v. Jefferson Cty., Ala.*, 517 U.S. 793, 798 (1996) ("[T]he term 'privity' is now used to describe various relationships between litigants that would not have come within the traditional definition of that term.").

Therefore, not only can a court enforce an injunction "by contempt proceedings against the corporation, its agents and officers and those individuals associated with it in the conduct of its business, but it may also, in appropriate circumstances, be enforced against those to whom the business may have been transferred, whether as a means of

evading the judgment or for other reasons. The vitality of the judgment in such a case survives the dissolution of the corporate defendant." *Walling v. James V. Reuter, Inc.*, 321 U.S. 671, 674 (1944). A court's "orders are binding upon successors and assigns who operate as 'merely a disguised continuance of the old employer." *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 14 (1945) (citation omitted).

"The 'legal identity' component of this rule often operates to bind a party's successors and assigns, and sometimes other nonparties as well, but only when doing so is consistent with due process." *Nat'l Spiritual Assembly*, 628 F.3d at 840-41. However, "[t]hese principles may be applied in fuller measure in furtherance of the public interest . . . than if only private interests were involved." *Walling*, 321 U.S. at 674-75. "[W]hether one brings himself in contempt as a 'successor or assign' depends on an appraisal of his relations and behavior and not upon mere construction of terms of the order." *Regal Knitwear Co.*, 324 U.S. at 15.

Having reviewed all of the evidence submitted to the Court, and having considered the relationship of the Attorneys and Morgan Drexen throughout this litigation, the Court finds that the Attorneys have become "a disguised continuance" of Morgan Drexen, and thus may be held in contempt. *Id.* at 14; *see also Reliable Limousine Serv., LLC*, 776 F.3d at 10 ("[I]dentity—of the corporate or the flesh-and-blood variety—is not determinative under Rule 65(d)(2).").

It is undisputed that, prior to Morgan Drexen's dissolution, "Morgan Drexen received 85% to 95% of the fees paid by consumers, and . . . the Attorneys[] received 5% to 15% of these fees." (Clarification Order at 10.) The Court already has found that, "[a]s a result of the fee-sharing arrangement and contractual relationship between the Attorneys and Morgan Drexen, . . . the Attorneys were in 'active concert or participation with' Morgan Drexen while Morgan Drexen was collecting illegal up-front fees from Affected Consumers." (Id. at 10.) The Court therefore has made clear that, because the Attorneys "fit within one of Rule 65's categories of non-parties that are bound by a permanent injunction, the majority of the Court's permanent injunction order applies equally to the Attorneys as it does to Morgan Drexen." (Id.)

The Attorneys assert that approximately 10,000 consumers to whom Morgan Drexen provided debt relief and purported bankruptcy services were clients of the Attorneys. (Id. at 11.) Thus, when the Court issued its Injunction, which, *inter alia*, restrained and enjoined Morgan Drexen from collecting any further fees from Affected Consumers, the Court interfered with the Attorneys' ability to continue to collect unlawful fees from Affected Consumers. It is apparent that all of the Attorneys' subsequent actions have been to avoid the import of the Injunction and to allow the Attorneys to continue to collect hundreds of thousands of dollars in unlawful fees from Affected Consumers despite Morgan Drexen's dissolution and the Injunction. Throughout this litigation, the Attorneys have contended that Morgan Drexen's "marketing and debt relief materials and the consumer files 'were prepared under the [Attorneys]' direction and control.'" (Id. at 10 (citation omitted).) The clear and convincing evidence shows that the Attorneys not only have attempted to continue the same business model that was in place prior to Morgan Drexen's bankruptcy, but that the Attorneys actually have attempted to *become* Morgan Drexen and collect 100% of the fees that they formerly had split with Morgan Drexen. As a means of evading the Injunction, the Attorneys have unilaterally taken steps to become the successors to Morgan Drexen's illegal business.

First, it is undisputed that the Attorneys obtained unfettered access to Morgan Drexen's consumer files by retrieving a copy of Morgan Drexen's backup data from Legalsoft on June 21, 2015. The Attorneys thus acquired all of Morgan Drexen's consumer files, which provided the Attorneys with unfettered access to the consumer files of Affected Consumers.

Second, it also is undisputed that Howard Law, P.C. sent a letter to consumers on July 10, 2015, cautioning them to not communicate with Morgan Drexen representatives. (Golden Decl., Ex. 1, Doc. 347; Felder Decl., Ex. 1, Doc. 348-2; *see also* Howard Decl. ¶ 75, Doc. 356-1.) The letter advises consumers that, "[b]ecause of the bankruptcy filing, your attorney will no longer use Morgan Drexen to service your accounts. . . . This change will have no effect on your

monthly ACH payment or fees – these items will remain the same." (Golden Decl., Ex. 1, Doc. 347.) The letter further states that the Attorneys are "continuing to send out payments on your negotiated settlement agreements," and, "[a]s always, your attorney continues to solicit settlement offers for any of your remaining accounts." (Id.) In addition, the letter informs consumers that the Attorneys are "continu[ing] to prepare bankruptcy petitions" on the consumers' behalf. (Id.) Similarly, the website that the Attorneys created urges consumers to "NOT contact your creditors directly, as you may jeopardize your legal rights, and may even create a situation where any negotiated debt reduction [may] be lost." (Golden Decl., Ex. 2, Doc. 347.) The website directs consumers to "not make payments directly to your creditors" and inform consumers that "[y]our attorney is continuing to make payments on your behalf pursuant to your negotiated settlement agreements." (Id.) Finally, the website states that "[y]our representation is unaffected and your attorney continues to work hard on your file to help you reach your goals." (Id.)

In sum, the letter and website that the Attorneys created attempt to convince Affected Consumers that, despite Morgan Drexen's bankruptcy, nothing has changed. These communications assert that the Attorneys will provide Affected Consumers with the exact same services and representation that Morgan Drexen and the Attorneys together were providing consumers prior to Morgan Drexen's bankruptcy. Therefore, the letters and website relate how the Attorneys are now capable of providing and will continue to provide consumers all of the services, under the same contracts, that were available when Morgan Drexen was operating.

Third, the Chapter 7 Trustee testified that the Attorneys had "wired around the MD network to gain access to the [Morgan Drexen] internet connection." (Golden Decl. at 9, Doc. 347.) Thus, the Attorneys were using the same utilities that Morgan Drexen had been using to service consumers.

Fourth, the Attorneys admit that they hired Walker and Gupta, two former officers of Morgan Drexen, to assist "with trust accounting work, and to develop a software program that would enable the [Attorneys] to read their own clients [sic] files." (Howard Decl. ¶ 51.) The Attorneys also admit that they "hired programmers to write software programs that would enable them to read the client files." (Id. ¶¶ 62, 63.) Further, the Attorneys made Katz a partner of Williamson & Howard, LLP. (O'Malley Decl., Ex. A, Doc. 360-1.) Katz also has invoiced the Attorneys for "legal advisory services" in connection with the Attorneys' attempts to continue Morgan Drexen's debt relief services. (Walker Tr. at 71:22-72:25.)

Ledda's testimony also supports Walker's testimony that the Attorneys were attempting to keep Affected Consumers in the debt relief program and provide them with the same services that they had received while Morgan Drexen was in business. (*See generally* Ledda Tr.; Walker Tr. at 66:24-67:2.) Ledda testified that Nancy Jin, whom the Court had found played a major role in Morgan Drexen's falsification of evidence, was a Williamson & Howard, LLP employee who had supervised Morgan Drexen employees. (Ledda Tr. at 61:16-62:8; *see also generally* Terminating Sanctions Order.) Ledda further testified that the entire Morgan Drexen Creditor Relations department, including Desmond Adams, the head of the Creditor Relations department, had switched over to become Williamson & Howard, LLP employees in 2014. (Ledda Tr. at 62:9-15, 63:5-64:19.) Ledda asserted that, in the last few months before Morgan Drexen filed for bankruptcy, Williamson & Howard, LLP took over Morgan Drexen's intake services, the Preferred Creditor department, and the Quality Control department. (Id. at 65:3-68:6.) Ledda testified that the Morgan Drexen employees who became Williamson & Howard, LLP employees performed the same work that they had performed while employed by Morgan Drexen, and some employees even stayed in the same offices that they had occupied when they had worked for Morgan Drexen. (Id. at 68:7-68:22.) In fact, Ledda related how, in the final few months

before Morgan Drexen filed for bankruptcy, he could not tell whether people working in the Morgan Drexen building were Morgan Drexen or Williamson & Howard, LLP employees. (Id. at 69:17-70:6.) Thus, the evidence shows that the Attorneys hired or partnered with key former employees and officers of Morgan Drexen and hired 50-60 other employees who formerly worked at Morgan Drexen to help the Attorneys continue to provide debt relief services to and collect fees from Affected Consumers.

Fifth, Walker testified that, since June 2015, the Attorneys have collected "a couple hundred thousand dollars" in fees from consumers who were formerly serviced by and enrolled in the debt relief programs of Morgan Drexen. (Walker Tr. at 69:15-71:12.) Howard's declaration supports the contention that Attorneys are continuing to charge fees from Affected Consumers under the same contracts that were in place when Morgan Drexen operated and which were deemed unlawful by the Court. (*See* Howard Decl. ¶ 77, Doc. 356-1 (explaining that the Attorneys "would no longer be able to represent these clients if they were barred from receiving compensation for the services rendered to these clients"). Thus, the evidence shows that the Attorneys have continued to collect hundreds of thousands of dollars in fees from Affected Consumers since the Injunction was issued. (*See* Walker Tr. 69:15-71:12 (noting that the Attorneys continue to collect fees from consumers); Bracey Decl., Ex. 1 (showing consistent $410.00 ACH withdrawals on a monthly basis from an Affected Consumer's account by Howard Law from December 2013, to July 2015).)

All of this evidence supports Ledda's sworn testimony that he had a conversation with Vincent Howard, in which Howard explicitly told Ledda that Williamson & Howard, LLP would be continuing Morgan Drexen's debt relief program and essentially stepping into the shoes of Morgan Drexen. (Ledda Tr. at 71:18-72:13.) Based on all of the evidence before the Court, and as CFPB alleges, it is clear and convincing that the Attorneys have continued Morgan Drexen's business enterprise – using the *same* employees and *same* customer files to collect

the *same* unlawful fees from the *same* consumers pursuant to the *same* contracts. The Attorneys became a "disguised continuance of" Morgan Drexen. *Regal Knitwear Co.*, 324 U.S. at 14. As a result, the Attorneys' actions have brought them "in contempt as a successor" to Morgan Drexen. *Id.*

"Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *Golden State Bottling Co., Inc. v. N.L.R.B.*, 414 U.S. 168, 179-80 (1973) (internal citation omitted). The Court has made abundantly clear that its "[P]ermanent [I]njunction restraining and enjoining Morgan Drexen from collecting any additional fees from Affected Consumers [was warranted and] in the public interest." (Clarification Order at 5.) The Attorneys' actions and efforts to continue Morgan Drexen's business, become a successor to Morgan Drexen's contracts and customers, and benefit by continuing to collect unlawful fees from Affected Consumers were clearly intended to further victimize Affected Consumers, obstruct the Court in its functions, and interfere with the Court's efforts to protect the public interest.

Accordingly, after considering all of the evidence submitted to the Court, the Attorneys' relations with Morgan Drexen, and the Attorneys' behavior following the issuance of the Injunction and Clarification Order, the Court finds that the Attorneys can be held in contempt because they are legally identified with Morgan Drexen. *See Regal Knitwear Co.*, 324 U.S. at 14; *G. & C. Merriam Co.*, 639 F.2d at 35.

B. The Attorneys Violated Specific and Definite Terms of the Injunction

The Court now details all of the ways in which the Attorneys have violated the Injunction.

1. The Attorneys' Violations of Sections IV and V of the Injunction

First, the Court finds that the Attorneys violated Sections IV and V of the Injunction. (PI Order §§ IV, V.) Section IV orders:

> that Morgan Drexen and its officers, agents, servants, and employees who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or indirectly, are permanently restrained and enjoined from:
>
> A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account) of any person that Morgan Drexen obtained prior to entry of this Order in connection with the advertising, marketing, promotion, offering for sale or sale of any debt relief product or service.
>
> B. Attempting to collect, collecting, selling, or assigning, or otherwise transferring any right to collect payment from any consumer who purchased or agreed to purchase a debt relief product or service from Morgan Drexen.

(PI Order § IV.) Section V also "permanently restrained and enjoined [Morgan Drexen] from collecting any further fees from Affected Consumers." (PI Order § V.)

The Attorneys violated these sections of the Injunction in several ways. First, despite the clear and specific language of the Injunction, the Attorneys obtained unfettered access to the consumer "files directly from the Legalsoft

server" and "hired programmers to write software programs that would enable them to read the client files." (Howard Decl. ¶¶ 62, 63, Doc. 356-1.) The Attorneys admit that they hired 50-60 former Morgan Drexen employees. (Id. ¶¶ 64, 65.) With the help of these employees, and with unfettered access to the consumer files, the Attorneys have continued to charge fees to Affected Consumers under the same contracts that were in place when Morgan Drexen was operating. (*See* Howard Decl. ¶ 77 (explaining that the Attorneys "would no longer be able to represent these clients if they were barred from receiving compensation for the services rendered to these clients"); Walker Tr. 69:15-71:12 (noting that the Attorneys continue to collect fees from consumers); Bracey Decl., Ex. 1 (showing consistent $410.00 ACH withdrawals on a monthly basis from an Affected Consumer's account by Howard Law from December 2013, to July 2015).) CFPB has submitted evidence that supports their contention that, since June 2015, the Attorneys have collected "a couple hundred thousand dollars" in fees from consumers who were formerly serviced by and enrolled in the debt relief programs of Morgan Drexen. (Walker Tr. at 69:15-71:12.) Thus, as CFPB contends, and as the clear and convincing evidence shows, "despite their knowledge of the Injunction and Clarification Orders, the Attorneys intentionally stepped into the shoes of Morgan Drexen to collect unlawful upfront fees from Affected Consumers for debt relief services." (OSC Mem. at 12.) In the process, the Attorneys benefited from the use of consumer information without Court permission through the collection of unlawful fees, violating both Sections IV and V of the Injunction.

2. The Attorneys' Violations of Sections II and VII of the Injunction

Next, not only did the Attorneys violate Section II of the Injunction, but the Court also finds that the Attorneys obstructed and interfered with the dissemination of notices

and information pursuant to Section VII of the Injunction. (PI Order §§ II, VII.) Section II of the Injunction orders:

> that Morgan Drexen and its officers, agents, servants, and employees, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or indirectly in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any consumer financial product or service, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication:
>
> A. Any aspect of any consumer financial product or service . . . ;
>
> B. Any aspect of the terms of any refund, cancellation, exchange, or repurchase policy . . . ;
>
> . . .
>
> F. Any material aspect of the performance, efficacy, nature, or characteristics of the consumer financial product or service; or
>
> G. Any other fact material to consumers concerning any consumer financial product or service.

(PI Order § II.) Section VII of the Injunction states that "[d]ue to the harm already suffered by Affected Consumers, the dissemination of . . . notices and information to Affected Consumers and creditors is of the highest priority." (Id. § VII.A.) Section VII then details the exact language and information that the Court required Morgan Drexen and CFPB to include in the notices, and ordered Morgan Drexen and CFPB to create a publicly available website and send letters to Affected Consumers within 30 days of the date of the issuance of the Injunction. (Id. § VII.)

Specifically, in Section VII of the Injunction, the Court stated that the Court-ordered website and

> letter must inform the Affected Consumer that Morgan Drexen will no longer be able to provide the Affected Consumer with debt settlement services. Further, the [website and] letter must inform the Affected Consumer of the following information: (1) the name of the Affected Consumer's creditor, (2) the terms of any debt relief payment plan that is in place for the Affected Consumer, (3) the date when the next payment is due, and (4) where/to whom payments must be made by the Affected Consumer.

(Id.) The Court also ordered CFPB and Morgan Drexen to send a letter to the Affected Consumers' creditors that asks

> for the creditor's patience in light of the Court's Orders and their effect on Morgan Drexen, urge[s] the creditor to suspend debt collection for a period of 90 days to best ensure continued payments by the consumer(s), and request[s] that the creditor reach out to the consumer(s) in some manner with information regarding alternative forms or methods of payment that will allow the consumer(s) to stay current on the debt relief payment plan(s).

(Id.)

The clear and convincing evidence shows that, through the Injunction's specific instructions and directives, the Attorneys learned exactly what information the Chapter 7 Trustee and CFPB would be sending to Affected Consumers and creditors in the Court-ordered letters and through the website. With this information in hand, the Attorneys violated Section II of the Injunction

by sending their own letters, replete with misrepresentations to consumers, in an effort to obstruct the Court's attempt to apprise consumers and creditors of the Court's Orders, Morgan Drexen's bankruptcy, and the effect this action would have on Affected Consumers.

Only four days after the Court approved the final versions of the letters and website in its Clarification Order, and ordered CFPB and the Chapter 7 Trustee to delay disseminating the letters for seven days so that the Attorneys could obtain copies of the consumer files, the Attorneys, having already obtained unfettered access to the consumer files without Court approval despite petitioning the Court for such access in its Clarification Motion, sent letters to consumers cautioning them to not communicate with Morgan Drexen representatives. Though the Attorneys' letters were sent to consumers prior to the mailing of the Court-ordered letters, the Attorneys were aware of the exact language that would be included in the Chapter 7 Trustee and CFPB's letters based on the Injunction and Clarification Order and the parties' Joint Report. The only logical conclusion, based on the clear and convincing evidence submitted to the Court, is that the Attorneys purposefully and quickly prepared and sent these letters to Affected Consumers before the Court-ordered letters could be disseminated in order to obstruct the Court's efforts to have consumers honestly and fully apprised of their rights and the status of their debt settlement payment plans.

The letters prepared by the Attorneys are replete with misrepresentations and mischaracterizations. In fact, certain portions of the Attorneys' letters directly contradict the information included in the Court-ordered notices. In the Court-ordered letters and website, the Chapter 7 Trustee and CFPB inform consumers that, "[s]ince Morgan Drexen is no longer in business, you must take action to keep your settlement from ending" and "you must pay directly to the creditor if you want to keep your settlement on track." (Joint Report, Ex. B, Doc. 321; *see also* id., Ex. A.) The Court-approved letters also inform Affected Consumers of the history of this case, and the Court's mandate "that Morgan Drexen must not

collect any additional money from its customers." (Id.) The Attorneys' letters, on the other hand, state:

> **Rest assured, none of your money is affected by Morgan Drexen's bankruptcy because your lawyers, not Morgan Drexen, are responsible for ACHing your account and holding your money in trust.** This change will have no effect on your monthly ACH payment or fees – these items will remain the same.
>
> . . .
>
> Your law firm **is** continuing to send out payments on your negotiated settlement agreements. Morgan Drexen is no longer assisting your law firm with sending out these payments. As always, your attorney continues to solicit settlement offers for any of your remaining accounts.
>
> . . .
>
> Your law firm's staff continues to prepare bankruptcy petitions under your attorney's supervision and direction. ***If*** you have directed your attorney to move forward with the filing of your petition, rest assured, that the law firm continues to work diligently towards that goal.

(Golden Decl., Ex. 1, Doc. 347; *see also* Felder Decl., Ex. 1, Doc. 348-2 (emphasis in original).) Nowhere in the Attorneys' letters are Affected Consumers informed of the CFPB's lawsuit against Morgan Drexen and Ledda, the Court's Order issuing terminating sanctions against Morgan Drexen, the Injunction or Clarification Order, the fact that the Court specifically ordered the Chapter 7

Trustee and CFPB to send letters to the Affected Consumers, or that the Court ordered that no fees be charged from Affected Consumers. (Id.)

It also is undisputed that the Attorneys created a website, located at www.morgandrexenbankruptcy.com, to further communicate with Affected Consumers. (Golden Decl. at 8 (explaining that the physical address listed on the "Contact Us" section of the website was "where the Howard Law Firm had been conducting business").) The website states, in relevant part:

> 1. Do NOT contact your creditors directly, as you may jeopardize your legal rights, and may even create a situation where any negotiated debt reduction [may] be lost.
>
> 2. Contact the attorney or law firm who has been continuously working on your behalf. You should not make payments directly to your creditors. Your attorney is continuing to make payments on your behalf pursuant to your negotiated settlement agreements.
>
> . . .
>
> 5. Do NOT talk with anyone claiming to be from Morgan Drexen; that company is no longer in business and any communication will not be confidential
>
> . . .
>
> You received this letter to notify you that Morgan Drexen, your attorney's previous service provider, is no longer in business. The Trustee and the government wrongfully assumed that without Morgan Drexen's support, your attorney would be incapable of handling your debts. THIS WAS

> WRONG! Your representation is unaffected and your attorney continues to work hard on your file to help you reach your goals.

(Golden Decl., Ex. 2, Doc. 347.) Thus, even more so than the letters created and sent by the Attorneys to consumers, the website created by the Attorneys directly contradicts the Court's instructions that Affected Consumers contact their creditors, make payments directly to creditors, and request refunds of their settlement accounts from the Attorneys. (Id.) Specifically, the Attorneys' website misrepresents that the Court-ordered letter "may not apply to you and in fact, may actually be putting your legal rights in jeopardy." (Id.) In sum, the website offers extremely misleading information concerning Morgan Drexen's bankruptcy and the reasons why the Attorneys are no longer contracting with Morgan Drexen, and omits any discussion of the terms of the Injunction and Clarification Order or the specific instructions the Court gave the Chapter 7 Trustee and CFPB regarding the Court-ordered notices. (Id.)

The actual language of the Attorneys' letters and website, when read in conjunction with the other evidence submitted to the Court, clearly and convincingly establish that the Attorneys made every effort to convince Affected Consumers that, despite Morgan Drexen's bankruptcy, nothing has changed. These communications assert that the Attorneys will provide Affected Consumers with the exact same services and representation that Morgan Drexen and the Attorneys were providing to Affected Consumers prior to Morgan Drexen's bankruptcy. In sum, and as CFPB contends, "the Attorneys took measures designed to ensure Affected Consumers would be confused—if not outright misled—about their rights in the wake of Morgan Drexen's shut-down." (OSC Mem., Doc. 348-1 at 12.)

The Court had deemed, and the Attorneys were aware, that the dissemination of the Court-ordered notices was of the "highest priority." Instead of respecting the Court's Orders, the Attorneys misrepresented a variety of

material facts to Affected Consumers concerning consumer financial products and services. Further, the Attorneys blatantly and purposefully obstructed the Court's efforts to provide notices and information to Affected Consumers and creditors. Accordingly, by clear and convincing evidence, the Court finds that the Attorneys violated Sections II and VII of the Injunction.

Because CFPB has shown by clear and convincing evidence that the Attorneys have willfully violated four specific and definite sections of the Injunction, the Court finds the Attorneys in contempt.[18] *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d at 695.

C. Sanctions

"Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes; to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947). "Where

[18] At the September 4, 2015 hearing, counsel for the Attorneys requested that, if the Court were inclined to hold the Attorneys in contempt, the Court stay the effect of its ruling for 30 days to enable counsel to file an emergency motion to stay in the Ninth Circuit. Counsel for the Attorneys represented that his clients were currently representing consumers in ongoing state court litigation and that the Court's order would have the effect of ordering the consumer to "get out of th[e] lawsuit." (Transcript, Doc. 379 at 50-51.) The Court stated that it would consider the Attorneys' request for a stay, but only if the Attorneys provided the Court with specific evidence establishing the existence of pending state court or bankruptcy proceedings, as the Attorneys claimed. Thus, the Court permitted the Attorneys to file a supplemental declaration, no later than September 9, 2015, with the specific case names and numbers for any pending litigation or bankruptcy proceedings for which the Attorneys represented Affected Consumers. Thereafter, the Attorneys filed or attempted to file supplemental documents, none of which contained any case-specific information requested by the Court. Thus, the Court will not stay this Order. *See, e.g., Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983).

compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss." *Id.* at 304. "Generally, the minimum sanction necessary to obtain compliance is to be imposed" because, "[u]nlike the punitive nature of criminal sanctions, civil sanctions are wholly remedial." *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir. 1992). "But where the purpose is to make the [individual or entity] comply, the court's discretion is otherwise exercised. It must then consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired." *United Mine Workers of Am.*, 330 U.S. at 304.

CFPB asks that the Court impose a sanction of $10,000 per day for each day since the Court issued its Injunction on June 18, 2015, and a sanction of $20,000 per day for each day that the Attorneys continue to violate the Court's Order after the issuance of this Contempt Order. (Attorneys' Reply at 23.) Further, CFPB requests that the Court require the Attorneys "to submit an accounting to the Court demonstrating the total amount of payments they received from Affected Consumers from June 18, 2015 (the date of the Injunction Order) to the present, and to refund those payments to consumers." (Id. at 24.) Finally, CFPB argues that "any award of monetary relief should be entered jointly and severally against each of the Attorneys since each is responsible for the repeated violations of this Court's Orders." (Id. at 25.)

As discussed in detail above, the Attorneys' violations of the Injunction further victimized Affected Consumers, obstructed the Court in its functions, and interfered with the Court's efforts to protect the public interest. The Attorneys have already shown an unwillingness to comply with the Injunction, even when the Court explicitly and clearly explained that the majority of the Injunction applies to the Attorneys in its Clarification Order. In light of the character and magnitude of the harm that the Attorneys have already inflicted upon Affected Consumers, most notably by continuing to collect hundreds of thousands of dollars in additional unlawful fees from consumers, and the fact that the Attorneys seek to profit by continuing to deduct monthly fees from the accounts of Affected Consumers, the Court finds that contempt sanctions that (1) restore to the

Affected Consumers the fees that the Attorneys have collected since the issuance of the Injunction, and (2) deter the Attorneys from continuing to deduct fees from the accounts of Affected Consumers, are the only means to ensure that the public interest and Affected Consumers are protected.

The evidence reflects that the Attorneys have approximately 8,000 Affected Consumers as clients. (Transcript at 50, Doc. 379.) The evidence also reflects that hundreds of dollars are deducted from the Affected Consumers' accounts each month. (*See* Bracey Decl., Ex. 1 (showing consistent $410.00 ACH withdrawals on a monthly basis from an Affected Consumer's account by Howard Law from December 2013, to July 2015); Howard Decl. ¶ 77, Doc. 356-1 (explaining that the Attorneys "would no longer be able to represent these clients if they were barred from receiving compensation for the services rendered to these clients").) This is consistent with evidence that the Attorneys continue to collects hundreds of thousands of dollars each month. (*See* Walker Tr. 69:15-71:12 (noting that the Attorneys continue to collect fees from consumers and have collected "a couple hundred thousand dollars" in fees.) To deter the Attorneys from continuing to violate the Injunction, the Court imposes a $10,000 per day sanction on the Attorneys for each day that the Attorneys continue to violate the Injunction after the issuance of this Order.

The Attorneys also are ordered to submit an accounting to CFPB no later than 10 days from the date of this Order, identifying the total payments they have received from Affected Consumers from June 18, 2015, to the present. The Attorneys must then refund those payments to CFPB so that CFPB can distribute them back to the relevant consumers. The Court orders CFPB to file a Status Report with the Court regarding the Attorneys' compliance with this Order no later than 30 days from the date of this Order.

Finally, the Court holds the Attorneys jointly and severally liable for these sanctions because the clear and convincing evidence shows that each of the Attorneys has repeatedly and intentionally violated the Court's Orders.

IV. Conclusion

"Courts do not sit for the idle ceremony of making orders and pronouncing judgments, the enforcement of which may be flouted, obstructed, and violated with impunity, with no power in the tribunal to punish the offender. [Federal] courts, equally with those of the state, are possessed of ample power to protect the administration of justice from being thus hampered or interfered with." *Waffenschmidt v. MacKay*, 763 F.2d 711, 716 (5th Cir. 1985) (citation omitted). For the reasons stated in this Order, the Court finds the Attorneys in contempt. For each day that the Attorneys continue to violate the Injunction from the date of this Order, the Attorneys will be sanctioned $10,000 per day. The Attorneys also are ORDERED to submit an accounting to CFPB no later than 10 days from the date of this Order, identifying the total payments they received from Affected Consumers from June 18, 2015, to the present. The Attorneys must then refund those payments to CFPB for distribution to the relevant consumers. The Attorneys are jointly and severally liable for these sanctions.

CFPB is ORDERED to file a Status Report with the Court regarding the Attorneys' compliance with this Order no later than 30 days from the date of this Order.

Initials of Preparer: tg