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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Consumer Financial Protection Bureau, Plaintiff, v. Morgan Drexen, Inc., and Walter Ledda, individually, and as owner, officer, or manager of Morgan Drexen, Inc., Defendants.	Case No. SACV13-01267 JLS (JEMx) **PLAINTIFF'S REPLY TO HOWARD LAW, P.C., VINCENT HOWARD, WILLIAMSON & HOWARD, LLP, THE WILLIAMSON LAW FIRM, LLC, AND LAWRENCE WILLIAMSON'S RESPONSE TO ORDER TO SHOW CAUSE RE: CONTEMPT** **HON. JOSEPHINE L. STATON** **Courtroom 10-A (Santa Ana)**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes & Regulations **Page**

I. INTRODUCTION

In an effort to protect Affected Consumers[1] from suffering further harm as a result of continued violations of law stemming from Morgan Drexen's unlawful debt relief scheme, this Court made it abundantly clear in its July 6, 2015 Clarification Order ("Clarification Order")[2] that Vincent Howard, Lawrence Williamson, Howard Law, PC, the Williamson Law Firm, LLC, and Williamson & Howard, LLP (collectively "the Attorneys") cannot stand in the shoes of Morgan Drexen and continue to prey upon Affected Consumers.[3] The Court explicitly warned that "[a]ny violation of the terms of the Court's [Injunction Order] by the Attorneys could subject them to contempt proceedings before this Court."[4] The Attorneys sought emergency relief from the Injunction Order and Clarification Order in the Ninth Circuit, but the Ninth Circuit denied this request.[5] The Attorneys were therefore required to comply with the Court's Orders pending the resolution of their appeal. The undisputed evidence, however, demonstrates that they failed to do so.

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[1] "Affected Consumer" is a defined term in the Court's June 18, 2015 *Order re: Permanent Injunction*, Doc. 306 ("Injunction Order"), and includes consumers who, "from October 27, 2010 to the present, have paid advance ('upfront') 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 "enrolled in a debt relief service with Morgan Drexen in response to Morgan Drexen's deceptive advertisements." Doc. 306 at 4.

[2] Doc. 326 (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).

[3] *Id*. at 10-11 ("[T]he Attorneys are bound by the Court's preliminary injunction order to the extent that the Attorneys were 'in active concert or participation with' Morgan Drexen and its illegal conduct.").

[4] *Id*. at 11.

[5] Case No. 15-56089, Doc. 8; Case No. 15-56089, Doc. 11; *see also* Doc. 334 (same).

Instead, the Attorneys blatantly violated at least four specific and definite provisions of the Orders and, while doing so, eviscerated the vital consumer protections this Court built into its Orders. There is no dispute that the Attorneys violated: (1) Section I of the Injunction Order (prohibiting the collection of fees from Morgan Drexen's customers); (2) Section I(C) of the Injunction Order (prohibiting the provision of debt relief products or services that charge consumers advance fees); (3) Section VII of the Injunction Order (which sets forth the Court's "highest priority" that consumers receive accurate information about their rights); and (4) Section III(A)(2) of the Clarification Order (prohibiting the Attorneys from having unfettered access to the files of Morgan Drexen's customers).

Caught red-handed violating specific and definite Orders of the Court, the Attorneys attempt to complicate the straightforward question of whether their actions warrant contempt sanctions by attacking the propriety of the Court's Injunction and Clarification Orders, but their arguments fail. It is well-established that non-parties are subject to contempt sanctions where (as here): (a) the non-party violates specific and definite courts orders addressed to the non-party without obtaining relief through appropriate legal channels; and (b) the non-party has actual notice of an injunction order but acts in concert or participation with a defendant to violate the order. The Attorneys' arguments to the contrary are meritless. Given that the Attorneys were required to take "all reasonable steps within [their] power to comply" with the Court's Orders,[6] but instead blatantly *violated* the Orders for over two months while acting in concert or participation with Morgan Drexen, severe contempt sanctions are warranted.

[6] *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993).

II. RELEVANT BACKGROUND[7]

The Attorneys have now had an opportunity to present facts to support their contention that they have complied with the Court's Injunction Order and Clarification Order. They could not do so. The following facts are now admitted:

- Howard Law hired Morgan Drexen's former Chief Financial Officer (David Walker) and former owner and Chief Technology Officer (Avi Gupta) to perform accounting work and develop software to enable Howard Law to utilize the files of Affected Consumers;[8]
- In addition to Walker and Gupta, the Attorneys hired 50-60 former Morgan Drexen employees;[9]
- The Attorneys are continuing to charge fees to Affected Consumers;[10]
- Howard Law obtained the files of Affected Consumers through the LegalSoft server instead of through the Morgan Drexen Trustee, as the Court had directed, and hired programmers to write software programs related to those files;[11] and

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[7] The procedural and factual background relevant to the Court's Order to Show Cause has been set forth in great detail in the Bureau's *Memorandum in Support of its Application for an Order to Show Cause*, Doc. 348-1, and that background is incorporated by reference here.

[8] Doc. 356-1, Howard Decl. ¶ 51; *see also* Doc. 348-2, Exhibit A to O'Malley Declaration (hereinafter "Walker Tr.") at 7:6-9; 57:17-20; Doc. 180-2 at 39.

[9] Doc. 356-1, Howard Decl. ¶ 65.

[10] *Id*. at ¶ 77 ("The Howard Firms have approximately eight thousand clients that received services of one kind or another from Morgan Drexen…. [T]he Howard Firms 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. 69:21-24 ("Q: Is Howard law accepting payments from consumers who are formerly services by Morgan Drexen? A: Yes, I believe they are."); *id*. at 69:15-71:12 (noting that Williamson and Howard continue to collect fees from consumers enrolled in Morgan Drexen's debt relief program).

[11] Doc. 356-1, Howard Decl. ¶ 72. Morgan Drexen filed for bankruptcy on April 30, 2015. *See In re: Morgan Drexen, Inc*., No. 8:15-bk-12278-CB (C.D. Cal. Apr.

- The Attorneys sent their own letters to Affected Consumers "to prevent [them] from acting on advice" in the letters mandated by the Court.[12]

In addition, despite having the opportunity to address the Bureau's clear and convincing evidence of blatant violations of the Court's Injunction and Clarification Orders, the Attorneys have failed to refute that:

- From June 2015 to the present, the Attorneys have continued Morgan Drexen's operations and collected hundreds of thousands of dollars in fees from Affected Consumers pursuant to the same contracts under which Morgan Drexen collected unlawful fees;[13]
- From June 2015 to the present, Howard Law has worked to ensure Affected Consumers would stay in the debt relief program;[14]
- The Kesher Law Group, which is the law firm formed by former Morgan Drexen General Counsel Jeffrey Katz, has invoiced the Attorneys for "legal advisory services" in connection with their

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30, 2015). All directives to and action taken by Morgan Drexen are handled by the Chapter 7 Bankruptcy Trustee for Morgan Drexen, Jeffrey I. Golden (hereinafter "Morgan Drexen Trustee"). Doc. 122, No. 8:15-bk-12278-CB.

[12] Doc. 356-1, Howard Decl. ¶ 75; *see also* Doc. 348-2, Felder Decl. at ¶ 4, Ex. 1 to Felder Decl.

[13] Walker Tr. at 71:11-12; *see also* Bracey Decl. ¶ 6 (noting a $410.00 withdrawal by Howard Law in early July 2015); *see also* Ex. 1 to Bracey Decl. (noting a "payment received" from Bracey's bank account on July 7, 2015 and "Payment of Attorney's Fees" on July 2, 2015).

[14] *See, e.g.*, Walker Tr. at 66:24-67:1 ("I mean Howard Law has the same consumers that they had that Morgan Drexen [was] providing services for . . . ."); *id*. at 69:15-19 (Howard Law has attempted to keep consumers in the debt relief program and provide them with the same services that they had been provided when Morgan Drexen was involved).

continuation of Morgan Drexen's debt relief services;[15]

- Howard is planning on running "new advertisements" and "marketing [debt relief services] and accepting new consumers" as debt relief clients;[16] and
- Using substantially the same language as in the letters the Attorneys sent to Affected Consumers, a website at the domain name www.morgandrexenbankruptcy.com instructs consumers to effectively ignore the Court-ordered notices to Affected Consumers.[17]

Instead of submitting evidence to the Court justifying their actions in the wake of the Injunction and Clarification Orders, or demonstrating that the Bureau's evidence is somehow inaccurate, the Attorneys instead argue that the Walker Transcript is inadmissible[18] and that "the prohibition against the collection of fees

[15] *Id*. at 71:22-72:25. Moreover, according to Williamson & Howard's filings with the Kansas Secretary of State, former Morgan Drexen Chief Legal Officer Jeffrey Katz is listed as a partner of Williamson & Howard. O'Malley Decl. ¶ 3, Ex. A. Katz is also the registered agent for Kesher Law Group, with an office at 675 Anton Boulevard, Costa Mesa, California, 92626, which is the same address where, until recently, Morgan Drexen, Williamson & Howard, LLP, and Howard Law were located. *Id*. at ¶ 4, Ex. B.

[16] Walker Tr. at 67:3-10.

[17] *See* Doc. 348-2, Albanese Decl. ¶ 6; *see also* Doc. 348-2, Ex. 1 to Albanese Decl. Although the Bureau does not have conclusive proof that the Attorneys created and own the website, the toll-free number listed on the website (877-336-3629) is the same number Vincent Howard urges consumers to call in his letter to them. *Compare* Doc. 348-2, Felder Decl., Ex. 1 *with* Doc. 348-2, Albanese Decl., Ex. 1. Moreover, the content of the website is substantially the same as the content of Howard's letter. *Id*.

[18] Doc. 357. The Attorneys are incorrect that the Walker Transcript is inadmissible. The transcript contains sworn statements from Walker that have been authenticated by counsel for the Bureau. *See* Doc. 348-2, O'Malley Decl. ¶ 3. Those statements are admissible for the same reasons the non-hearsay statements in the declarations submitted by the Attorneys are admissible: a court may consider sworn statements when making a finding of fact. Moreover, the Attorneys' main objection to the

[in the Injunction Order] *refers to Morgan Drexen alone*," and not to the Attorneys or others acting in concert with Morgan Drexen.[19] The remainder of the Attorneys' response to the Order to Show Cause focuses on re-litigating the issue currently on appeal to the Ninth Circuit.

As explained in greater detail below, the Bureau has presented clear and convincing evidence—now undisputed—demonstrating that the Attorneys have acted in concert or participation with Morgan Drexen in violating four specific and definite Orders of the Court. The Court should therefore hold the Attorneys in contempt and issue severe coercive and compensatory sanctions to ensure the Attorneys no longer violate the rights of Affected Consumers.

III. THE ATTORNEYS SHOULD BE HELD IN CONTEMPT BECAUSE THEY VIOLATED SPECIFIC AND DEFINITE ORDERS OF THE COURT THROUGH ACTIVE CONCERT OR PARTICIPATION WITH MORGAN DREXEN.

A. THE COURT HAS THE POWER TO ENFORCE ITS ORDERS AGAINST NON-PARTIES THROUGH CIVIL CONTEMPT PROCEEDINGS.

This Court has the inherent power to enforce its orders through civil contempt proceedings.[20] Civil contempt proceedings may be initiated by the Court

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testimony—that they did not have an opportunity to cross-examine Walker—is unsupported. Walker is an employee of Howard Law, PC, which is a creditor of Morgan Drexen, and thus the Attorneys could have appeared at the hearing to cross-examine Walker, but they chose not to. Moreover, the Attorneys could have easily attached a declaration from Walker in response to the Court's Order to Show Cause to correct any misstatements they believe Walker may have made. Tellingly, they did not. Nor did they offer any evidence to contradict Walker's testimony.

[19] Doc. 356 at 7. This argument is addressed *infra*, Section III(C)(3).

[20] *Shillitani v. United States*, 384 U.S. 364, 370 (1966) ("There can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt.").

itself, or upon motion by any party to the action.[21] When contempt proceedings are initiated by motion, "[t]he moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court."[22] Once that burden is met, "the burden then shifts to the contemnors to demonstrate why they were unable to comply."[23] The contempt "need not be willful," and there is no good faith exception to the requirement of obedience to a court order.[24] Rather, the contemnors must demonstrate that they took "all reasonable steps within [their] power to comply" with the court's order.[25]

It is well-established that district courts have the power, pursuant to Federal Rule of Civil Procedure 71, to enforce orders against "a person who is not a party… as if a party."[26] "[W]hen 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

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[21] *See Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y*, 774 F.3d 935, 944 (9th Cir. 2014) (noting that courts "'possess [the] inherent authority to initiate contempt proceedings for disobedience to [their] orders'" (quoting *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 793 (1987)); *see also FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir.1999) (contempt proceedings initiated upon motion of the Federal Trade Commission).

[22] *Affordable Media*, 179 F.3d at 1239 (citation omitted).

[23] *Id.*

[24] *Go–Video, Inc. v. Motion Picture Ass'n of America,* 10 F.3d 693, 695 (9th Cir.1993); *see also Stone v. City & Cnty. of San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992) ("Intent is irrelevant to a finding of civil contempt and, therefore, good faith is not a defense.").

[25] *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993).

[26] *Irwin v. Mascott*, 370 F.3d 924, 931 (9th Cir. 2004) (quoting Fed. R. Civ. P. 71); *see also* Fed. R. Civ. P. 71 ("When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.").

holding him in contempt for violating it."[27] When an injunction order is *not* explicitly addressed to a non-party, Rule 71 still permits courts to hold the non-party in contempt for violating the order if the non-party is "in active concert or participation" with a defendant and has "actual notice" of the injunction order.[28] As the Ninth Circuit has reiterated on several occasions, district courts must have the ability to hold non-parties in contempt because "[r]esponsibility must reach those with the power to alter the prohibited conduct."[29]

As explained below, the Attorneys should be held in contempt because: (a) the Court explicitly addressed its Injunction and Clarification Orders to the

[27] *Irwin*, 370 F.3d at 931 (quoting Fed. R. Civ. P. 71); *see also Chicago Truck Drivers v. Brotherhood Labor Leasing*, 207 F.3d 500, 506-07 (8th Cir. 2000) ("It is well-settled that a court's contempt power extends to non-parties who have notice of the court's order and the responsibility to comply with it."); *see, e.g., United States Commodity Futures Trading Comm'n v. Forex Liquidity LLC*, 2009 WL 2231684 (C.D. Cal. July 23, 2009) (finding a non-party agent of the defendant in civil contempt for failing to turn over assets pursuant to court-ordered receivership).

[28] *N.L.R.B. v. Sequoia Dist. Council of Carpenters, AFL-CIO*, 568 F.2d 628, 633 (9th Cir. 1977) ("Those not identified with a party, but in active concert or participation with him, are bound only with actual notice."); *see also United States v. Laurins*, 857 F.2d 529, 535 (9th Cir. 1988) (same); *NuScience Corp. v. Henkel*, 2015 WL 103378, at *2 (C.D. Cal. Jan. 5, 2015) (a court may hold non-parties in contempt if they "(1) had actual notice of the order; and (2) acted in concert with defendants in violating those orders"). As the Ninth Circuit has also explained, a non-party can be held in contempt if the non-party "either abet[s] the defendant [in violating the court's order] or [is] legally identified with him." *Sequoia Dist. Council*, 568 F.2d at 633; *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1323 (9th Cir. 1998) (same).

[29] *Sequoia Dist. Council*, 568 F.2d at 634; *see also id.* (holding non-party officers of defendant corporation in contempt of court for violating court order, noting "[i]t is imperative that we hold these officers in contempt if we are to have respect for and obedience to our orders in such cases"); *Peterson*, 140 F.3d at 1323 (citation omitted) ("Rule 71 was intended to assure that process be made available to enforce court orders in favor of and against persons who are properly affected by them, even if they are not parties to the action.").

Attorneys, yet the Attorneys blatantly violated four specific and definite provisions of the Orders; and (b) the Attorneys had actual notice of the Orders and acted in concert or participation with Morgan Drexen by continuing Morgan Drexen's unlawful business enterprise. For these reasons, severe contempt sanctions are warranted.

B. THE UNDISPUTED EVIDENCE DEMONSTRATES THAT THE ATTORNEYS VIOLATED FOUR SPECIFIC AND DEFINITE PROVISIONS OF THE COURT'S ORDERS, WHICH THE COURT EXPLICITLY ADDRESSED TO THE ATTORNEYS.

The undisputed evidence demonstrates that the Attorneys violated four specific and definite provisions of the Injunction and Clarification Orders after the Court explicitly addressed its Orders to the Attorneys. This evidence amply supports a contempt order.

First, the Attorneys have violated Section I(C) of the Injunction Order by "providing any debt relief product or service that charges consumers advance fees."[30] By definition, "Affected Consumers" are individuals who were charged advance fees for debt relief services.[31] The Attorneys do not dispute that they are continuing to provide services to these consumers and are collecting fees.[32]

Second, it is undisputed that the Attorneys have engaged in obstructionist tactics to confuse and mislead Affected Consumers in violation of Section VII of

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[30] Doc. 306 at 7.

[31] *Id*. at 4.

[32] Doc. 356-1, Howard Decl. ¶ 77 ("The Howard Firms have approximately eight thousand clients that received services of one kind or another from Morgan Drexen…. [T]he Howard Firms 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* Bracey Decl. ¶ 6 (noting a $410.00 withdrawal by Howard Law in early July 2015); *see also* Ex. 1 to Bracey Decl. (noting a "payment received" from Bracey's bank account on July 7, 2015 and "Payment of Attorney's Fees" on July 2, 2015).

the Injunction Order. Vincent Howard admitted that the Attorneys sent their own letters to Affected Consumers "to prevent [them] from acting on advice" in the letters mandated by the Court.[33] By the Attorneys' own admission, this letter served no purpose other than to undermine the effectiveness of the consumer notices required by Section VII of the Injunction Order. The Attorneys' efforts to thwart Section VII is especially egregious given that, as the Court rightfully noted, "[d]ue to the harm already suffered by Affected Consumers, the dissemination of the [] notices and information to Affected Consumers and creditors is of the highest priority."[34]

Third, it is undisputed that the Attorneys violated Section III(A)(2) of the Clarification Order, which prohibited them from having "unfettered access" to the files of Affected Consumers.[35] The Court restricted the Attorneys' access to the files because of its concern that unfettered access would lead to further victimization of Affected Consumers.[36] Instead, as the Morgan Drexen Trustee proposed, the Court granted the Attorneys the opportunity to copy the consumer files if they chose to do so.[37]

Without the Morgan Drexen Trustee knowing, the Attorneys obtained copies of the files of Affected Consumers from LegalSoft,[38] and hired Morgan Drexen's former Chief Financial Officer and former owner and Chief Technology Officer to perform accounting work and develop software related to those files.[39] Thus, despite Howard's sworn statement to the Court on June 26, 2015, that "irreparabl[e] harm[]" would result if the Court did not grant the Attorneys

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[33] Doc. 356-1, Howard Decl. ¶ 75; *see also* Doc. 348-2, Felder Decl. at ¶ 4, Ex. 1.
[34] Doc. 306 at 11.
[35] Doc. 326 at 11.
[36] *Id*.
[37] *Id*. at 13.
[38] Doc. 356-1, Howard Decl. ¶ 72.
[39] *Id*. at ¶ 51; *see also* Walker Tr. 7:6-9, 57:17-20; Doc. 180-2 at 39.

unfettered access to the consumer files, in reality, the Attorneys already had unfettered access to those files through LegalSoft and the expertise of former key Morgan Drexen personnel.[40]

And finally, the Attorneys have failed to provide any evidence to contradict the Bureau's clear and convincing evidence demonstrating that the Attorneys have collected hundreds of thousands of dollars in fees from Affected Consumers in the past two months alone in violation of Section I of the Injunction Order.[41] Rather, as noted above, the Attorneys essentially admit that they are continuing to collect fees from Affected Consumers,[42] and they (incorrectly) argue that Section I does not

[40] Doc. 309, Howard Decl. at 19-23, ¶ 14-15 (declaring under penalty of perjury that "[Morgan Drexen's] closure has forced the Law Firms to directly provide the Clients with the services previously provided by MD. To provide these services directly, the Law Firms must obtain copies of their respective Clients' files, and secure a copy of the MDIS software (the 'MDIS Software') that allows them to access these files. Without access to the files and the software, the Law Firms and their Clients will be irreparably harmed."); *see also* Doc. 309 at 6 (brief filed by the Attorneys, which claims that they needed access to Morgan Drexen's computer software (MDIS) or else "hundreds and eventually thousands of [consumer settlement] plans will fall into default and the affected Clients will become subject to legal recourse by the creditors who have been promised payments under these plans"). Although the Attorneys neglect to specify *when* they obtained access to the files of Affected Consumers through LegalSoft, the Morgan Drexen Trustee declared that they did so on June 21, 2015. Doc. 347, Decl. of Jeffrey I. Golden at 7. Even if the Trustee is incorrect and the Attorneys obtained access to the files *after* the Court's Clarification Order, then the Attorneys would have been on clear notice that such unfettered access to the files was prohibited by this Court.

[41] Walker Tr. at 71:11-12; *see also* Bracey Decl. ¶ 6 (noting a $410.00 withdrawal by Howard Law in early July 2015); *see also* Ex. 1 to Bracey Decl. (noting a "payment received" from Bracey's bank account on July 7, 2015 and "Payment of Attorney's Fees" on July 2, 2015).

[42] Doc. 356-1, Howard Decl. ¶ 77 ("The Howard Firms have approximately eight thousand clients that received services of one kind or another from Morgan Drexen…. [T]he Howard Firms would no longer be able to represent these clients if they were barred from receiving compensation for the services rendered to these clients.").

apply to them.[43] Accordingly, the clear and convincing evidence demonstrates that the Attorneys have violated Section I of the Injunction Order.

Instead of taking "all reasonable steps within [their] power to comply" with the Court's Orders[44]—which is exactly what the law requires of the Attorneys—the Attorneys have flagrantly violated the Orders to continue collecting fees from the very consumers this Court sought to protect. The fact that the Attorneys have appealed the Court's Orders does not give them the license to violate the Orders during the pendency of their appeal.[45] The Ninth Circuit has made clear that, if an injunction order explicitly addresses a non-party, and the non-party has notice of the order, then the non-party may challenge the order "through the usual processes of law," but may not violate the order while challenging it.[46]

In *Irwin v. Mascott*, for example, a non-party violated an injunction order that "on its face" applied to him and prohibited the conduct in which the non-party had engaged.[47] The non-party's defense to the charge of civil contempt was to challenge the injunction order itself in the contempt proceeding.[48] The Ninth Circuit rejected this defense, noting that the non-party "received a copy of the Injunction, which states on its face that it applies to him, [and] he was on notice of

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[43] Doc. 356 at 7; *see also, infra,* Section III(C)(3).

[44] *Dual-Deck Video*, 10 F.3d at 695.

[45] *See, e.g. Reich v. Sea Sprite Boat Co., Inc.*, 50 F.3d 413, 415 (7th Cir. 1995) ("[O]ne must obey even an invalid judicial order until the order is stayed or reversed by a higher court.") (citing *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 439-40 (1976)); *Lake Shore Asset Mgmt. Ltd. v. Commodity Futures Trading Comm'n*, 511 F.3d 762, 767 (7th Cir. 2007) (non-parties "act at their peril if they disregard the commands of the injunction, for, if the district court ultimately determines that they are in concert with [the enjoined party], then they will be in contempt of court").

[46] *Irwin*, 370 F.3d at 931 ("Any challenge to an injunction with which one disagrees should be made through the usual processes of law, such as an appeal.").

[47] *Id.* at 932.

[48] *Id.* at 931.

its terms."[49] The Ninth Circuit held that the non-party's failure to "engage[] in a good faith effort to substantially comply with the Injunction" warranted an order of contempt.[50]

In this case, since the Ninth Circuit declined to enter a stay of the Orders pending the Attorneys' appeal,[51] the Attorneys were required to follow the Orders so that Affected Consumers would receive the critical protections that the Orders mandate.[52] The undisputed evidence demonstrates that—far from taking "all reasonable steps within [their] power to comply" with the Orders[53]—the Attorneys have flagrantly violated four specific and definite provisions of the Orders to continue collecting fees from the very consumers this Court sought to protect.

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[49] *Id*. at 932.

[50] *Id*. In *Irwin*, the Ninth Circuit noted that the non-party "did not move to intervene or otherwise attack the Injunction when it issued," and therefore held that "he may not now challenge its legality in a contempt proceeding arising out of its violation." *Id*. Although that fact is not present here, as the Attorneys *did* object to the Court's Injunction Order when it issued, Doc. 313, the broader holding of *Irwin* (that non-parties who are addressed in injunction orders and have notice of those orders cannot then violate those orders while challenging them) applies with equal force here. As in *Irwin*, the Orders were addressed to the Attorneys. As in *Irwin*, the Attorneys had notice of the Orders. And, as in *Irwin*, the fact that the Attorneys are challenging the legality of the Orders does not permit them to violate the Orders in the meantime. In essence, the Attorneys are attempting the same failed strategy that the non-party contemnor in *Irwin* attempted, which is to violate an effective order of the court while challenging it.

[51] Case No. 15-56089, Doc. 8; Case No. 15-56089, Doc. 11; *see also* Doc. 334 (same).

[52] *GTE Sylvania, Inc. v. Consumers Union*, 445 U.S. 375, 386 (1980) (as a matter of respect for the judicial process, persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if there may exist proper grounds to object to the order); *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983) (absent a stay, all court orders and judgments must be complied with promptly).

[53] *Dual-Deck Video*, 10 F.3d at 695.

The 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 collects fees from the already-victimized Affected Consumers. As explained below, they have acted in concert or participation with Morgan Drexen to perpetuate this scheme and ensure their cash flow would continue uninterrupted despite this Court's—and the Bureau's—best efforts to protect consumers. The Attorneys' actions therefore warrant severe coercive and compensatory contempt sanctions.

C. A CONTEMPT ORDER IS WARRANTED BECAUSE THE ATTORNEYS ACTED IN CONCERT OR PARTICIPATION WITH MORGAN DREXEN TO PERPETUATE MORGAN DREXEN'S UNLAWFUL SCHEME.

Under Federal Rule of Civil Procedure 65(d), an injunction binds not only the parties, but also "persons who are in active concert or participation with" the parties, so long as those persons "receive actual notice of [the order]."[54] Thus, as this Court warned in its Clarification Order, the Attorneys may be held in contempt if they are "in active concert or participation with" Morgan Drexen in violating the Injunction Order.[55]

They Attorneys are in contempt for just this reason. They have stepped into Morgan Drexen's shoes and continued to carry out its unlawful scheme—in direct violation of the Injunction Order's specific terms. Incredibly, the Attorneys claim that they cannot be "in concert or participation" with Morgan Drexen because Morgan Drexen has ceased its operations. But Morgan Drexen's bankruptcy does not nullify the Court's Injunction. And here, 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. Well-established case law makes clear that the Attorneys cannot hide

[54] Fed. R. Civ. P. 65(d).
[55] Clarification Order at 11.

behind corporate formalities to avoid the Court's Injunction Order. Nonparties to an injunction cannot succeed to an enjoined party's business and continue the very practices a court has enjoined.

1. The Attorneys Continue To Charge Fees Relating To Their Acts in Concert or Participation with Morgan Drexen Before the Injunction Order.

It is disingenuous for the Attorneys to argue that they should not be held in contempt for violating the Court's Orders when they are continuing to benefit from their active concert and participation in Morgan Drexen's illegal debt relief scheme. The fees that the Attorneys continue to collect from Affected Consumers are the fruits of *the very conduct this Court held was illegal*. The fees were established in contracts entered into when Morgan Drexen was a going concern and the Attorneys acted in concert and participation with Morgan Drexen to provide debt relief services. As such, the fees the Attorneys are charging Affected Consumers are *the very same fees this Court found impermissible*. A recent accounting statement sent by Howard Law to an Affected Consumer vividly illustrates that the Attorneys' collection of unlawful fees has continued uninterrupted in the wake of the Court's Orders.[56] The Attorneys cannot have it both ways: they cannot claim that they are immune from contempt sanctions on the ground that they are not in "active concert or participation" with Morgan Drexen, but then continue to receive the benefits of their long history of active concert and participation in this debt relief scheme.

[56] Ex. 1 to Bracey Decl. (reflecting a "beginning balance" owed to Howard Law, PC, of $2,500 on October 21, 2013; noting monthly payments to Howard Law, PC, from October 2013 to July 7, 2015).

2. Since The Injunction Order, the Attorneys Have Acted in Concert or Participation with Morgan Drexen by Continuing Morgan Drexen's Unlawful Business Enterprise.

It is well established that an injunction may "be enforced against those to whom [a] business may have been transferred, whether as a means of evading the judgment or for other reasons."[57] "The vitality of the judgment in such a case survives the dissolution of the corporate defendant."[58] This makes sense, for otherwise parties could "nullify the court's decree and circumvent the [relevant] regulations by carrying out prohibited acts through successive corporations not party to the original actions."[59] Thus, where an entity "operate[s] as merely a disguised continuance of the old [entity],"[60] or is "a continuing business enterprise,"[61] it has "the requisite relationship" to the enjoined party to be subject to the injunction.[62] Such a continuing enterprise "may be found to be acting 'in active concert or participation' with the enjoined party and thus subject to contempt under Rule 65(d)."[63] These principles, moreover, "may be applied in fuller measure" where, as here, doing so will further "the public interest."[64]

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[57] *Walling v. James V. Reuter, Inc.*, 321 U.S. 671, 674 (1944).
[58] *Id.*
[59] *I.C.C. v. Rio Grande Growers Co-op*, 564 F.2d 848, 849 (9th Cir. 1977).
[60] *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945) (quoting *Southport Petroleum Co. v. Labor Bd.*, 315 U.S. 100, 106 (1942)).
[61] *Golden State Bottling Co., Inc. v. NLRB*, 414 U.S. 168, 180 (1973).
[62] *Id.*
[63] *Additive Controls & Measurement Sys., Inc. v. Flowdata, Inc.*, 96 F.3d 1390, 1397 (Fed. Cir. 1996); *accord Rockwell Graphic Sys., Inc. v. DEV Indus., Inc.*, 91 F.3d 914, 919 (7th Cir. 1996) (explaining that under the "active concert or participation" case law, "an injunction may bind nonparties who are successors in interest to parties named in the injunction with respect to the subject matter of the injunction")
[64] *Walling*, 321 U.S. at 674.

The Attorneys are precisely the sort of "continuing business enterprise" that must comply with the injunction.[65] By Howard's own admission, the Attorneys hired 50-60 former Morgan Drexen employees, including two of Morgan Drexen's principal officers, David Walker (Morgan Drexen's former Chief Financial Officer) and Avi Gupta (a former Morgan Drexen shareholder and Chief Technology Officer).[66] The Attorneys are also working in concert with former Morgan Drexen Chief Legal Officer Jeffrey Katz, who is identified as a partner at Williamson & Howard in the firm's filings with the Kansas Secretary of State.[67] Indeed, the *majority* of Williamson & Howard's employees came from Morgan Drexen.[68] These former Morgan Drexen employees perform the same "accounting functions" and "client services" functions that they performed while at Morgan Drexen.[69] Even more, the firms obtained unfettered access to the data on Morgan Drexen's customers in order to provide those customers the same purported "services" and charge them the same fees that this Court found unlawful and ordered Morgan Drexen to stop collecting.[70] The Attorneys are continuing to charge these fees pursuant to the same contracts with consumers that existed prior to June 2015. Moreover, until recently, the Attorneys operated out of the same building as Morgan Drexen, and, according to the Morgan Drexen Trustee, even

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[65] The individual attorneys, Howard and Williamson, are likewise subject to contempt because they are participating in the continuing enterprise in violation of the injunction. *Cf. Saga Int'l, Inc. v. John D. Brush & Co., Inc*., 984 F. Supp. 1283, 1288 (C.D. Cal. 1997) (explaining that where a company is "a successor in interest" to an enjoined party, an officer of that company "would also be bound").

[66] Doc. 356-1, Howard Decl. ¶¶ 51, 65.

[67] Walker Tr. 71:22-72:25; Decl. O'Malley Decl. ¶ 3, Ex. A.

[68] Walker Tr. at 60.

[69] *Id*. at 66.

[70] Doc. 356-1, Howard Decl. ¶¶ 51, 65, 72, 77.

utilized the Morgan Drexen internet connection to carry out their business.[71] The facts are clear: the firms have taken over Morgan Drexen's business operations wholesale.

These sorts of facts have led myriad courts to hold that nonparties are sufficiently connected to a predecessor business to be bound by an injunction addressed to that business.[72] The same holding is warranted here.

Finally, if *any* case justifies applying Rule 65(d) principles to "fuller measure" to further the public interest,[73] it is this one. The consumers this Court sought to protect through its Injunction Order are struggling with debt and were depending on Morgan Drexen and the Attorneys to deliver on their promise to help. Instead, Morgan Drexen and the Attorneys charged consumers illegal upfront fees. The Attorneys then had the audacity to thwart the effectiveness of the crucial consumer communications this Court went to significant efforts to outline in its

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[71] Doc. 347 at 9. On top of all of this, as the Court noted in its Clarification Order, the Attorneys were *also* in active concert or participation with Morgan Drexen's unlawful activity before the injunction was entered. This is "circumstantially suggestive" that the Attorneys' post-injunction conduct is likewise in concert with Morgan Drexen. *G. & C. Merriam Co. v. Webster Dictionary Co., Inc.*, 639 F.2d 29, 35 (1st Cir. 1980).

[72] *See, e.g.*, *Golden State Bottling*, 414 U.S. at 182 ("wholesale transfer of the predecessor's employees"); *Software Freedom Conservancy, Inc. v. Westinghouse Digital Electronics, LLC*, 812 F. Supp. 2d 483, 487 (S.D.N.Y. 2011) (new company occupied same location, used many of the same employees, and acquired the assets necessary to carry on the business); *Chanel Industries, Inc. v. Pierre Marche, Inc.*, 199 F. Supp. 748, 753 (E.D. Mo. 1961) (new corporation acquired inventory of enjoined company, hired same employees, and engaged in transactions prohibited by the injunction); *cf. Long v. AT&T Information Sys. Inc.*, 733 F. Supp. 188, 208 (S.D.N.Y. 1990) (looking to "the continuity of business operations between the predecessor and the successor, which includes such matters as continuity in supervisory personnel, employees, physical plant, location, nature of product or service and methods of producing the product or service" for purposes of successor liability).

[73] *Walling*, 321 U.S. at 674.

Injunction Order to provide consumers with a way out of this scam. The public interest demands that this Court apply Rule 65(d) principles in "full[] measure" to the Attorneys to ensure that they stop victimizing Affected Consumers.

For all of these reasons, the Attorneys are properly subject to the Court's Injunction and Clarification Orders and should be held in contempt for violating them.

3. The Injunction's Prohibition on Collecting Fees from Affected Consumers Applies to the Attorneys and Any Others Bound under Rule 65(d).

The Attorneys next object that they cannot be held in contempt for charging fees to Affected Consumers because the Injunction Order by its terms bars only Morgan Drexen itself from collecting those fees—and thus implicitly permits those acting in concert with Morgan Drexen to collect them. This argument misunderstands Rule 65(d).

Under Rule 65, "an injunction *automatically* applies to" the persons covered by the rule—including persons "in active concert or participation" with a party.[74] Such parties are bound "even if they are not expressly mentioned in the text of the order."[75]

Moreover, the Attorneys can hardly claim to have understood the Court's orders as barring Morgan Drexen alone from collecting fees from Affected Consumers. The Court's Clarification Order specifically found that those consumers' "relationships with Morgan Drexen, and, as a result, their relationships

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[74] *Washington Metropolitan Area Transit Comm'n v. Reliable Limousine Service, LLC*, 776 F.3d 1, 9 (D.C. Cir. 2015) (emphasis added); *see also In re Estate of Ferdinand Marcos Human Rights Litigation*, 94 F.3d 539, 545 (9th Cir. 1996) (explaining that the rule "automatically makes the injunction against [an entity] binding upon persons 'in active concert or participation with' the [entity] who have actual notice of the injunction").

[75] *Washington Metropolitan Area Transit Comm'n*, 776 F.3d at 9 (citing 11A Wright & Miller § 2956 (3d ed. 2014)).

with the Attorneys, ha[d] already been tainted by Morgan Drexen's false advertising and illegal fee collection" and that "any additional collection of fees from Affected Consumers would only further victimize consumers."[76] To "protect[] consumers from being further victimized" in that way, the Court explicitly held that the Attorneys could not "have unfettered access to the consumer files."[77] The Court's Clarification Order thus left no room to doubt that the Attorneys, like Morgan Drexen itself, are barred from using the consumer files to collect fees from the Affected Consumers.

In short, the Attorneys violated four specific and definite provisions of the Court's Injunction and Clarification Orders, which the Attorneys knew the Court had explicitly addressed to the Attorneys, and they acted in concert or participation with Morgan Drexen by continuing Morgan Drexen's unlawful business enterprise. Severe coercive and compensatory sanctions against the Attorneys are therefore warranted so that Affected Consumers will no longer fall victim to this illegal debt relief scam.

IV. HOLDING THE ATTORNEYS IN CONTEMPT DOES NOT VIOLATE DUE PROCESS.

The Attorneys' argument that holding them in contempt will violate their due process and jury trial rights is meritless. It is true that "a non-party cannot be personally bound by an injunction unless that non-party has had an actual day in court."[78] But the only "day in court" that due process requires is "the nonparty's opportunity to contest whether he acted in concert with a party contemnor or was in privity and therefore bound by the injunction. If, after an appropriate hearing, the court concludes that the nonparty [is bound]," there is no need to "relitigat[e]…

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[76] Clarification Order at 10-11.

[77] *Id*. at 11.

[78] *Nat'l Spiritual Assembly of Baha'is of U.S. Under Hereditary Guardianship, Inc. v. National Spiritual Assembly of Baha'is of U.S.*, 628 F.3d 837, 853 (7th Cir. 2010).

the underlying controversy."[79] Thus, the Attorneys' opportunity to present their defenses in these contempt proceedings provides them the "day in court" that due process requires.

V. NO LIMITATIONS ON THE BUREAU'S "REGULATORY POWERS" EXCUSE THE ATTORNEYS FROM COMPLYING WITH THE INJUNCTION.

The Attorneys cannot avoid liability for contempt by citing limitations on the Bureau's "regulatory powers."[80] At the outset, the Attorneys do not—and could not—cite to any authority for the proposition that limitations on an agency's enforcement authority somehow limit a *court's* authority to hold entities in contempt for violating a court order.

The Attorneys nonetheless suggest that they can violate the injunction with impunity because the Bureau could not have brought suit, and obtained an injunction, directly against them. But the Bureau *could* have brought such a suit. The Attorneys point to a provision limiting the Bureau's enforcement authority "with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law."[81] For all of the reasons that the Bureau explained in response to Morgan Drexen's similar argument in its motion to dismiss,[82] however, this provision does not prevent the Bureau from bringing an enforcement action to end the practices here—including because the provision by its terms does not "limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or

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[79] *Id*. at 853; *see also Zenith Radio Corp*. *v*. *Hazeltine Research, Inc*., 395 U.S. 100, 112 (1969) (explaining that "a nonparty with notice cannot be held in contempt until shown to be in concert or participation. . . in a proceeding to which [nonparty is] a party").

[80] Doc. 356 at 23.

[81] 12 U.S.C. § 5517(e).

[82] Doc. 25.

H."[83] Those authorities include the Telemarketing Sale Rule, which bars collection of the advance fees at issue in this case, and does not include an attorney exemption.[84]

In any event, whether the Bureau could have brought an enforcement action against the Attorneys for violating the law is beside the point. Nothing prevented the Bureau from suing and obtaining an injunction against Morgan Drexen. Nor did anything prevent that injunction from applying to the full extent authorized by Rule 65(d)—to encompass parties who take over Morgan Drexen's business or otherwise act in concert with it.

VI. COERCIVE AND COMPENSATORY SANCTIONS ARE WARRANTED.

Once a party is found in contempt, the Court has wide discretion in determining the appropriate sanctions.[85] Sanctions for civil contempt may be imposed "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."[86] A court may "excuse minor, technical, or good faith violations of an injunction," but it "likewise has discretion to punish substantial violations when appropriate."[87]

Here, the Attorneys have flagrantly thwarted this Court's efforts to protect consumers from Morgan Drexen's nationwide debt relief scheme. Not only have these Attorneys taken significant measures to stand in the shoes of Morgan Drexen to continue the scheme, but they have also engaged in obstructionist tactics to confuse consumers about important rights that this Court ordered Morgan Drexen

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[83] 12 U.S.C. § 5517(e)(3).
[84] *See* Dodd-Frank Act § 1100C (amending Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6100 *et seq*.); 15 C.F.R. Pt. 310.
[85] *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947).
[86] *Id*.
[87] *Irwin*, 370 F.3d at 932.

and the Bureau to communicate. The Attorneys' conduct warrants significant sanctions—both coercive and compensatory.

1. Coercive sanctions are warranted.

Courts have broad discretion in designing a contempt sanction that will ensure compliance with the court's orders.[88] The two paradigmatic civil contempt sanctions are imprisonment and a per diem fine imposed for each day a contemnor fails to comply with an affirmative court order.[89] Per diem fines exert a constant coercive pressure, and once the commands of the injunction are obeyed, daily fines may be purged.[90]

The Court should order a severe coercive sanction to compel the Attorneys' to comply with its Orders. A coercive sanction of $10,000 per day for each day between June 18, 2015 and the date of any contempt order issued by the Court is appropriate. The Court should also impose a sanction of $20,000 per day for each day that the Attorneys continue to violate the Court's Orders after the date of any contempt order issued by the Court.[91]

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[88] *Falstaff Brewing Corp v. Miller Brewing Co.*, 702 F.2d 770, 779-80 (9th Cir. 1983).

[89] *United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 829 (1994).

[90] *FTC v. Productive Mktg. Inc.*, 136 F. Supp. 2d 1096, 1112-13 (C.D. Cal. 2001) (finding nonparty in civil contempt for failing to turn over assets to a court ordered receivership and issuing a per diem fine that doubled each day the nonparty failed to comply).

[91] The proposed sanctions would be well within the Court's discretion to compel compliance with its Orders. *See, e.g., Koninklijke Philips Electronics N.V. v. KXD Tech., Inc.*, 539 F.3d 1039, 1041 (9th Cir. 2008) (dismissing appeal of contempt sanctions in patent infringement case that included $353,611.70 in attorney's fees, $37,098.14 in costs, $1,284,090.00 in lost royalties, and $10,000.00 per day until the defendants came into compliance with the court's reporting requirements); *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1482 (9th Cir. 1992) (upholding contempt sanction of $10,000 per day in fraud and breach of contract case; noting that if the "$10,000 per day was insufficient to coerce compliance, the appropriate solution would seem to be to remand the case to the

2. Compensatory sanctions are warranted.

Ordinarily, the amount of a compensatory sanction is the actual damage caused to the petitioner by the respondent's contumacious act.[92] However, "a civil compensatory sanction need not always be dependent upon proof of actual loss."[93] In fact, courts are justified in ordering the contemnors to disgorge profits or gross revenue generated from the illicit activity.[94]

Here, given that the Attorneys have preyed upon—and continue to prey upon—the very consumers the Court seeks to protect, nothing less than full redress to Affected Consumers is warranted. The Attorneys should be required 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.

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district court so that it can *increase* the sanction"); *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510 (9th Cir. 1992) (dismissing appeal of sanctions in trade and unfair competition case amounting to $10,000 per day until appellant complied with order and $600,000 in attorneys' fees and costs).

[92] *United States v. Asay*, 614 F.2d 655, 660 (9th Cir. 1980).

[93] *In re: General Motors Corp.*, 110 F.3d 1003, 1018-19 fn. 16 (4th Cir. 1997).

[94] *FTC v. Kuykendall,* 371 F.3d 745, 764 (10th Cir. 2004) (FTC may seek contempt sanctions in an amount reflecting the defendants' gross receipts); *Asay*, 614 F.2d at 660 (finding no abuse of discretion in the imposition of a fine for recovery of all expenses incurred where it was impossible to determine how much money the government 'lost'); *Rebis v. Universal Cad Consultants, Inc.*, No. C-96-4201 SC, 1998 U.S. Dist. LEXIS 12366, at *11 (N.D. Cal. Aug. 11, 1998) (contempt sanction based on gross revenue generated from the illicit product is warranted in order to deter future violations) (citing *Colonial Williamsburg Found. v. Kittinger Co.*, 792 F. Supp. 1397, 1407 (E.D. Va. 1992)).

3. The Attorneys Should be Held Jointly and Severally Liable for Sanctions.

Finally, 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.[95]

VII. CONCLUSION

For the foregoing reasons, the Bureau respectfully requests that the Court hold Vincent Howard, Lawrence Williamson, Howard Law, PC, the Williamson Law Firm, LLC, and Williamson & Howard, LLP, in contempt for their specific and definite violations of the Court's Injunction and Clarification Orders.

Respectfully submitted,

Dated: August 31, 2015

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[95] *NLRB v. AFL-CIO*, 882 F.2d 949, 955 (5th Cir. 1989) ("Where ... parties join together to evade a judgment, they become jointly and severally liable for the amount of damages resulting from the contumacious conduct."); *Colonial Williamsburg Found.*, 792 F. Supp. at 1406 (holding contempt defendants jointly and severally liable because all defendants had actively violated consent judgment).