JEFFREY PAUL EHRLICH, FL Bar # 51561
Deputy Enforcement Director
JAN SINGELMANN, DC Bar # 999087
E-mail: jan.singelmann@cfpb.gov
Phone: 202-435-9670
AMY RADON, CA Bar # 277727
E-mail: amy.radon@cfpb.gov
Phone: 202-435-9142
P. SOLANGE HILFINGER-PARDO, CA Bar # 320055
E-mail: patricia.hilfinger-pardo@cfpb.gov
Phone: 202-435-9024
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
Fax: (202) 435-7722

LEANNE HARTMAN, CA Bar # 264787 - Local Counsel
Consumer Financial Protection Bureau
301 Howard St., Suite 1200
San Francisco, CA 94105
Phone: (415) 844-9787
Email: leanne.hartman@cfpb.gov
Attorneys for Plaintiff
Consumer Financial Protection Bureau

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Consumer Financial Protection Bureau, Plaintiff, v. Vincent Howard, Lawrence Williamson, Howard Law, P.C., The Williamson Law Firm, LLC, and Williamson & Howard, LLP, Defendants.	Case No. 8:17-CV-00161 (JLS) (JEMx) **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR TERMINATING AND MONETARY SANCTIONS PURSUANT TO FED. R. CIV. P. 11 AND 28 U.S.C. § 1927**

The Consumer Financial Protection Bureau brought this enforcement action against Vincent Howard; Lawrence Williamson; Howard Law, P.C.; The Williamson Law Firm; and Williamson & Howard, LLP ("Defendants" or "Attorneys") alleging that they violated consumer financial protection laws as part of their role in an unlawful debt-relief scheme that they perpetrated along with Morgan Drexen, Inc. Now, in a Hail-Mary attempt to end prematurely the litigation, Defendants seek terminating sanctions against the Bureau (as well as attorneys' fees) for the Bureau's purportedly improper conduct in prosecuting a contempt motion against them over two and a half years ago in a separate enforcement action against Morgan Drexen.

The Court should reject Defendants' motion for sanctions out of hand. Neither Federal Rule of Civil Procedure 11 nor 28 U.S.C. § 1927 permits Defendants to seek sanctions in *this* case for the Bureau's conduct in an entirely separate case. Nor can they seek sanctions under Rule 11 "after the district court has decided the merits of the underlying dispute."[1] The Court long ago decided the contempt motion on which Defendants' motion for sanctions is based, so Defendants' request for Rule 11 sanctions comes far too late.

In addition to these procedural problems, Defendants' motion is substantively meritless. Defendants flagrantly violated clear orders of this Court, took over Morgan Drexen's role in a scheme that this Court had found unlawful, and engaged in conduct that this Court had enjoined. It was entirely reasonable for the Bureau to seek contempt in those circumstances.

---

[1] *Islamic Shura Council of S. Cal. v. FBI*, 757 F.3d 870, 873 (9th Cir. 2014) (citing Fed. R. Civ. P. 11, Advisory Committee's Note to 1993 Amendments).

I. BACKGROUND

A. The *Morgan Drexen* enforcement action

In 2013, the Bureau brought suit against Morgan Drexen for deceiving consumers and charging unlawful upfront fees for debt-relief services.[2] The Bureau alleged that Morgan Drexen partnered with attorneys across the country to carry out its scheme.[3] Morgan Drexen allegedly would enroll financially distressed consumers in a program under which Morgan Drexen's partner attorneys purportedly would provide bankruptcy and debt-relief services.[4] Because it is unlawful to charge upfront fees for debt-relief services,[5] Morgan Drexen claimed that the upfront fees were for bankruptcy services.[6] But, as alleged in the Complaint, little to no bankruptcy work was ever actually performed.[7] After the Court found that Morgan Drexen deliberately fabricated evidence of purported bankruptcy work in the case, it entered judgment against Morgan Drexen and enjoined the company from charging any further fees to the consumers it had already victimized and from using or disclosing consumer files.[8] On the same day that the Court entered that injunction, Morgan Drexen shut down.[9]

B. The Attorneys' involvement and contempt proceedings in *Morgan Drexen*

After the Court entered judgment against Morgan Drexen, Howard Law, Williamson & Howard, and the Williamson Law Firm—who were not parties to the

---

[2] *CFPB v. Morgan Drexen, Inc.*, No. 8:13-cv-1267 (C.D. Cal.) (complaint filed Aug. 20, 2013).
[3] *See* Compl. ¶¶ 7-14 (Doc. 1), *CFPB v. Morgan Drexen*.
[4] *Id.* ¶¶ 13-14.
[5] 16 C.F.R. § 310.4(a)(5)(i).
[6] *Morgan Drexen* Compl. ¶¶ 31-33.
[7] *Id.* ¶ 60.
[8] Order Granting Pl.'s Mot. for Sanction of Default J. Against Morgan Drexen, Inc. (Doc. 284); Order re: Permanent Inj. (Doc. 306), *CFPB v. Morgan Drexen*.
[9] Notice of Cessation of All Operations of Morgan Drexen (Doc. 307), *CFPB v. Morgan Drexen*.

Morgan Drexen case but had been involved in the debt-relief scheme—sought clarification or modification of the injunction to allow Morgan Drexen's bankruptcy trustee to disclose the consumer files to them.[10] The Bureau did not oppose that request, but asked that the Court preclude the Attorneys from using the files to collect fees from Affected Consumers (*i.e.*, those consumers already victimized by Morgan Drexen's unlawful scheme).[11]

In its July 6, 2015 Clarification Order, the Court permitted the firms to obtain consumer files from Morgan Drexen, but refused to give them "unfettered access"—and made clear that they could not use those files to continue collecting fees from harmed consumers.[12] It reasoned 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."[13] The Clarification Order further advised that, under Federal Rule of Civil Procedure 65(d), the injunction also applied to persons who act "in concert" with the enjoined party, and that it "appear[ed] 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."[14]

The Attorneys sought an emergency stay of this order from the Ninth Circuit, but that court declined to grant a stay.[15]

Having failed to obtain judicial relief from the Clarification Order, the Attorneys took matters into their own hands and simply violated the order. They circumvented the

---

[10] Am. and Corrected *Ex Parte* Mot. for Clarification or Modification of Inj. (Doc. 313), *CFPB v. Morgan Drexen*.
[11] Pl.'s Conditional Opp'n to Ch. 7 Trustee's *Ex Parte* Appl. for Order Clarifying Order re: Permanent Inj. at 2 (Doc. 318), *CFPB v. Morgan Drexen*.
[12] Order at 11 (Doc. 326), *CFPB v. Morgan Drexen* ("Clarification Order").
[13] *Id.*
[14] *Id.* at 10.
[15] *CFPB v. Howard Law, P.C.*, No. 15-56089 (9th Cir.) (Docs. 3, 11).

Morgan Drexen trustee to get full access to Morgan Drexen's files, and then used those files to continue collecting fees from harmed consumers—exactly what this Court had forbidden.[16] They also sent out letters to consumers that directly contradicted letters that this Court instructed the Bureau and the Morgan Drexen trustee to send to consumers advising them of their rights.[17] And they stepped into Morgan Drexen's shoes, taking over its role in the operation.[18] They hired Morgan Drexen's officers and employees, took over its departments, and used its files to continue charging the same consumers the same fees under the same contracts.[19]

Once it discovered these facts, the Bureau filed an *ex parte* application on August 19, 2015, asking the Court to hold the Attorneys in contempt.[20] After full briefing, on October 9, 2015, the Court held the Attorneys in contempt as successors, finding that it was "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."[21]

C. The Attorneys' appeal

The Attorneys appealed the Contempt Order.[22] On appeal, the Ninth Circuit held that the Attorneys could not be bound as successors because the injunction "did not expressly bind 'successors,'" and because there was not sufficient evidence in the "current iteration" of the record that "the Attorneys acquired Morgan Drexen's assets

---

[16] Order Holding [Attorneys] in Contempt at 35 (Doc. 386), *CFPB v. Morgan Drexen* ("Contempt Order").
[17] *Id.* at 38.
[18] *Id.* at 33.
[19] *Id.* at 30-33.
[20] Pl.'s *Ex Parte* Appl. for an Order to Show Cause (Doc. 348), *CFPB v. Morgan Drexen* ("Contempt Mot.").
[21] Contempt Order at 33.
[22] *CFPB v. Howard Law, P.C.*, No. 15-56576 (9th Cir.).

after the Permanent Injunction was entered."[23] The court of appeals further held that "[i]t could be, however, that the Attorneys and Morgan Drexen were so identified in interest prior to the entry of the Permanent Injunction … as to warrant a finding of legal identity based on pre-injunction conduct."[24] The court accordingly "reverse[d] and remand[ed] for additional and more detailed findings and conclusions."[25] On remand, the Bureau declined to continue pursuing contempt against the Attorneys.

D. This enforcement action

On January 30, 2017, the Bureau brought this enforcement action against the Attorneys. The Bureau alleges that Defendants violated the Telemarketing Sales Rule (TSR), 16 C.F.R. pt. 310, by charging upfront fees for debt-relief services, falsely representing in advertisements that they did not charge upfront fees for debt-relief services, and providing substantial assistance to Morgan Drexen's violations of the TSR.[26] Defendants moved to dismiss, and the Court denied that motion on May 26, 2017.[27] Among other things, the Court rejected Defendants' argument that the Bureau should be judicially estopped from pursuing this enforcement action against them because the agency previously charged Morgan Drexen, not them, with the same conduct.[28] In rejecting that argument, the Court made clear that "the agency's choice to file suit solely against Morgan Drexen, alleging that the company committed various violations of the TSR, is not 'clearly inconsistent' with the agency['s] subsequent

---

[23] *CFPB v. Howard Law, P.C.*, 671 Fed. Appx. 954, 955 (9th Cir. 2016) (internal quotations omitted).
[24] *Id.* at 955-56 (internal quotations and ellipsis omitted).
[25] *Id.* at 956 (internal quotations omitted).
[26] Compl. ¶¶ 87-97 (Doc. 1).
[27] Defs.' Mot. to Dismiss (Doc. 27); Order Denying Defs.' Mot. to Dismiss ("MTD Order") (Doc. 42).
[28] MTD Order at 12.

decision to take action against Defendants."[29] The Court similarly rejected Defendants' argument that issue preclusion principles should bar the Bureau from pursuing its claims against them because the Bureau previously alleged that Morgan Drexen engaged in the conduct for which it now seeks to hold Defendants liable.[30] This defense failed, the Court explained, because "the *Morgan Drexen* action did not resolve whether Morgan Drexen acted alone or in concert with others."[31] Discovery in this case is currently underway.

II. ARGUMENT

In an attempt to relitigate both the contempt motion in *Morgan Drexen* and their motion to dismiss this case, Defendants now seek sanctions against the Bureau under Rule 11 and 28 U.S.C. § 1927. Defendants contend that terminating sanctions as well as an award of attorneys' fees are warranted because, in the contempt proceedings in *Morgan Drexen*, the Bureau purportedly improperly (1) "argued that Defendants were bound [by the Morgan Drexen injunction] because they 'acted in concert' with Morgan Drexen before the injunction was issued," and (2) presented inaccurate facts to show that Defendants had become Morgan Drexen's successors by "stepp[ing] into the shoes of Morgan Drexen" and "t[aking] over Morgan Drexen's debt relief business."[32] Defendants' request is both procedurally improper and substantively meritless.

A. Defendants' motion is procedurally improper

As a threshold matter, a Rule 11 sanctions motion "cannot be served after the district court has decided the merits of the underlying dispute giving rise to the questionable filing."[33] The Attorneys' motion seeking sanctions for the Bureau's actions

---

[29] *Id.* at 12.
[30] MTD Order at 12-13; *see also* Defs.' Mot. to Dismiss at 20-24 (Doc. 27).
[31] MTD Order at 12-13.
[32] Defs.' Mem. (Doc. 70) at 1-2 (internal quotations omitted).
[33] *Islamic Shura Council*, 757 F.3d at 873; *see also* Fed. R. Civ. P. 11, Advisory Committee's Notes to the 1993 Amendments ("[A] party cannot delay serving its Rule 11 motion until conclusion of the case (or judicial rejection of the offending contention).").

in prosecuting the contempt motion in *Morgan Drexen* thus comes far too late. Not only has the Court decided the merits of the underlying dispute (the contempt motion), the Ninth Circuit has resolved the Attorneys' appeal, and the case is closed.[34]

In addition, Defendants "present[] no argument or authority that would authorize the court to grant sanctions against [the Bureau] for actions committed in a separately filed case."[35] The Ninth Circuit has made clear that, for purposes of 28 U.S.C. § 1927 sanctions motions, district courts do "not have power to sanction conduct that occurred in a different court in a different case."[36] That this Court is the same court that presided over the *Morgan Drexen* action does not matter. "The principal purpose of imposing sanctions under 28 U.S.C. § 1927 is the deterrence of intentional and unnecessary delay in the proceedings."[37] That purpose "is frustrated by the imposition of sanctions in two distinct cases, not in two different courts."[38] Thus, a party cannot seek § 1927 sanctions based on conduct in a different case, even if the new case is proceeding before the same court.[39] Nor could Defendants claim that the Bureau has somehow unreasonably and vexatiously

---

[34] *See Howard Law*, 671 Fed. Appx. 954 (resolving appeal); Minutes, Status Conference (Doc. 512), *CFPB v. Morgan Drexen* (closing case).

[35] *Foley v. Kennedy*, No. 03-2203, 2004 WL 1243899, at *10 (N.D. Cal. May 27, 2004) (denying Rule 11 sanctions motion).

[36] *Trulis v. Barton*, 107 F.3d 685, 694 (9th Cir. 1995); *accord Inviron Techs., Inc. v. W. States Int'l, Inc.*, No. 1:15-cv-01643, 2016 WL 861397, at *5 (E.D. Cal. Mar. 7, 2016) ("[A]llegations of opposing counsel's … misconduct in other proceedings cannot give rise to sanctions under § 1927."); *Oliver v. In-N-Out Burgers*, 945 F. Supp. 2d 1126, 1130 n.1 (S.D. Cal. 2013) ("The Court may only sanction a party based on activities that occurred in the case before the district court.").

[37] *Raymark Indus., Inc. v. Baron*, No. 96-7625, 1997 WL 359333, at *7 (E.D. Pa. June 23, 1997) (internal quotations and alteration omitted) (quoting *Zuk v. E. Pa. Psychiatric Inst.*, 103 F.3d 294, 297 (3d Cir. 1996)).

[38] *Id.* at *7 n.10.

[39] *See id.* at 7 & n.10.

multiplied proceedings under 28 U.S.C. § 1927 by filing this suit against Defendants. "The filing of a complaint … may not be sanctioned pursuant to § 1927."[40]

B. The Bureau did not engage in sanctionable conduct

Defendants' motion is also substantively meritless, as the Bureau's attempt to hold the Attorneys in contempt was entirely proper.

1. No sanctions are warranted under 28 U.S.C. § 1927

Defendants' contention that the Bureau "multiplie[d] proceedings … unreasonably and vexatiously" under 28 U.S.C. § 1927 by seeking contempt against them is frivolous. The Court made it clear in its Clarification Order that although the Attorneys could obtain their customer files from Morgan Drexen, they could not use those files to continue collecting fees from Affected Consumers.[41] The Court further held that the Attorneys would be bound by the injunction.[42] The Attorneys sought a stay of the Clarification Order from the Ninth Circuit, but the Ninth Circuit denied it.[43] Defendants then nonetheless violated the Court's order by using the files to collect fees from Affected Consumers, and they took over Morgan Drexen's operations to continue carrying out the scheme. In an effort to keep consumers paying fees for the debt-relief program, Defendants even sent consumers letters that directly contradicted letters that the Court ordered the Bureau and the Morgan Drexen Trustee to send out. Defendants' blatant disregard of the Court's order flew in the face of the black-letter law that, "[a]bsent a stay, 'all orders and judgments of courts must be complied with promptly.'"[44] It was

---

[40] *In re Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 435 (9th Cir. 1996).
[41] Clarification Order at 11.
[42] *Id.* at 10.
[43] Order, *CFPB v. Howard Law, P.C.*, No. 15-56089 (Doc. 11).
[44] *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983) (quoting *Maness v. Meyers*, 419 U.S. 449, 458 (1975)); *see also In re Crystal Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1365 (9th Cir. 1987) (Where "no stay [is] obtained," a "party cannot disobey a court order.").

hardly "unreasonabl[e]" or "vexatious[]" for the Bureau to pursue contempt in these circumstances. Defendants' request for sanctions under 28 U.S.C. § 1927 is therefore baseless.

2. No sanctions are warranted under Rule 11

Nor does Defendants' contention that the Bureau violated Rule 11 by seeking contempt against them have any merit. To support their request under Rule 11, Defendants first complain that the Bureau made a frivolous legal contention by seeking to hold them in contempt based on their pre-injunction activity in concert with Morgan Drexen (and that the Bureau's "non-frivolous" argument that the Attorneys were bound as successors did not redeem the Bureau's contempt motion, as the Bureau did not raise that argument until the reply brief).[45] But the Court's Clarification Order made clear that the Attorneys were bound by the injunction in the *Morgan Drexen* case. It was hardly unreasonable for the Bureau to seek to enforce that order when it learned that Defendants were violating it—particularly given the law's command that "[a]bsent a stay, all orders and judgments of courts must be complied with promptly.'"[46] Moreover, Defendants' objection to the legal argument that they were bound by the *Morgan Drexen* injunction based on their pre-injunction activity cannot be squared with the Ninth Circuit's recognition on appeal that the Attorneys *could* be bound "based on pre-injunction conduct."[47] And, in any event, the Bureau argued at the outset of the contempt process that the Attorneys had "stepped into the shoes of Morgan Drexen," including by hiring former Morgan Drexen employees, to keep the scheme alive.[48]

The Attorneys' second Rule 11 claim—that the Bureau misrepresented facts to show that the Attorneys became successors to Morgan Drexen—fares no better. The

---

[45] *See* Defs.' Mem. at 8-12.
[46] *Donovan*, 716 F.2d at 1240 (internal quotations omitted).
[47] *Howard Law*, 671 Fed. Appx. at 956.
[48] Contempt Mot. at 12; *see also id.* at 1, 7-8.

Attorneys appear to contend that it is impossible for them to be successors to Morgan Drexen because, as the Bureau "now represent[s]" (and Defendants apparently concede), the Attorneys have been involved all along as principals supervising Morgan Drexen as their agent in carrying out the unlawful debt-relief scheme.[49] This Court has repeatedly rejected just this sort of argument. As it explained in response to the Attorneys' Rule 60(b) motion in the *Morgan Drexen* matter, it is "absurd" to suggest that the Attorneys would be "immune from successorship liability because they also happened to have played a role in Morgan Drexen's earlier (illegal) conduct."[50] In addition, as the Court recognized in rejecting Defendants' judicial estoppel and issue preclusion arguments in their motion to dismiss in this case, the Bureau's claims here are consistent with its earlier litigation against Morgan Drexen.[51] Whatever the Attorneys' relationship with Morgan Drexen before the Court entered the injunction against that company, the Attorneys unquestionably took over *Morgan Drexen's role* in their shared scheme—and it was entirely appropriate for the Bureau to contend that Defendants were successors to Morgan Drexen on that basis. Indeed, consistent with this history, the Bureau alleges in this action that the Attorneys violated the TSR both before and after they took over the debt relief operation from Morgan Drexen.

CONCLUSION

For all the foregoing reasons, the Court should deny Defendants' motion for sanctions.

---

[49] Defs.' Mem. at 14-17.

[50] Order Holding In Abeyance Attorneys' Rule 60(b) Mot. at 8 (Doc. 500), *CFPB v. Morgan Drexen*.

[51] *See* MTD Order at 12-13.

Dated: March 2, 2018

Respectfully submitted,

CONSUMER FINANCIAL PROTECTION BUREAU

KRISTEN A. DONOGHUE
Enforcement Director

JEFFREY PAUL EHRLICH
Deputy Enforcement Director

R. GABRIEL D. O'MALLEY
Assistant Litigation Deputy

/s/ Jan Singelmann
Jan Singelmann
Amy Radon
P. Solange Hilfinger-Pardo
Enforcement Attorneys
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
Fax: (202) 435-7722

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2018, a copy of the foregoing document was served via electronic mail to counsel for Defendants, listed below:

Douglas B. Vanderpool (SBN 162857)
Heather A. Tovar (SBN 237004)
The Vanderpool Law Firm
330 Main Street, Suite 203B
Seal Beach, CA 90740
Tel: 562-431-6900
Fax: 714-276-0558
doug@vanderpool-law.com
heather@vanderpool-law.com

/s/ Jan Singelmann
Jan Singelmann
Enforcement Attorney
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
Fax: (202) 435-7722