
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

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

Date: March 16, 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 PLAINTIFF'S MOTION
TO ENTER FINAL JUDGMENT (Doc. 393)**

Before the Court is Plaintiff Consumer Financial Protection Bureau's Motion to Enter Final Judgment Against Defendant Morgan Drexen, Inc. (Mot., Doc. 393.) Having considered CFPB's briefing and heard oral argument, the Court GRANTS CFPB's Motion. The Court enters a Final Judgment concurrent with this Order.

I. BACKGROUND

The facts and procedural history in this matter are well-documented. (*See generally* Order on Terminating Sanctions, "OTS," Doc. 284; Permanent Injunction, Doc. 306.) This Motion follows the Court's entry of default judgment against Morgan Drexen and order granting CFPB's request for terminating sanctions. (OTS at 27.) As a consequence of the default judgment, the Court found that "Morgan Drexen is deemed to have violated the CFPA and TSR[.]" (Permanent Injunction at 2.) CFPB's request for a Final Judgment followed.

II. DISCUSSION

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CFPB seeks to recover restitution of “the total unlawful fees charged or received by Morgan Drexen,” and requests that Morgan Drexen be assessed “a significant civil money penalty.” (Mot. at 3, 5.) The Court considers each request in turn.

A. Restitution

CFPB seeks a monetary judgment against Morgan Drexen in the amount of \$132,882,488. (*Id.* at 3.) According to CFPB, “[t]his amount represents the total unlawful fees charged or received by Morgan Drexen between October 27, 2010, the date when the Telemarketing Sales Rule went into effect, and June 18, 2015, when Morgan Drexen ceased operations.” (*Id.*) CFPB supports its request with a declaration by Timothy Hanson, a forensic accountant at the CFPB. (Hanson Decl., Doc. 393-1.) For the period of October 27, 2010 to August 31, 2014, Hanson’s analysis relies upon data produced in discovery by Morgan Drexen. (*Id.* ¶¶ 6-7.) For the remaining months, Hanson incorporates “projections about fees that Morgan Drexen charged or received for the period” between September 1, 2014 and June 18, 2015. (*Id.* ¶ 6 (describing methodology for “Projected Fees”).)

Hanson’s analysis distinguishes between two types of “Affected Consumers,” defined as those individuals who enrolled in Morgan Drexen’s dual services program. (*Id.* ¶ 8.) The first group includes Affected Consumers who enrolled in Morgan Drexen’s dual services program on the basis of advertisements that the Court has deemed deceptive. (*Id.* ¶¶ 8-9.) The second group consists of Affected Consumers who enrolled in the dual services program without the aid of deceptive advertisements. (*Id.*) In his declaration, Hanson states that of the 59,507 Affected Consumers, 30,976 of them enrolled in response to a deceptive advertisement. (*Id.* ¶ 9.)

Separately, Hanson distinguishes between the types of fees Morgan Drexen charged to Affected Consumers. (*Id.* ¶¶ 10-13, 15.) Hanson defines “Upfront Fees” to include both the “Bankruptcy Planning and Preparation Fee,” as well as certain “monthly maintenance fees” that were charged by or paid to Morgan Drexen prior to an Affected Consumer’s first payment to a creditor. (*Id.* ¶¶ 11-13.) Hanson defines “Subsequent Fees” as the remaining “monthly maintenance fees” paid to Morgan Drexen after the date of an Affected Consumer’s first creditor payment. (*Id.* ¶ 15.)

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As CFPB correctly states, for the 30,976 Affected Consumers who enrolled in the dual services programs on the basis of deceptive advertisements, “the full measure of restitution encompasses both the unlawful upfront fees charged as well as any subsequent (*i.e.*, non-upfront) fees that the consumers paid.” (Mot. at 4.) Hanson calculates that these Affected Consumers paid Morgan Drexen a total of (1) \$46,625,350 in Upfront Fees, (2) \$24,981,004 in Subsequent Fees, and (3) \$5,675,205 in Projected Fees. (Hanson Decl. ¶¶ 14-17.) In aggregate, these Affected Consumers paid Morgan Drexen \$77,281,559 in improper fees. (*Id.* ¶ 17.)

For the remaining 28,531 Affected Consumers, who enrolled in a Morgan Drexen dual services program without reliance on a deceptive advertisement, “the appropriate measure of restitution is only the amount of upfront fees they were charged during the relevant time period.” (Mot. at 5.) Hanson calculates that these Affected Consumers paid Morgan Drexen a total of (1) \$44,061,821 in Upfront Fees, and (2) \$11,539,107 in Projected Fees. (Hanson Decl. ¶¶ 18-20.) In total, according to Hanson, these Affected Consumers paid Morgan Drexen \$55,600,928 in improper fees. (*Id.* ¶ 20.)¹

In sum, for the period between October 27, 2010 and June 18, 2015, Hanson states that Morgan Drexen “charged or received a total of \$132,882,488 in Upfront Fees and Subsequent Fees from the two groups of Affected Consumers.” (*Id.* ¶ 21.) The Court finds Hanson’s methodology sound and his conclusions persuasive. Accordingly, the Court awards restitution to CFPB in the amount of \$132,882,488.

B. Civil Penalty

In addition to a recovery in restitution, CFPB also requests the Court to assess a “significant civil money penalty” against Morgan Drexen. (Mot. at 5.) The Consumer Financial Protection Act provides that any person who “violates . . . any provision of

¹ At oral argument, the Court noted an apparent typographical error in paragraph 20 of Hanson’s declaration, wherein he refers to “Affected Consumers who enrolled in response to a deceptive advertisement[.]” (Hanson Decl. ¶ 20.) CFPB clarified that this was, indeed, an inadvertent error and that paragraph 20 of Hanson’s declaration actually refers to Affected Consumers who enrolled without reliance on a deceptive advertisement. After the hearing, CFPB filed a supplemental chart clarifying the error. (Supplemental to Plaintiff’s Motion, Ex. A, Doc. 424-1.)

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Federal consumer financial law *shall forfeit and pay a civil penalty[.]* See 12 U.S.C. § 5565(c)(1) (emphasis added). Here, because the Court previously determined that Morgan Drexen violated various provisions of the CFPB (Permanent Injunction at 2), the Court shall impose a civil penalty pursuant to § 5565(c)(1). The CFPB sets forth three tiers of penalties, with heightened penalties associated with unlawful conduct that was “knowing” or “reckless.” See 12 U.S.C. § 5565(c)(2) (setting the maximum penalties for “knowing” or “reckless” conduct at \$1,000,000 per day or \$25,000 per day, respectively). Finally, § 5565(c)(3) sets forth certain mitigating factors that the Court must consider.

Id.

Morgan Drexen’s unlawful conduct and willful attempts to mislead the Court are well-documented. (See generally OTS at 18; Permanent Injunction at 2-3.) Specifically, CFPB alleged – and Morgan Drexen, by way of default, admitted – that Morgan Drexen made “false and misleading” representations that “constitute deceptive acts or practices” under the CFPB. (Complaint ¶¶ 94, 97; Permanent Injunction at 2-3 (detailing Morgan Drexen’s various CFPB violations).) Moreover, the Court previously concluded that Morgan Drexen acted “willfully and in bad faith” when it falsified evidence and “engag[ed] in practices that . . . undermined the integrity of judicial proceedings.” (OTS at 17.) Although these findings arguably demonstrate that Morgan Drexen’s violations were “willful” under § 5565(c)(3), at a minimum they confirm that Morgan Drexen’s conduct was “reckless.”

“Reckless” violations of the CFPB may support penalties of up to \$25,000 per day. See, e.g., *Consumer Financial Protection Bureau v. Siringoringo*, No. SACV 14-1155 JVS (AJWx), 2016 WL 102435, at *7, n.4 (C.D. Cal. Jan. 7, 2016) (describing penalty tiers under § 5565(c)(3)). Here, CFPB requests a civil penalty of \$40,000,000. (Mot. at 7.) Because the unlawful conduct at issue occurred over a span of 1,695 days between October 27, 2010 and June 18, 2015, CFPB’s request amounts to a penalty of approximately \$23,598.82 per day, a number that falls within the statutory limit set forth in § 5565(c)(3). Alternatively, if considered against the 59,507 Affected Consumers, CFPB’s request amounts to a penalty of \$672.19 for each individual harmed. See *Siringoringo*, 2016 WL 102435 at *7 (concluding that a \$12 million civil penalty for conduct that affected 2,400 customers over a two-year period does not exceed § 5565(c)(2)(A)’s \$5,000 per day threshold). The Court finds CFPB’s proposed

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\$40,000,000 penalty to be both statutorily permitted and reasonable when set against the gravity of Morgan Drexen's misconduct.

As directed by the CFPA, the Court must also take into account certain mitigating factors. *See* 12 U.S.C. § 5565(c)(3). After careful consideration of Morgan Drexen's conduct, the Court finds that none of the enumerated statutory factors – i.e., evidence of good faith, the gravity of the violation, the losses suffered by the consumer, or the history of previous violations – warrant a more lenient penalty. *See Siringoringo*, 2016 WL 102435, at *7 (refusing to mitigate \$12 million penalty absent evidence on the record). If anything, consideration of these factors serve only to further illustrate Morgan Drexen's bad-faith and the far-reaching magnitude of the harm inflicted on consumers. As a result, the Court finds no basis for mitigating Morgan Drexen's civil penalty.

III. CONCLUSION

For the reasons stated, the Court GRANTS CFPB's Motion. Concurrent with this Order, the Court enters a Final Judgment against Morgan Drexen that awards \$132,882,488 in restitution and imposes a \$40,000,000 civil penalty pursuant to the CFPA.

Initials of Preparer: tg