
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 13-1267-JLS (JEMx)

Date: July 7, 2016

Title: Consumer Financial Protection Bureau v. Morgan Drexen, Inc. et al.

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

Terry Guerrero

Deputy Clerk

N/A

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

Not Present

**PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING IN PART AND DENYING
IN PART PLAINTIFF’S MOTION FOR COMPENSATORY
SANCTIONS (Doc. 435)**

Before the Court is Plaintiff Consumer Financial Protection Bureau’s Motion to enter judgment for compensatory sanctions against Vincent Howard, Howard Law, P.C., Lawrence Williamson, The Williamson Law Firm, LLC, and Williamson & Howard, LLP (the “Attorneys”). (Mot., Doc. 435.) The Attorneys oppose the Motion. (Opp., Doc. 459.) The Court finds this matter appropriate for disposition without oral argument. *See* Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. For the reasons stated below, the Court GRANTS IN PART and DENIES IN PART CFPB’s Motion.

I. BACKGROUND

The instant Motion relates to an enforcement action brought by CFPB against Defendants Morgan Drexen, Inc. and Walter Ledda for violations of the Telemarketing Sales Rule and the Consumer Financial Protection Act. (Complaint, Doc. 1.) Prior to trial, the Court issued terminating sanctions against and entered a permanent injunction enjoining Morgan Drexen. (Terminating Sanctions Order, Doc. 284; PI Order, Doc. 306.) Thereafter, on October 9, 2015, the Court found that “the Attorneys [were] ‘legally identified’ with Morgan Drexen[.]” and that “the Attorneys [had] become ‘a disguised continuance’ of Morgan Drexen[.]” (Contempt Order at 27-28, Doc. 386.) Based on

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these findings, the Court held that “the Attorneys’ actions have brought them ‘in contempt as a successor’ to Morgan Drexen.” (*Id.* at 33.) In relevant part, the Court ordered the Attorneys to “identify[] the total payments they have received from Affected Consumers . . . [and] then [to] refund those payments to CFPB so that CFPB can distribute them back to the relevant consumers.” (*Id.* at 44.)

On February 5, 2016, following issuance of the Contempt Order, the Court issued an order clarifying the Attorneys’ obligation to provide refunds to affected consumers. (Clarifying Order, Doc. 409.) Specifically, the Court clarified that the Attorneys, through the CFPB, should refund to affected consumers “the Fee Amount, that is, the amount of payments made by a consumer less amounts already refunded[,] less amounts paid to creditors on the consumer’s behalf.” (*Id.* at 2.) On May 4, 2016, CFPB filed the instant Motion. (Mot., Doc. 435.) Subsequently, and in anticipation thereof, the Court issued an order freezing the Attorneys’ assets. (Asset Freeze Order, Doc. 441.)

II. LEGAL STANDARD

Civil contempt sanctions “may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard.” *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994). “A contempt fine . . . is considered civil and remedial if it either ‘coerce[s] the defendant into compliance with the court’s order, [or] compensate[s] the complainant for losses sustained.” *Id.* at 829. As such, “[c]ourts have embraced an inherent contempt authority . . . as a power ‘necessary to the exercise of all others[.]’” *Id.* at 831. “The amount of a compensatory contempt fine is in the discretion of the court.” *U.S. v. Asay*, 614 F.2d 655, 660 (9th Cir. 1980).

III. DISCUSSION

CFPB’s Motion raises the following two issues: (1) whether the amount to be refunded by the Attorneys is \$5,326,981.13, the amount proposed by CFPB, or, instead, \$1,851,644.50, the amount proposed by the Attorneys, and (2) whether CFPB is entitled

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to an award of \$85,000 to cover the costs of administering the refunds. (Mot. at 2.) The Court considers each issue in turn.

A. Amount to be Refunded to Affected Consumers

According to the parties’ briefing, the Attorneys provided a full accounting to CFPB on February 19, 2016. (Mot. at 8.) Thereafter, the CFPB employed Timothy Hanson, a forensic accountant, to calculate the refunds owed by the Attorneys. (*Id.*) In his declaration, Hanson states that “[t]he data file produced [by the Attorneys] contained 7,623 records.” (Hanson Decl. ¶ 4, Doc. 435-2.) Each record included information concerning (1) the full name and corresponding contact information for each consumer, (2) the “engagement date,” (3) the “new payments collected,” (4) any “amounts transferred to Trust,” (5) the amounts “paid to creditors,” (6) the amounts “refunded to client,” (7) the amounts “sent to new counsel,” and (8) the “amount applied to fees.” (*Id.*)

Relying on the Court’s clarification order, Hanson “calculated the amount of refund owed to each consumer by subtracting from the amount each consumer had paid (listed in the ‘new payments collected’ column) the amount (if any) the consumer had been refunded (reflected in the ‘[r]efunded to client’ column of the spreadsheet) and subtracting the amount (if any) the Attorneys had paid creditors on behalf of the consumer (reflected in the ‘[p]aid to [c]reditors’ column).” (*Id.* ¶ 5.) Additionally, “where the consumer’s refund and/or amount paid to creditors exceeded the amount reflected in the ‘new payments collected’ column,” Hanson “assigned these records a zero value to reflect that the consumer is not owed any additional refund.” (*Id.* ¶ 6.) According to Hanson, these calculations yielded a refund amount equal to \$5,326,981.13. (*Id.*)

In their Opposition, the Attorneys raise two objections to CFPB’s methodology. First, the Attorneys contend that CFPB erred in its refund calculation.¹ (Opp. at 4-5.) Specifically, the Attorneys argue that CFPB failed to take into account “funds transferred

¹ In their Opposition, the Attorneys also contend that Williamson should not be held jointly and severally liable for the refund amounts. (Opp. at 5-6.) However, this issue is not before the Court on this Motion.

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to Trust” and “refunds sent to a location at the client’s direction,” including, for example, “transfer[s] . . . to [a client’s] new attorney.” (*Id.* at 4, n.1-2.) These amounts total \$1,948,687.58 and \$704,287.19, respectively. (*Id.* at 4.) According to the Attorneys, CFPB’s refund estimate should be reduced by each of these amounts. (*Id.*)

The Attorneys’ first argument is unpersuasive. The Court’s Clarifying Order was clear: namely, the Attorneys were instructed to refund “the Fee Amount, that is, the amount of payments made by a consumer less amounts already refunded less amounts paid to creditors on the consumer’s behalf.” (Clarifying Order at 2.) Significantly, nowhere in that order did the Court permit – expressly or impliedly – the Attorneys to transfer funds to trust accounts or to other attorneys. Moreover, the Court has never suggested that the Attorneys could avoid their refund obligations merely by transferring funds to a client trust account or to an account controlled by a consumer’s purported new attorney. Additionally, even if the Court were inclined to accept the Attorneys’ argument, the Attorneys failed to provide any evidence to substantiate the amounts that were purportedly held in trust or transferred to new attorneys.²

The Attorneys’ second argument concerns CFPB’s decision to zero-out those consumer accounts where the Attorneys refunded or otherwise paid to creditors amounts that exceeded the total fees they collected. (Opp. at 5.) Specifically, the Attorneys challenge and object to “this draconian approach.” (*Id.*) Here, too, the Attorneys’ argument is unpersuasive. The problem with the Attorneys’ position is that it ignores that the refunds will be returned to individual consumers. That is, even if a particular consumer experienced a net gain for some reason, this does not justify a reduced refund for a different consumer – which is the position advocated by the Attorneys.

Accordingly, the Court GRANTS CFPB’s Motion in so far as the amount to be refunded to affected consumers is \$5,326,981.13.

B. CFPB’s Prospective Administrative Costs

² In fact, as the Court has previously noted, the Attorneys have been inconsistent about these figures. (*See, e.g.*, Budget Request Order at 5, n.2, Doc. 449 (detailing Howard’s inconsistent statements concerning the amount of funds remaining in the trust accounts).)

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In its second request, CFPB seeks an order from the Court obligating the Attorneys to pay an additional \$85,000 to CFPB “for administering refunds to 7,623 Affected Consumers[.]” (Mot. at 10.) In support of its request, CFPB submits a declaration from Rumana Ahmad, who “oversee[s] the operations of the Bureau’s Civil Penalty Fund and Bureau-administered redress program.” (Ahmad Decl. ¶ 1, Doc. 435-2.) Ahmad’s estimate is “based on contract pricing that the Bureau has with two third-party administrators that currently perform redress distribution work on behalf of the Bureau.” (*Id.* ¶ 4.) Moreover, Ahmad indicates that CFPB’s estimate includes the costs associated with “a redress administrator” who will “provide basic consumer support services[.]” (*Id.* ¶ 5.) The CFPB’s administrative cost estimate also accounts for (1) mailing checks to affected consumers with an explanatory cover letter and (2) reminder letters for those consumers whose checks have not been negotiated within forty-five days of the check’s expiration date. (*Id.*)

At this time, however, CFPB’s request for administrative costs is entirely prospective. CFPB has not yet incurred this amount of fees in connection with administering refunds and, therefore, Ahmad’s declaration is necessarily speculative. For these reasons, the Court concludes that CFPB’s request is better considered after the refunds have been administered and CFPB is able to submit to the Court a precise accounting of the costs incurred. Accordingly, the Court DENIES, without prejudice, CFPB’s request for administrative costs.

IV. CONCLUSION

For the reasons stated above, the Court GRANTS IN PART and DENIES IN PART CFPB’s Motion. The Court GRANTS the Motion as to CFPB’s requested compensatory sanctions. Thus, the Attorneys are ORDERED³ to pay \$5,326,981.13 in

³ CFPB’s Motion and its Proposed Order are each captioned as a request for entry of a “judgment.” (Mot. at 1; Proposed Order, Doc. 436-1.) However, in the body of its Motion, CFPB variously requests either a “judgment” (Mot. at 1, 10) or, instead, an “order” (*id.* at 7-8, 10). CFPB provides no authority in support of its request for a judgment. Accordingly, the

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restitution to the CFPB. This amount is to be refunded by CFPB to individual consumers. Separately, the Court DENIES the Motion, without prejudice, as to CFPB's request to prospectively be awarded administrative costs.

Initials of Preparer: tg

Court finds that a final order is the appropriate procedural mechanism by which to resolve this Motion.
