IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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KANAWHA COUNTY CIRCUIT COURT

STATE OF WEST VIRGINIA, ex rel.
DARRELL V. MCGRAW, JR.,
Attorney General[1]
Plaintiff,

v.

Civil Action No. 11-C-829
Judge Louis H. Bloom

MORGAN DREXEN, INC., HOWARD | NASSIRI,
VINCENT D. HOWARD, DAMIAN J. NASSIRI,
LAWRENCE W. WILLIAMSON,
RACHELLE MCINTYRE-NICHOLSON,
WALTER JOSEPH LEDDA, individually and
in his capacity as majority owner and CEO of
MORGAN DREXEN, INC.
Defendants.

FINAL ORDER

On September 7, 2011, came the Plaintiff, the State of West Virginia *ex rel.* Darrell V. McGraw, Jr., Attorney General (State or Attorney General), by counsel Douglas L. Davis and Matthew Stonestreet, Assistant Attorney Generals, and the Defendants—Morgan Drexen, Inc., by counsel Alexander Macia, Leah P. Macia, and Bruce M. Jacobs; Howard | Nassiri, Vincent D. Howard, Damian J. Nassiri, and Lawrence W. Williamson, by counsel Carrie G. Fenwick; and Rachelle McIntyre-Nicholson, by counsel Robert B. Allen and Pamela C. Deem—for a bench trial on the State's *Complaint*, alleging several West Virginia Consumer Credit and Protection Act (WVCCPA) violations. Upon review of the testimony and documentary evidence offered at trial, the pleadings of record, the parties' proposed findings of fact and conclusions of law, and the applicable law, the Court makes the following findings of fact and conclusions of law.

[1] This action was filed prior to the election of the current Attorney General, Patrick Morrisey.

FINDINGS OF FACT

1. At the bench trial on September 7, 2011, the State offered the testimony of Mary Linville, Brenda Martin, Lawrence Williamson, and Rachelle McIntyre-Nicholson in support of its *Complaint*. David Walker testified on behalf of Defendant Morgan Drexen.

Testimony of Mary Linville

2. Mary Linville (Ms. Linville) of Lincoln County, West Virginia, began participating in a debt settlement program in March 2008. Ms. Linville testified that she learned of Morgan Drexen by Morgan Drexen contacted her by telephone. Specifically, Ms. Linville testified the following:

> I received several calls with—where it says "not provided—the name not provided." I didn't answer until, you know, several times, and then I finally answered. And they asked me did I want to be debt free? And, and each time I listened to a little bit more. And then they asked me if I wanted to speak to a live person, to press "1," and I did. . . . They were telling me that, that they could let me be debt free from 18 to 24 months.[2]

Ms. Linville testified that the person with whom she spoke said he or she was from Morgan Drexen. She participated in the program for eight or nine months.[3]

3. To enroll in the debt-settlement program, Ms. Linville was required to sign a one-page *Disclosure Statement*, containing eight separate disclosures that consumers must sign to indicate that they understand and agree with said disclosures.[4] Morgan Drexen also sent Ms. Linville the following list of documents regarding the debt-settlement program:

a. State's exhibit 1 includes two letters and a set of instructions from Morgan Drexen to Ms. Linville. The first letter is dated March 17, 2008, and it states that Ms. Linville has been "qualified for enrollment," that her "unsecured debt totals $79,181" and that "we [Morgan Drexen] estimate that it will take well over 20

[2] Linville Test., Trial Tr. 10:9–24, 11.
[3] *Id.* at 30:1–13, 41:11–15.
[4] State's ex. 6.

years, making minimum payments, to fully pay these obligations."[5] The letter further states, "The program is designed to negotiate mutually agreeable settlements between you and your creditors over an approximate period of 36 months. Your monthly installment payment will be $1,365 per month, which we expect will save you approximately $30,041 upon successful completion."[6] The second letter welcomes Ms. Linville to the program and lists Morgan Drexen's responsibilities and Ms. Linville's responsibilities per the program (*i.e.*, that she should complete the required documentation and forward any correspondences from creditors to Morgan Drexen).[7] The instructions set forth the steps required to complete the documentation and sign on to Morgan Drexen's website.[8] At the trial, Ms. Linville testified to receiving the above-described letters from Morgan Drexen.[9]

b. State's exhibit 2 is a letter from Morgan Drexen to Ms. Linville dated March 19, 2008, and it contains the same information as the first letter contained in State's exhibit 1 dated March 17, 2008, except the 36-month term is increased to 60 months, the monthly payments are decreased from $1,365 per month to $840 per month, and the expected savings are decreased from $30,041 to $28,781.[10]

c. State's exhibit 3 is a *Williamson Law Firm Unsecured Debt Negotiation/Settlement Attorney/Client Fee Agreement.* The *Agreement* is

[5] State's ex. 1.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Linville Test., Trial Tr. 13–16.
[10] State's ex. 2.

provided to attorneys by Morgan Drexen for attorneys to use with Morgan Drexen consumers.[11]

d. State's exhibit 4 is titled "Morgan Drexen Debt Schedule," and it contains a list of Ms. Linville's debts along with her signature authorizing "Morgan Drexen Group and its affiliates to negotiate" the listed debts.[12]

e. State's exhibit 5 is titled "Agreement for Automated Electronic Funds Transfer," and it includes Ms. Linville's and her husband's signature, as well as a copy of a voided check to authorize Morgan Drexen's access to Ms. Linville and her husband's bank account.[13]

f. State's exhibit 6 is a one page document titled "Disclosure Statement," and it includes Ms. Linville and her husband's initials next to eight numbered disclosures, signifying that Ms. Linville and her husband understood the responsibilities and implications of being enrolled in the program. Ms. Linville testified that she did not read it "word for word."[14] Nonetheless, Ms. Linville read portions of the *Disclosure Statement* and testified that she understood said portions.[15]

g. State's exhibit 7 is a letter bearing Williamson Law Firm's name and letterhead, acknowledging that Ms. Linville is being sued by a creditor, advising Ms. Linville of Williamson Law Firm's limited scope of representation with regard to the creditor's suit, and informing Ms. Linville that Williamson Law Firm is

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[11] *See* State's exs. 13, 22; *see infra* ¶ 14 (Lawrence Williamson's testimony about Morgan Drexen's form documents).
[12] State's ex. 4; Linville Test., Trial Tr. at 25.
[13] State's ex. 5; Linville Test., Trial Tr. at 26.
[14] Linville Test., Trial Tr. at 30:1–2.
[15] *Id.* at 49.

authorized to practice law in West Virginia and is authorized to represent Ms. Linville. Morgan Drexen provides attorneys with this letter.[16]

h. State's exhibit 8 is titled "Agreement and Authorization for Limited Scope Representation" and states "WILLIAMSON LAW FIRM, LLC ("Attorneys") agrees to provide LIMITED SCOPE REPRESENTATION to you, Mary Linville / Ronnie Linville, by and through an attorney licensed to practice law in your jurisdiction." Morgan Drexen provides this letter to attorneys who work for Morgan Drexen.[17]

i. State's exhibit 9 is a letter sent from the Linvilles to one of their creditors informing the creditor that its claim is disputed and requesting certain documents from the creditor. Morgan Drexen provides attorneys with this letter.[18]

4. Ms. Linville testified that during her relationship with Morgan Drexen, a Morgan Drexen representative asked her, "Were you made aware that your monthly payments will not be paid to your creditors and this may adversely affect your credit?" Ms. Linville replied, "Yes."[19] Ms. Linville testified that she was informed that her creditors may bring legal action against her.[20] Ms. Linville testified that Morgan Drexen told her "they were negotiating, . . . reaching a settlement, . . . nearing a settlement."[21]

5. Ms. Linville testified that, after signing up with Morgan Drexen, she entered into a *Williamson Law Firm Unsecured Debt Negotiation/Settlement Attorney/Client Fee Agreement.*[22]

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[16] State's ex. 7; *see* State's exs. 13, 22.
[17] *See* State's exs. 13, 22.
[18] State's ex. 9; *see* State's exs. 13, 22.
[19] Linville Test., Trial Tr. 46:20–23.
[20] *Id.* at 47:21–22.
[21] *Id.* at 21:19–23.
[22] State's ex. 3; Linville Test., Trial Tr. at 20–25.

Ms. Linville testified that she understood the contract.[23] Ms. Linville was informed that she was a client of the Williamson Law Firm, which was responsible for "approving negotiations and/or settling [her] unsecured debt on [her] behalf, which may not alleviate creditor phone calls."[24] The *Agreement* contains the following clause:

> **UTILIZATION OF LOCAL COUNSEL** You authorize Attorneys with the discretion to select an attorney licensed in your jurisdiction ("local counsel") to assist Attorneys in providing services under this Agreement. Attorneys' use of local counsel will not increase the fees and charges you agreed to pay under this Agreement. If Attorneys needs [sic] to transfer your case from one local counsel to another, your consent to such transfer will be implied unless you object in writing within seven (7) days. By signing this Agreement, you are consenting to Attorneys sharing part of the contingent fee or any other fee paid to Attorneys under this Agreement with local counsel.[25]

6. Ms. Linville testified that she participated in and paid into the program for eight or nine months before being sued by one of her creditors.[26] As a result, Ms. Linville quit the program: "I was paying in money, and then . . . got sued. And if one [creditor] did it, maybe the rest of them would do it."[27] Ms. Linville also testified that Morgan Drexen did not warn her that creditors might sue her for not paying her bills.[28] However, Ms. Linville affirmed, via a recorded telephone call presented at the bench trial, that Morgan Drexen disclosed to her that creditors may contact her and attempt to collect debts owed and could even bring legal action against her for the unpaid debts.[29] Via the same recorded telephone call, Ms. Linville affirmed that a Morgan Drexen representative informed her that her "engagement fee"—one of three fees

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[23] Linville Test., Trial Tr. at 24–25.
[24] Martin Test., Trial Tr. 150:17–22, 153:1–2.
[25] State's ex. 3.
[26] Linville Test., Trial Tr. 30:1–13, 41:11–15.
[27] *Id.* at 41:11–15.
[28] *Id.* at 29–31.
[29] *Id.* at 47:11–14, 22.

mentioned in the phone call—is not refundable.[30] Nonetheless, Ms. Linville testified that she received a refund of "six hundred and some dollars," but had paid "close to seven thousand [dollars]" into the program.[31] Ms. Linville testified that Morgan Drexen never assisted her in obtaining loans or credit cards.[32]

7. Ms. Linville testified that Morgan Drexen required her to pay an "engagement fee" of $4,101.53.[33] To participate in Morgan Drexen's program, Ms. Linville was required to pay $771.25 per month for 60 months in "installment payments."[34] Ms. Linville paid "eight or nine" months' worth of installment fees and therefore paid either $6,170 or $6,941.25 to Morgan Drexen.[35]

Testimony of Brenda Martin

8. Brenda Martin (Ms. Martin) began participating in Morgan Drexen's debt settlement program in March or April 2010. At trial, Ms. Martin testified that she saw a Morgan Drexen television ad about "getting out of debt in half the time."[36] The television ad included a telephone number to call to "be out of debt within months instead of 25 years."[37] She testified that she called the number, and a Morgan Drexen representative answered and informed her of Morgan Drexen's program.[38]

9. A letter to Brenda Martin from Morgan Drexen dated March 30, 2010, lists Ms. Martin's unsecured debt and states: "it may take over 20 years, making minimum payments, to fully pay these obligations. As we discussed, the program is designed to negotiate mutually agreeable

[30] *Id.* at 46:24, 47:1–5.
[31] *Id.* at 39:6–11.
[32] *Id.* at 10.
[33] *Id.* at 47:2.
[34] *Id.* at 20.
[35] *Id.* at 22, 30.
[36] Martin Test., Trial Tr. 117:21–22.
[37] *Id.* at 118:1–2.
[38] *Id.* at 118–119.

settlements between you and your creditors over an approximate period of 42 months."[39] Ms. Martin testified that Morgan Drexen was supposed to "pay our—we were supposed to make them one payment, and then they were supposed to have us debt free, like, in 42 or 46 months" after Morgan Drexen took "money out of my checking account every month."[40] Ms. Martin testified that Morgan Drexen "asked me not to make no payments, and they gave me statements to say to the creditors when they called me."[41]

10. Upon signing up for the debt-settlement program, Ms. Martin signed several documents, including a one-page *Disclosure Statement*, which contains eight separate disclosures that consumers must sign to indicate that they understand and agree with said disclosures.[42] Morgan Drexen, via Williamson Law Firm, sent Ms. Martin several documents:

a. State's exhibit 15 is a letter to Ms. Martin dated March 30, 2010. It is expounded upon above and is the same as the first letter contained in State's exhibit 1 and State's exhibit 2, which were sent to Ms. Linville, except State's exhibit 15 does not contain Morgan Drexen's letterhead. Ms. Martin testified that Williamson Law Firm sent her the letter.[43]

b. State's exhibit 16 is a *Williamson Law Firm Unsecured Debt Negotiation/Settlement Attorney/Client Fee Agreement*. It is the same agreement sent to Ms. Linville. The *Agreement* is provided to attorneys by Morgan Drexen for attorneys to use with Morgan Drexen consumers.[44] Like Ms. Linville, Ms. Martin also signed a *Williamson Law Firm Unsecured Debt*

[39] State's ex. 15.
[40] Martin Test., Trial Tr. 124:1–4, 126:14–15; State's ex. 16, 18.
[41] Martin Test., Trial Tr. 130:9–11.
[42] State's ex. 19.
[43] Martin Test., Trial Tr. 121:4–5.
[44] *See* State's exs. 13, 22.

Negotiation/Settlement Attorney/Client Fee Agreement.[45] Ms. Martin testified that she thought "Williamson is a . . . law firm for Morgan Drexen."[46] She testified she did not understand the entirety of the Attorney/Client Agreement, like what "scope of legal services" meant, but she testified she understood everything else in the *Agreement.*[47] The *Agreement* contains the following clause:

> **UTILIZATION OF LOCAL COUNSEL** You authorize Attorneys with the discretion to select an attorney licensed in your jurisdiction ("local counsel") to assist Attorneys in providing services under this Agreement. Attorneys' use of local counsel will not increase the fees and charges you agreed to pay under this Agreement. If Attorneys needs [sic] to transfer your case from one local counsel to another, your consent to such transfer will be implied unless you object in writing within seven (7) days. By signing this Agreement, you are consenting to Attorneys sharing part of the contingent fee or any other fee paid to Attorneys under this Agreement with local counsel.[48]

c. State's exhibit 17 is titled "Debt Schedule" and is similar to the debt schedule that Ms. Linville received, but State's exhibit 16 does not contain Morgan Drexen's letterhead.[49] Rather than authorizing Morgan Drexen and its affiliates to negotiate debts, Ms. Martin's debt schedule authorizes Williamson Law Firm, LLC, to negotiate the listed debts.[50]

d. State's exhibit 18 is titled "Agreement for Automatic Electronic Funds Transfer," and it is similar to the same-titled document that Ms. Linville signed but State's exhibit 18 authorizes Williamson Law Firm, rather than Morgan Drexen, to access Ms. Martin and her husband's bank account.[51]

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[45] State's ex. 16, Mar. 30, 2010.
[46] Martin Test., Trial Tr. 123:3–4.
[47] *Id.* at 140–145.
[48] State's ex. 16.
[49] State's ex. 16.
[50] *Id.*
[51] State's ex. 18.

e. State's exhibit 19 is a one page document titled "Disclosure Statement," and it includes Ms. Martin and her husband's initials next to eight numbered disclosures, signifying that Ms. Martin and her husband understood the responsibilities and implications of being enrolled in the program. State's exhibit 19 is substantively similar to State's exhibit 6, signed by Ms. Linville. At the bench trial, Ms. Martin testified that she did not read the disclosures, and then testified later that she "tried" to read them but "didn't understand a lot of them."[52]

11. Ms. Martin testified that a Morgan Drexen representative told her, "If there is anything that you're unsure of, I'll be happy to answer any questions . . . ."[53] Ms. Martin agreed a Morgan Drexen representative asked her, "Were you made aware that your monthly payments will not be paid to your creditors and this may adversely affect your credit?" Ms. Martin replied, "Yes."[54] Ms. Martin agreed that she was informed her creditors may bring legal action against her.[55] Ms. Martin was further informed that creditors "may attempt to access [her] funds in their attempts to collect the debt."[56] Ms. Martin, testified that "they" told her that her "credit rating . . . would be bad for about a year, and then it would initially start getting better after that."[57]

12. Ms. Martin testified that Morgan Drexen required her to pay a $1,304.26 engagement fee.[58] To participate in Morgan Drexen's program, Ms. Martin had to pay $360 per month for 42 months.[59] Ms. Martin testified that she participated in and paid into the program for "four or five" months and then began receiving harassing phone calls from creditors.[60] As a result, she

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[52] Martin Test., Trial Tr. 128–29.
[53] *Id.* at 148:20–22, 153:1–2.
[54] *Id.* at 149:17–19, 150:17–18.
[55] *Id.*
[56] *Id.* at 152:3–7.
[57] *Id.* at 119:14–18.
[58] Martin Test., Trial Tr. 149:23.
[59] *Id.* at 148–149; State's exs. 3, 15, 16.
[60] Martin Test., Trial Tr. 126:18–20.

"decided just to go ahead and drop out and handle it . . . ."[61] Thus, Ms. Martin paid either $1,440 or $1,800 to Morgan Drexen. Ms. Martin testified, via a recorded telephone call presented at the bench trial, that a Morgan Drexen representative informed her that her "engagement fee"—one of three fees mentioned in the phone call—was nonrefundable. Nonetheless, Ms. Martin testified that, upon quitting the program, she received a $1,200 refund.[62] Ms. Martin testified that, after she quit the program, she received a telephone call informing her that "they had negotiated an amount with Discover through [her] credit card."[63]

Testimony of Lawrence Williamson

13. Mr. Williamson is licensed to practice law in Kansas, not West Virginia.[64]At the bench trial, Lawrence Williamson (Mr. Williamson) testified that his law firm provides legal services for debt settlement clients by reviewing the settlements, evaluating whether or not a settlement is in the best interests of the clients, and then approving, modifying, or rejecting those settlements.[65] Mr. Williamson also testified that he oversees the work of and directs the actions of the Morgan Drexen paralegals.[66]

14. Mr. Williamson testified that Williamson Law Firm has "about 245 customers" in West Virginia.[67] Mr. Williamson testified that each Morgan Drexen costumer receives similar documents and forms through Morgan Drexen's automated system,[68] but he testified that he substantially altered or edited the documents that had previously been prepared by Morgan Drexen.[69] However, the Court does not find this testimony credible. The documents Ms. Linville

[61] *Id.* at 134:1–12.
[62] *Id.* at 132:1–5.
[63] *Id.* at 130:24, 131:1–2.
[64] Williamson Aff., State's ex. 21, Aug. 26, 2011.
[65] Williamson Test., Trial Tr. 178:11–27.
[66] Williamson Aff. ¶ 16, State's ex. 21, Aug. 26, 2011
[67] Williamson Test., Trial Tr. 170:13–14.
[68] *Id.* at 171–172, 194.
[69] *Id.* at 172:5–10.

received from Morgan Drexen are the same documents Ms. Martin received from Williamson Law Firm.[70]

15. At the bench trial, Mr. Williamson also testified that he does not review "all the documents," nor does he negotiate with any creditors.[71] Rather, Mr. Williamson entered into an agreement with and formed a business relationship with the Howard | Nassiri law firm to use the Howard | Nassiri "local counsel" network in jurisdictions where he is not licensed to practice law (Howard | Nassiri is a law firm in California and is discussed *infra*).[72] Mr. Williamson's *Affidavit* further states:

> As a part of the agreement that I reached with Howard | Nassiri, I use Rachelle McIntyre-Nicholson as a local counsel for all clients who reside in West Virginia. . . . When a person from West Virginia becomes a client of my law firm, that person immediately becomes a client of Rachelle McIntyre-Nicholson. . . . It is Ms. McIntyre-Nicholson—not I— who provides advice and counsel on all matters related to West Virginia law and procedure. . . . Ms. McIntyre-Nicholson—not I—reviews every proposed settlement offer from unsecured creditors and either accepts, rejects, or counters those offers on behalf of our clients.[73]

16. Mr. Williamson testified that he was aware that Morgan Drexen had television ads airing in West Virginia.[74]

Testimony of Rachelle McIntyre-Nicholson

17. At the bench trial, Rachelle McIntyre-Nicholson (Ms. Nicholson) testified that she began working for Morgan Drexen in August 2009 after seeing an ad on Craigslist showing that Morgan Drexen was hiring.[75] Ms. Nicholson responded to the ad and was given an interview

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[70] *See supra* ¶¶ 3.a–i, 10.a–e (discussing documents received by Ms. Linville and Ms. Martin).
[71] Williamson Test. 175:7–17.
[72] *Aff. of Lawrence W. Williamson*, State's ex. 21.
[73] *Id.*
[74] Williamson Test., Trial Tr. 183:19–24.
[75] Nicholson Test., Trial Tr. 72:20.

with Howard|Nassiri.[76] Ms. Nicholson testified that she was "hired through Howard|Nassiri, and . . . assigned to Williamson Law Firm" and is "actually local counsel for Williamson."[77] Ms. Nicholson testified that her agreement with Howard|Nassiri did not explicitly mention Williamson Law Firm, but that she understood the clause—"We will provide you with the names and other pertinent information about the clients you will be assigned to act for as local counsel"—to mean that other law firm's clients may be involved, including Williamson Law Firm's clients.[78]

18. At the bench trial, Ms. Nicholson testified that she is an attorney licensed to practice in West Virginia.[79] Ms. Nicholson serves as local counsel in West Virginia for Williamson Law Firm.[80] However, neither Mr. Williamson nor Williamson Law Firm have a written agreement with Ms. Nicholson.[81] Rather, Howard|Nassiri has a written agreement with Ms. Nicholson, and it reads in pertinent part:

> The purpose of this letter is to confirm our law firm's engagement of the services of your law firm, to act as local counsel for our clients in **West Virginia**, to specify what services we expect you will perform on our behalf and on behalf of our clients, and to establish the fee structure for the services that you perform on our and our clients' behalf.
>
> . . .
>
> Related to your duties as local counsel is the review and *prompt approval* of settlement offers that you will receive via e-mail for our service provider, Morgan Drexen. The settlement offers you receive via e-mail—are achieved by virtue of Morgan Drexen's paralegals' competence, focus, perseverance, and determination. . . . Once the parties agree on a settlement, we usually have to forward the clients first payment check within 24 (or at max, 48) hours to complete the settlement. In short, time is of the essence. That is why it is very important for you to review the settlements

[76] *Id.* at 77.
[77] *Id.* at 78.
[78] *Id.* at 84–85.
[79] Nicholson Test., Trial Tr. 97.
[80] *Local Counsel Engagement Letter*, State's Ex. 10.
[81] Williamson Test., Trial Tr. 169:11–13; Nicholson Test., Trial Tr. 87:16–20.

> to make sure there is compliance with your state's laws, if any, and adequately protect the client . . . .
>
> Therefore and in addition to the abovementioned remuneration, **you will receive an additional $250.00 each month to review each settlement and either <u>accept</u> (by clicking on the submit/approval button in the settlement e-mail) or <u>reject</u> (by advising Morgan Drexen of any perceived inadequacy under state law, or lack of sufficient protection for the client) each settlement within 24 hours *for the first 50 settlements*** (Please be mindful that most creditors will reject a settlement offer if too many changes are insisted upon). For every settlement reviewed over the first 50 settlements, as local counsel you will receive an additional $5.00 per settlement.[82]

Ms. Nicholson entered into a *Confidential Contract* with Morgan Drexen, which states in pertinent part:

> **WHEREAS**, MCINTYRE-NICHOLSON provides legal services including but not limited to, family law, criminal defense law, and abuse and neglect law; *and*
>
> **WHEREAS**, these new areas of practice would require engaging experienced paraprofessionals assistants and administrative staff to: (a) evaluate whether prospective clients would be suitable candidates for the unsecured debt negotiation and settlement legal services (referred to for simplicity in this Contract as "**debt settlement**"); (b) answer telephone calls from clients; (c) notify and receive telephone calls from creditors of the firm's clients; (d) manage communications by way of the telephone calls, written communications, and Internet contacts with clients and third parties; (e) handle organizing, indexing, and storing a large volume of electronic data and papers; (f) process settlement agreements and settlement checks for an attorney's review and approval; and (g) to produce management and financial reports . . . .
>
> . . .
>
> MCINTYRE-NICHOLSON will practice law with independent judgment when providing legal services to clients, without obligation to MD [Morgan Drexen], with the exception that MCINTYRE-NICHOLSON shall be bound by all terms of this Contract for the entire term of this Contract with respect to debt settlement services. With regard to such services, the parties agree

[82] *Local Counsel Engagement Letter*, State's ex. 10 (emphasis original).

> that before accepting any client MCINTYRE-NICHOLSON will evaluate the best course of action for each client.[83]

19. Mr. Williamson also entered into the same "confidential contract" with Morgan Drexen. Attached to the contracts is an "Exhibit B," which is an itemized list of the fees that Morgan Drexen charges attorneys for its services.[84] Additionally, several documents Morgan Drexen provides to its attorneys to use are attached to the *Confidential Contract.*

20. Ms. Nicholson testified that she approved or rejected settlement agreements between consumers and creditors after reviewing files.[85] Ms. Nicholson testified, "When a client is sued by a creditor, the summons is sent in to the paralegals and paraprofessionals at Morgan Drexen who then funnel it through their system, which makes it very easy for me to view those documents and review them with the client."[86] She also testified about documentation sent to clients informing them that she would be representing them: "when the client enters into litigation, the limited scope of representation goes out to the client with my name on it. At that point in time the client recognizes that I am represented—I am local counsel for their engagement counsel. And then we have a conversation. I've not had a client yet who didn't want to talk to me about their litigation process."[87] However, Ms. Nicholson testified that she did not contact clients until December 2010 and only proposed changes to paperwork that she would return to Morgan Drexen: "I had contact through my paralegals at Morgan Drexen to make changes [to documents] that I had proposed to better protect the client."[88]

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[83] *Confidential Contract* at 1–2, State's ex. 13 (emphasis original).
[84] Def.'s ex. 2; State's exs. 13, 21.
[85] Nicholson Test., Trial Tr. 79–81.
[86] *Id.* at 89:20–24.
[87] *Id.* at 92:9–15.
[88] *Id.* at 95:5–12.

21. Via the *Confidential Contract*, Morgan Drexen also dictates the maximum fees that Ms. Nicholson is allowed to charge clients.[89] Attached to the *Confidential Contract* is a sample attorney client agreement identical to the ones that Ms. Linville and Ms. Martin signed, along with letter templates, disclosure statements identical to the ones Ms. Linville and Ms. Martin signed, a script for attorneys to use when contacting customers, a script for customers to use when contacted by creditors, and other templates that include statements of the law with regard to the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and defamation of character, among others.[90]

22. According to Ms. Nicholson's testimony, Morgan Drexen provides its employees with a *Morgan Drexen Legal Intake Specialist Training Manual*, which, as Ms. Nicholson testified, "assist[s] new employees at Morgan Drexen to learn the process and how better to assist its attorney clients."[91] The *Training Manual* contains several scripts that "intake specialists" can read over the phone.[92] The *Training Manual* states in part:

> I'm a Morgan Drexen Legal Intake Specialist who works with (name the firm). . . . Ultimately, they work with you to pay back the debt at a reduced amount, without the scar of filing for bankruptcy. Your attorney will set you up with the law firm's trust account. You will pay into this account. Your attorney will communicate with your creditors and notify them that you have retained a law firm to represent you. At this point, they'll be able, with the support of Morgan Drexen, to negotiate legally on your behalf. The law firm will not be paying off your debt when they receive these funds from you. Rather, your attorney will work to negotiate a manageable settlement to extinguish your debt. Once you accumulate at least 20% of the balance of any one account in the trust account, negotiations will begin to reach a settlement to pay your creditor and eliminate that debt. Only once a settlement is reached, your attorney will your funds to pay off the settlement. Plus your creditors are told to call us regarding your account.

[89] State's ex. 13 at 7–8.
[90] *Id.*
[91] State's ex. 12; Nicholson Test., Trial Tr. 98:19–21.
[92] State's ex. 12.

> Ultimately, we will administer the distribution of your funds, with attorney direction, from the attorney's trust account. . . .[93]

The Q&A portion of the script addresses credit ratings: "Q: Will this affect my credit? Response: Yes, it may adversely affect it, but you will have a chance to reestablish your credit once you complete the program. In addition, the only way to get out of debt is to not acquire any more."[94] The *Training Manual* also states: "Once these debts are settled, your attorney will have your creditor issue a letter, showing the account has been paid off! The best thing is even the credit bureaus get a copy of this too. It shows that you did the right thing and amended your relationship with the creditor."[95]

23. Ms. Nicholson testified that she was aware that Morgan Drexen television ads were being aired in West Virginia and did not list her as the responsible counsel.[96]

Testimony of David Walker

24. David Walker (Mr. Walker), Chief Financial Officer of Morgan Drexen, testified during the trial and in his affidavit that Morgan Drexen does not "do any business in West Virginia," "does not pay the business registration tax levied under W. Va. Code § 11-12-3[,] . . . does not pay West Virginia corporate income tax[,] . . . does not collect or withhold any tax administered under West Virginia Code § 11-10-1, et seq.[,] . . . does not claim exemption from payment of taxes imposed by W. Va. Code § 11-15-1, et seq. or W. Va. Code § 11-15A-1, et seq.[,] . . . and does not have any gross income from business activity for any tax year for West Virginia state income tax purposes."[97] Mr. Walker also states in his affidavit that "Morgan Drexen's income consists of fees paid to it by the law firms it services, none of which emanate from West

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[93] *Id.*
[94] *Id.*
[95] *Id.*
[96] Nicholson Test., Trial Tr. 107:20–24.
[97] Walker Test., Trial Tr. 225:13–16; David Walker Aff. ¶¶ 3–7, Ex. K, Def. Morgan Drexen's Mot. Summ. J.

Virginia."[98] Mr. Walker testified that Morgan Drexen has "more than 245 customers" in West Virginia.[99] When asked on redirect if Morgan Drexen has any clients in West Virginia, Mr. Walker testified, "Oh, no. I'm sorry. On behalf of the attorneys. No, the attorneys have the clients. We [Morgan Drexen] support the attorneys and their clients."[100] Mr. Walker testified, at the time of trial, over one-hundred consumers in West Virginia were in settlement discussions and others were in negotiations for additional settlements.[101]

25. Mr. Walker testified that the attorneys pay Morgan Drexen, not consumers.[102] He testified further that Morgan Drexen provides accounting services for the attorneys' clients' funds: "we document the ACH's [Automated Clearing House, an electronic network used for electronic banking, direct deposit, and electronic bill payment], document the banking processes, send out monthly statements to the law firm clients, upload these statements and all the accounting so the attorney can review that at any time through their Web portal, as well as we do trust administration and trust transfers on behalf of the attorneys . . . The creditors get paid from the trust funds that the clients have accrued within the trust funds of the attorneys. Once the attorneys have approved the settlement agreement with that creditor, then the checks are . . . issued in accordance with that settlement agreement."[103] This testimony is supported by the *Unsecured Debt Negotiation/Settlement Attorney/Client Fee Agreement* issued to Ms. Martin and Ms. Linville by Williamson Law Firm, LLC, whose letterhead is on said *Agreement*.[104] The

[98] *Id.* at ¶ 8.
[99] Walker Test., Trial Tr. 212:16–24, 213:1–9.
[100] Trial Tr. 233:20–24.
[101] Walker Test. 228:7–11.
[102] *Id.* at 216:4–10.
[103] *Id.* at 224:8–21.
[104] State's ex. 3.

Agreement provides the fee arrangement in paragraph 7, which includes the engagement fee, ACH payment, check-handling fee, monthly fee, and contingent fee.[105]

26. Mr. Walker testified that, to his knowledge, Morgan Drexen has never engaged in telemarketing itself or through a third party.[106] Later in the bench trial, however, Mr. Walker admitted that Ms. Linville "probably did" receive telemarketing calls from "lead providers" purchased by Morgan Drexen.[107] Mr. Walker testified that around August 2009, Morgan Drexen "stopped accepting any kind of leads provided by any other entity."[108] Mr. Walker also admitted that client intake specialists

> receive . . . phone calls from clients. They'll talk to them about the program, they'll go through their income, their expenses to try and determine the disposable income that they can put into the program, decide if they're suitable. If they meet the criteria that the attorneys establish for acceptance, they explain what the program is, and then they go through a, a series of disclaimers with the client. And if the client wants to move forward, they go through an intake process of notifying the attorney of that, sending out a contract between the attorney and the person for them to review. It's called the kit.[109]

Defendant Howard | Nassiri

27. Ms. Nicholson and Mr. Williamson both testified that Howard | Nassiri was responsible "for providing any local counsel that we needed in any jurisdictions" or for "matching up the appropriate local counsel with the appropriate engagement counsel."[110] This testimony is supported by Ms. Nicholson's contract with Howard | Nassiri, which states, "We are engaging your law firm to perform whatever legal services are necessary for our client that we cannot

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[105] *Id.*
[106] Walker Test., Trial Tr. at 217–218.
[107] *Id.* at 218:14–21.
[108] *Id.* at 225:2–3.
[109] *Id.* at 219:5–18.
[110] Williamson Test., Trial Tr. 166:5–9; Nicholson Test., Trial Tr. 89:4–6.

provide in your jurisdiction because we are not licensed there. . . . A fifteen percent (15%) referral fee paid to HOWARD | NASSIRI, LLP will apply."[111]

DISCUSSION

First Cause of Action: Misleading Advertisement

28. In its first cause of action, the State alleges that Morgan Drexen violated W. Va. Code § 46A-6-104 by advertising debt relief services that it does not provide and by failing "to clearly and conspicuously disclose that [Morgan Drexen] provides all the debt relief services in its debt relief program, and that enrollment lawyers do nothing on behalf of the consumers."[112]

29. W. Va. Code § 46A-6-104 states: "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." The "unfair or deceptive acts" to which the State alleges Morgan Drexen performed are defined in W. Va. Code §§ 46A-6-102(7)(B), (L), and (M) as:

> (B) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by another;
>
> . . .
>
> (L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;
>
> (M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;[113]

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[111] State's ex. 10.
[112] Compl. ¶¶ 147–48, May 20, 2011.
[113] W. Va. Code § 46-6-102(7)(B), (L), and (M).

30. At the bench trial, Ms. Linville testified that Morgan Drexen told her it was "nearing a settlement."[114] After signing up with Morgan Drexen, Ms. Linville entered into a *Williamson Law Firm Unsecured Debt Negotiation/Settlement Attorney/Client Fee Agreement*, providing, in pertinent part:

> a. Attorneys will review and analyze relevant documents to determine your legal rights and remedies pertaining to your Debt;
> b. Legal counsel will be available to consult with and advise you as to matters that may arise regarding this representation of you;
> c. Attorneys will contact and notify your creditors that we have been engaged as your attorney to represent you in matters pertaining to settlement of your scheduled Debts;
> d. Your creditors and their collection agencies will be advised that all communications and efforts to collect on your Debt are to be directed to Attorneys;
> e. Attorneys will advise your creditors of your desire to reach a fair and honorable settlement of your Debts. We will explain to your creditors that a settlement can only be offered when funds are available in your trust account, and that time is required for you to build up these funds;
>
> . . .
>
> Unless we enter into a different written agreement with you, this Agreement will govern all legal services we may perform for you.[115]

Ms. Linville testified that she understood the contract.[116] She testified that, by the contract's terms, she expected the Defendants would "negotiate with [her] creditors, come to a reasonable amount, and settle."[117] Ms. Linville testified that, while she may not have read or understood each word of the contract or other paperwork, she understood that attorneys would "be responsible for negotiating and/or settling [her] unsecured debt on [her] behalf."[118]

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[114] Linville Test., Trial Tr. 21:19–23.
[115] State's ex. 3, Mar. 25, 2008.
[116] Linville Test., Trial Tr. 24–25.
[117] *Id.* at 25:3–5.
[118] *Id.* at 47:15–20; *see, e.g.*, *id.* at 30:1–2, 60:3–4, 60:19–21.

31. Ms. Martin signed the same *Williamson Law Firm Unsecured Debt Negotiation/Settlement Attorney/Client Fee Agreement.*[119] Ms. Martin testified that she thought "Williamson is a . . . law firm for Morgan Drexen."[120] She testified she did not understand the entirety of the *Attorney/Client Agreement*, like what "scope of legal services" means, but she testified she understood everything else in the *Agreement.*[121] Ms. Martin testified that a Morgan Drexen representative told her, "If there is anything that you're unsure of, I'll be happy to answer any questions . . . ."[122] Ms. Linville was also informed that she was a client of the Williamson Law Firm, which was responsible for "approving negotiations and/or settling [her] unsecured debt on [her] behalf, which may not alleviate creditor phone calls."[123]

32. Ms. Martin testified that, after she quit the program, she received a telephone call informing her that "they had negotiated an amount with Discover through [her] credit card."[124]

33. At the bench trial, Mr. Williamson testified that his law firm, through Ms. Nicholson acting as local counsel, provides legal services for debt settlement clients by reviewing the settlements, evaluating whether or not a settlement is in the best interests of the clients, and then approving, modifying, or rejecting those settlements.[125] Mr. Williamson also purports to oversee the work of and direct the actions of the Morgan Drexen employees.[126] However, Mr. Williamson conceded that he does not review all of the documents and does not negotiate with creditors.[127]

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[119] State's ex. 16, Mar. 30, 2010.
[120] Martin Test., Trial Tr. 123:3–4.
[121] *Id.* at 140–145.
[122] *Id.* at 148:20–22, 153:1–2.
[123] *Id.* at 150:17–22, 153:1–2.
[124] *Id.* at 130:24, 131:1–2.
[125] Williamson Test., Trial Tr. 178:11–27.
[126] Williamson Aff. ¶ 16, State's ex. 21, Aug. 26, 2011.
[127] Williamson Test., Trial Tr. at 175:7–17.

34. At the bench trial, Ms. Nicholson testified about her limited role in the debt settlement services:

> [Mr. Davis:] Okay, Ms. Nicholson, would you agree that you have no active part in the debt settlement part of the program except to review the settlements that are negotiated by Morgan Drexen?
> [Ms. Nicholson:] That's not accurate in every case, no, sir.
> [Mr. Davis:] Okay. Can you tell me how many cases it hasn't been accurate in?
> [Ms. Nicholson:] It's been accurate in a lot of cases. I can't give you numbers as I review many, many settlements on behalf of the client. But I have also contacted many creditors directly—or counsel for the creditors in cases where I've been asked to do so by the client.
> [Mr. Davis:] Okay. But none of that happened before December 2010; did it?
> [Ms. Nicholson:] I believe it had actually happened for the first time right around December of 2010 . . . .
> [Mr. Davis:] Right. So, for the first year and a half you had no contact with creditors of any of these consumers; is that right?
> [Ms. Nicholson:] I had no direct contact in the beginning process of the process of the negotiations. When those settlement proposals got to me, I had contact through my paralegals at Morgan Drexen to make changes that I had proposed to better protect the client.[128]

According to Ms. Nicholson, she prepares the necessary paperwork and uploads it into the Morgan Drexen system along with a letter containing instructions mailed to the client.[129]

35. Upon review of said testimony and evidence, the Court is of the opinion that attorneys do not "contact and notify . . . creditors" or "advise . . . creditors" as advertised and disclosed to consumers.[130] Rather, attorneys review paperwork, "propose" changes, and send their proposals to Morgan Drexen. Accordingly, the Court is of the opinion that Morgan Drexen violated W. Va. Code § 46A-6-104, as the State has asserted in its first cause of action, because Morgan Drexen represents that "lawyers will provide debt relief services to consumers," which thereby causes likelihood of confusion as to the source and approval of services and which thereby constitutes

[128] *Id.* at 94–95.
[129] *Id.* at 90:10–16.
[130] *See* State's ex. 3.

the misrepresentation and concealment of a material fact with the intent that others rely upon such concealment in connection with the sale of services.[131]

Second Cause of Action:
Failure to Disclose Adverse Consequences of Debt Settlement Program

36. In its second cause of action, the State alleges that Morgan Drexen violated W. Va. Code § 46A-6-104 by: (1) "failing to disclose it is not licensed or registered to do business in West Virginia"; (2) failing to "clearly and conspicuously disclose that it will provide no . . . services . . . until all of its fees have been paid," and by (3) failing to disclose potential adverse consequences for participating in debt settlement."[132]

37. In addition to the code subsections cited in the first cause of action and quoted above, here, the State argues that W. Va. Code § 46A-6-104 has been violated as expressed in W. Va. Code §§ 46A-6-102(7)(C) and (I), which define "unfair or deceptive acts" as: "(C) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by another; [and] . . . (I) Advertising goods or services with intent not to sell them as advertised."[133]

(1) Failure to Disclose Lack of West Virginia Business License

38. First, regarding the first alleged violation of W. Va. Code § 46A-6-104 in this second cause of action, the State contends that Morgan Drexen deceived consumers by not disclosing their want of a West Virginia business license.[134]

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[131] *See* Compl. ¶ 147–48; W. Va. Code §§ 46A-6-102(7)(B), (L), and (M), and 46A-6-104.
[132] Compl. ¶¶ 150–156; *see* W. Va. Code §§ 46A-6-104, 46A-6-102(7)(B), (C), (I), (L), and (M). While the State's *Complaint* alleges a consumer protection violation for Morgan Drexen's want of business license, the State's proposed *Findings of Fact and Conclusions of Law* do not mention such violation or other violations alleged in the *Complaint*. Because the allegations are contained in the *Complaint* and have not been dismissed, the Court addresses them in this *Order*.
[133] W. Va. Code §§ 46A-6-102(7)(C) and (I).
[134] Compl. ¶ 150.

39. For the State's contention to be true, logic dictates that it must also be true that Morgan Drexen (1) conducts business in West Virginia; (2) without a license; (3) does not disclose its lack of a license to consumers; (4) that failure to do so violates W. Va. Code § 46A-6-104; and (5) that such violation can be prosecuted by the Attorney General.

40. Regarding whether Morgan Drexen conducts business in West Virginia, W. Va. Code § 11-12-2 defines "business activity" as: "all purposeful revenue-generating activity engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect, and all activities of this state . . . which involve . . . the rendering of service when such service activities compete with or may compete with the activities of another person."[135]

41. Mr. Walker testified at the bench trial and in his affidavit that Morgan Drexen does not "do any business in West Virginia," "does not pay the business registration tax levied under W. Va. Code § 11-12-3[,] . . . does not pay West Virginia corporate income tax[,] . . . does not collect or withhold any tax administered under West Virginia Code § 11-10-1, *et seq.*[,] . . . does not claim exemption from payment of taxes imposed by W. Va. Code § 11-15-1, *et seq.* or W. Va. Code § 11-15A-1, *et seq.*[,] . . . and does not have any gross income from business activity for any tax year for West Virginia state income tax purposes."[136] Mr. Walker also states in his affidavit that "Morgan Drexen's income consists of fees paid to it by the law firms it services, none of which emanate from West Virginia."[137]

42. However, Mr. Walker testified that Morgan Drexen has "more than 245 customers" in West Virginia, and Mr. Williamson testified that Williamson Law Firm has "about 245 customers" in West Virginia.[138] When asked on redirect if Morgan Drexen has any clients in

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[135] W. Va. Code § 11-12-2.
[136] Walker Test., Trial Tr. 225:13–16; David Walker Aff. ¶¶ 3–7, Ex. K, Def. Morgan Drexen's Mot. Summ. J.
[137] *Id.* at ¶ 8
[138] Trial Tr. 212:16–24, 213:1–9, 170:13–14.

West Virginia, Mr. Walker testified, "Oh, no. I'm sorry. On behalf of the attorneys. No, the attorneys have the clients. We [Morgan Drexen] support the attorneys and their clients."[139]

43. Ms. Linville testified that she received several telephone calls from Morgan Drexen, asking her if she wanted to be debt free and encouraging her to enroll with Morgan Drexen.[140] Ms. Linville enrolled with Morgan Drexen in March 2008.[141]

44. From the testimony of Mr. Williamson, Mr. Walker, Ms. Linville, it appears that Morgan Drexen conducts business in West Virginia because it solicits clients in West Virginia and services 245 clients in West Virginia. Morgan Drexen receives payment from attorneys for services that it advertises in West Virginia and solicits from West Virginia consumers. Thus, it is the opinion of this Court that, without a license, Morgan Drexen engaged in purposeful revenue-generating activity with the objective of economic benefit.[142]

45. Second, regarding whether Morgan Drexen lacks a license to conduct business in West Virginia, Morgan Drexen concedes in its *Answer and Affirmative Defenses of Defendant Morgan Drexen, Inc.*, that it is not registered to do business in West Virginia.[143]

46. Third, Morgan Drexen does not disclose to its customers that it is not licensed to conduct business in West Virginia. At the bench trial, the State presented Morgan Drexen's packet sent to customers Mary Linville and Brenda Martin.[144] The paperwork does not disclose that Morgan Drexen lacks a license to conduct business in West Virginia.[145] The State also presented the *Morgan Drexen Legal Intake Specialist Training Manual* at the bench trial, which, as Ms. Nicholson testified, "assist[s] new employees at Morgan Drexen to learn the process and how

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[139] Trial Tr. 233:20–24.
[140] Linville Test., Trial Tr. 10:9–24, 11.
[141] *Id.* at 12:10–14.
[142] *See* W. Va. Code § 11-12-2.
[143] Answer and Affirmative Defenses of Defendant Morgan Drexen, Inc., ¶ 3, June 30, 2011.
[144] *See generally* State's exs.
[145] *See id.*

better to assist its attorney clients."[146] The *Training Manual*, which contains a script for Morgan Drexen employees to read to potential customers, also does not mention Morgan Drexen's lack of a business license in West Virginia. Thus, it is the opinion of this Court that Morgan Drexen did not disclose its lack of a West Virginia business license to the West Virginia consumers it services.

47. Fourth, regarding whether Morgan Drexen's failure to disclose its lack of a business license violates W. Va. Code § 46A-6-104, the WVCCPA defines "unfair methods of competition and unfair or deceptive acts or practices" as:

> (B) Causing likelihood of confusion or of misunderstanding as to the source . . . or certification of . . . services;
>
> (C) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by another;
>
> (L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding; [and]
>
> (M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby.[147]

48. This Court recognizes that it "is not powerless to prevent the doing of an act involving encroachment upon valuable franchise rights of others . . . ."[148] Indeed, the WVCCPA was enacted to "protect the public and foster fair and honest competition."[149]

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[146] State's ex. 12; Nicholson Test., Trial Tr. 98:19–21.
[147] W. Va. Code § 46A-6-102(7).
[148] *Sloan v. Mitchell*, 113 W. Va. 506, 168 S.E. 800 (1933).
[149] W. Va. Code § 46A-6-101.

49. With the Legislature's intent in mind, this Court is of the opinion that a company, such as Morgan Drexen, conducting business in West Virginia without a license violates the WVCCPA by causing a likelihood of confusion and of misunderstanding as to certification by omitting the material fact that it is not licensed to do business in West Virginia. To hold otherwise would foster unfair and dishonest competition among businesses and breed confusion and misunderstanding among consumers. In addition to honoring and enforcing the purposes of the WVCCPA, this holding comports with W. Va. Code § 11-12-7, which authorizes a circuit court to issue an injunction for failure to obtain a business license but also allows "all other penalties and remedies provided by law."[150] Thus, because Morgan Drexen does not have a license to conduct business activity in West Virginia, yet persisted in conducting such activity without disclosing its want of a business license, the Court finds and concludes it has violated W. Va. Code § 46A-6-104 .

50. Fifth, regarding whether the Attorney General can prosecute a violation of W. Va. Code § 11-12-3 and, consequently, of W. Va. Code § 46A-6-104, the West Virginia Supreme Court of Appeals has ruled that the "Attorney General is the legal representative of the State and its agencies unless specifically exempted from his duty by statute."[151] Further, W. Va. Code § 46A-7-111 states: "The attorney general may bring a civil action to restrain a person from violating this chapter [the West Virginia Consumer Credit and Protection Act] and for other appropriate relief."[152]

51. However, W. Va. Code § 11-10-5h provides: "The enforcement of any collections provisions of ***this article*** in any of the courts of this state shall be under the exclusive jurisdiction

[150] W. Va. Code § 11-12-7.
[151] Syl. pt. 2, *State ex rel. Caryl v. MacQueen*, 182 W. Va. 50, 385 S.E.2d 646 (1989).
[152] W. Va. Code § 46A-7-108.

of the tax commissioner."[153] Article 10 of chapter 11 of the West Virginia Code applies to, *inter alia*, "business registration tax."[154] It is article 12 of chapter 11 that requires business registration. W. Va. Code § 11-12-9 states that "[i]t shall be the duty of the tax commissioner to collect the full amount of the business registration tax, additions to tax, interest, and all penalties imposed. . . ." W. Va. Code § 11-12-3 states: "No person shall, without a business registration certificate, engage in or prosecute, in the State of West Virginia, any business activity without first obtaining a business registration certificate from the Tax Commissioner of the State of West Virginia."[155]

52. It is the opinion of this Court that the Attorney General is not attempting to collect taxes, interest, or tax penalties. Rather, the Attorney General is bringing suit to prosecute Morgan Drexen for, *inter alia*, "causing likelihood of confusion or of misunderstanding as to the source . . . or certification of . . . services" under the WVCCPA.[156] "For its enforcement[,] the WVCCPA grants the Attorney General 'broad powers to supervise, investigate and prosecute violations.' . . . Although the Attorney General may '[r]eceive and act on complaints,' the WVCCPA also empowers him to 'commence proceedings on his own initiative.'"[157] Thus, this Court is of the opinion that the Attorney General is properly prosecuting this matter.

(2) Morgan Drexen's Alleged Failure to Disclose That it Will Provide No Services Until All of its Fees Have Been Paid

53. Regarding the second alleged violation of W. Va. Code § 46A-6-104 in the second cause of action, the State contends that Morgan Drexen causes the likelihood of confusion by failing to clearly and conspicuously disclose that it will not provide debt relief services until its fees have

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[153] W. Va. Code (emphasis added).
[154] W. Va. Code § 11-10-3(a).
[155] *See supra* ¶ 40 (defining "business activity" per W. Va. Code § 11-12-2).
[156] W. Va. Code § 46A-6-102(7)(B); *see generally* W. Va. Code § 46A-6-101–110.
[157] *West Virginia ex rel. McGraw v. CVS Pharmacy, Inc.*, 646 F.3d 169, 175 (4th Cir. 2011) (internal citations omitted).

been paid, which violates W. Va. Code §§ 46A-6-102(7)(I) and (L).[158] Subsection (I) defines unfair methods of competition and unfair or deceptive acts or practices as "[a]dvertising goods or services with intent not to sell them as advertised."[159] Subsection (L) defines unfair methods of competition and unfair or deceptive acts or practices as "[e]ngaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding."[160]

54. Under the WVCCPA, "A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it."[161] Further, "[w]hether a term or clause is conspicuous or not is for decision by the court."[162]

55. Ms. Martin and Ms. Linville signed a one-page *Disclosure Statement*, which states:

> I understand that all monies received by Morgan Drexen will first be applied to pay the balance of my establishment fee and monthly maintenance fee. No monies will be applied to the escrow account or withdrawn for payment of other obligations until my establishment fee is paid in full. My creditors will not be paid until there is enough money in my escrow account to pay the settled amount.[163]

While this disclosure informs consumers creditors will be paid after the establishment fee or engagement fee is paid, it does not inform consumers that no services will be rendered until the entire engagement fee has been paid.

56. Upon review of the evidence, the Court finds Morgan Drexen does not disclose to consumers that no services will be rendered until the establishment fees have been paid. Thus, the Court finds and concludes Morgan Drexen has violated the WVCCPA by engaging in conduct that creates a likelihood of confusion or misunderstanding.

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[158] Compl. ¶ 151.
[159] W. Va. Code § 46A-6-102(7)(I).
[160] W. Va. Code § 46A-6-102(7)(L).
[161] W. Va. Code § 46A-1-102(11).
[162] *Id.*
[163] State's exs. 6 and 19.

(3) Morgan Drexen's Alleged Failure to Disclose Potential Adverse Credit Consequences for Participating in Debt Settlement.

57. Regarding the third alleged violation of W. Va. Code § 46A-6-101 in the second cause of action, the State asserts that Morgan Drexen fails to clearly and conspicuously disclose that consumers, by participating in debt settlement and by discontinuing payment to creditors, will have their credit negatively affected and have their account balances increase due to interest and fees being charged to their accounts. Further, the State alleges Morgan Drexen fails to disclose that few consumers complete Morgan Drexen's debt relief program.[164] Here, the State invokes W. Va. Code § 46A-6-102(7)(M) of the WVCCPA quoted *supra*.[165]

58. At the bench trial, Ms. Linville agreed a Morgan Drexen representative asked her, "Were you made aware that your monthly payments will not be paid to your creditors and this may adversely affect your credit?" Ms. Linville replied, "Yes."[166] Ms. Linville also agreed that she was informed her creditors may bring legal action against her.[167]

59. Like Ms. Linville, Ms. Martin was informed of the same above information.[168] Ms. Martin was further informed that creditors "may attempt to access [her] funds in their attempts to collect the debt."[169]

60. Further, both Ms. Linville and Ms. Martin were provided with and signed an *Unsecured Debt Negotiation/Settlement Attorney/Client Fee Agreement*, which states in paragraph ten: "Attorneys cannot and do not predict or guarantee the outcome or resolution of your Debt."[170]

61. Lastly, both Ms. Linville and Ms. Martin signed a *Disclosure Statement*, which states: "I understand that Morgan Drexen does not prevent my creditors from pursuing lawful means of

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[164] Compl. ¶¶ 151–156.
[165] *See supra* ¶ 29.
[166] Linville Test., Trial Tr. 46:20–23.
[167] *Id.* at 47:21–22.
[168] Martin Test., Trial Tr. 149:17–19, 150:17–18.
[169] *Id.* at 152:3–7.
[170] State's ex. 3.

collection (i.e. legal action, judgments, liens on real property, seizure of liquid assets and/or garnishment of wages)."[171]

62. The evidence shows that Ms. Linville and Ms. Martin were informed several times of the potential adverse consequences accompanying Morgan Drexen's debt relief program.

63. Thus, this Court is of the opinion that Morgan Drexen did not fail to disclose potential adverse credit consequences for participating in the debt settlement program and, consequently, did not violate W. Va. Code § 46A-6-101 or, more specifically, W. Va. Code § 46A-6-102(7)(M). Likewise, this Court concludes that a reasonable person ought to have noticed the clauses in the *Disclosure Statement* and the *Unsecured Debt Negotiation/Settlement Attorney/Client Fee Agreement* pertaining to potential adverse credit consequences for participating in the debt settlement program.[172] Lastly, the State produced no evidence indicating that most consumers do not complete Morgan Drexen's debt relief program.

Third Cause of Action:
Fees Collected for Services Not Rendered

64. In its third cause of action, the State alleges that Morgan Drexen violated W. Va. Code § 46A-6-104 by refusing "to refund money to consumers who have withdrawn from the program even though it has failed to settle any significant debts and has provided no credit services of substantial value to the consumers."[173] The State alleges that "Morgan Drexen, directly or indirectly, has collected fees from West Virginia consumers for debt relief services not provided . . . ."[174] For both alleged violations, the State invokes subsections 46A-6-102(7)(I) and (L). Subsection (I) defines "unfair or deceptive acts or practices" as "[a]dvertising goods or services

[171] State's exs. 6 and 19.
[172] *See* W. Va. Code § 46A-1-102(11).
[173] Compl. ¶ 161.
[174] Compl. ¶ 162.

with intent not to sell them as advertised," and (L) defines the same as "[e]ngaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding."[175]

65. Both Ms. Linville and Ms. Martin signed a *Williamson Law Firm Unsecured Debt Negotiations/Settlement Attorney Client Fee Agreement*, which provides:

> **FEES ON TERMINATION**: In the event of the termination of this Agreement by either party, any accrued fees and costs shall become immediately due and payable, including fees on settlement offers which originated during the term of this Agreement, regardless of when the settlement is accepted or even if the settlement offer is modified after termination of this Agreement.[176]

66. With regard to the State's allegations that Morgan Drexen refuses to refund money to consumers and that Morgan Drexen neither settles significant debts nor provides debt relief services, at the bench trial, Ms. Linville and Ms. Martin both testified that they quit the program and received refunds, and Ms. Martin testified that one of her debts was settled. Ms. Martin testified that she participated in and paid into the program for "four or five" months and then began receiving harassing phone calls from creditors.[177] As a result, she "decided just to go ahead and drop out and handle it . . . ."[178] Ms. Martin testified, via a recorded telephone call presented at the bench trial, that a Morgan Drexen representative informed her that her "engagement fee"—one of three fees mentioned in the phone call—was nonrefundable. Nonetheless, Ms. Martin testified that, upon quitting the program, she received a $1,200 refund.[179] After Ms. Martin quit the program, she received a telephone call informing her that "they had negotiated an amount with Discover through [her] credit card."[180]

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[175] W. Va. Code § 46A-6-102(7)(I), (L).
[176] State's ex. 3 at ¶ 16; State's ex. 16 at ¶ 17.
[177] Martin Test., Trial Tr. 126:18–20.
[178] *Id.* at 134:1–12.
[179] *Id.* at 132:1–5.
[180] *Id.* at 130:24, 131:1–2.

67. Ms. Linville testified that she participated in and paid into the program for eight or nine months before being sued by one of her creditors.[181] As a result, Ms. Linville quit the program.[182] Ms. Linville also testified that Morgan Drexen did not warn her that creditors might sue her for not paying her bills.[183] However, Ms. Linville affirmed, via a recorded telephone call presented at the bench trial, that Morgan Drexen disclosed to her that creditors may contact her and attempt to collect debts owed and could even bring legal action.[184] Via the same recorded telephone call, Ms. Linville affirmed that a Morgan Drexen representative informed her that her "engagement fee"—one of three fees mentioned in the phone call—is not refundable.[185] Nonetheless, Ms. Linville testified that she received a refund of "six hundred and some dollars," but had paid "close to seven thousand [dollars]" into the program.[186]

68. With regard to the State's allegation that Morgan Drexen collects fees from consumers, Mr. Walker testified that the attorneys pay Morgan Drexen, not consumers.[187] Mr. Walker testified further that Morgan Drexen provides accounting services for the attorneys' clients' funds:

> [W]e document the ACH's [Automated Clearing House, an electronic network used for electronic banking, direct deposit, and electronic bill payment], document the banking processes, send out monthly statements to the law firm clients, upload these statements and all the accounting so the attorney can review that at any time through their Web portal, as well as we do trust administration and trust transfers on behalf of the attorneys . . . The creditors get paid from the trust funds that the clients have accrued within the trust funds of the attorneys. Once the attorneys have approved the settlement agreement with that creditor, then the checks are . . . issued in accordance with that settlement agreement.[188]

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[181] Linville Test., Trial Tr. 30:1–13, 41:11–15.
[182] *Id.* at 41:11–15.
[183] *Id.* at 29–31.
[184] *Id.* at 47:11–14, 22.
[185] *Id.* at 46:24, 47:1–5.
[186] Linville Test., Trial Tr. 39:6–11.
[187] Walker Test. 216:4–10.
[188] *Id.* at 224:8–21.

69. Mr. Walker's testimony is supported by the *Unsecured Debt Negotiation/Settlement Attorney/Client Fee Agreement* issued to Ms. Martin and Ms. Linville by Williamson Law Firm, LLC.[189] The *Agreement* provides the fee arrangement in paragraph 7, which includes the engagement fee, ACH payment, check-handling fee, monthly fee, and contingent fee.[190]

70. Mr. Walker testified, at the time of trial, over one-hundred consumers in West Virginia were in settlement discussions and others were in negotiations for additional settlements.[191]

71. The Court is of the opinion that the Defendants' operations amount to a ruse perpetrated by Morgan Drexen. However, the State produced no evidence indicating that Morgan Drexen "has failed to settle any significant debts and provided no credit services of substantial value."[192]

72. Accordingly, the State did not demonstrate by a preponderance of the evidence that Morgan Drexen violated W. Va. Code § 46A-6-104 via W. Va. Code § 46A-6-102(7)(I) by not providing relief services to consumers and by not refunding money to consumers who have withdrawn from the debt settlement program.

Fourth Cause of Action:
Fees Charged Exceed Legal Limits for Debt Pooling

73. In its fourth cause of action, the State alleges that Morgan Drexen violated W. Va. Code § 61-10-23 by "debt pooling" and charging more than two-percent of the amount of money collected for debt settlement. The State alleges that Morgan Drexen has violated W. Va. Code § 46A-6-104 by violating W. Va. Code § 61-10-23.[193]

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[189] State's ex. 3.
[190] *Id.*
[191] Walker Test. 228:7–11.
[192] Compl. ¶ 161.
[193] Compl. ¶¶ 163–70.

74. W. Va. Code § 61-10-23 provides: "It shall be unlawful for any person to solicit in any manner a debt pooling. It shall further be unlawful for any person, except licensed attorneys, to make any charge for a debt pooling by way of fee, reimbursement of costs, or otherwise, in excess of an amount equal to two percent of the total amount of money actually deposited pursuant to a debt pooling."[194] Thus, to address this fourth cause of action, the Court must first determine whether the "licensed attorneys" exception applies to Morgan Drexen.

(1) Whether Morgan Drexen fits the "licensed attorneys" exception

75. The Supreme Court of Appeals of West Virginia has repeatedly held: "The exclusive authority to define, regulate and control the practice of law in West Virginia is vested in the Supreme Court of Appeals."[195] The Court also recognizes that article eight of the West Virginia Constitution vests in the Supreme Court of Appeals the exclusive authority to define, regulate and control the practice of law in West Virginia.[196]

76. Perhaps more germane to the instant matter is the West Virginia Supreme Court of Appeals statement in *Chevy Chase Bank v. McCamant*:

> It appears obvious to this Court that the purpose of the WVCCPA is to protect consumers from unfair, unconscionable, fraudulent, and abusive practices of debt collectors. Specifically, W. Va. Code § 46A-2-123 is designed to prohibit fraudulent practices of debt collectors by proscribing the practice of law by non-lawyers . . . . Prior to the passage of consumer credit protection acts like the WVCCPA, unscrupulous debt collectors mailed threatening letters to consumers wherein they posed as attorneys and misrepresented the law. As a result, unsuspecting consumers were misinformed concerning their actual legal rights. At that time, the law offered little protection to consumers who were the recipients of such correspondence. As a result, shady debt

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[194] *Id.*

[195] Syl. pt. 3, *State ex rel. York v. W. Va. Office of Disciplinary Counsel*, 231 W. Va. 183, 744 S.E.2d 293 (2013); syl. pt. 1, *State ex rel. Askin v. Dostert*, 170 W. Va. 562, 295 S.E.2d 271 (1982).

[196] W. Va. Const., art. VIII, §§ 1, 3; *Shenandoah Sales & Svc., Inc. v. Assessor of Jefferson Cnty.*, 228 W. Va. 762, 770, 724 S.E.2d 733, 741 (2012); syl. pt. 1, *Lane v. W. Va. Bd. of Law Examiners*, 170 W. Va. 583, 295 S.E.2d 670 (1982); syl. pt. 1, *State ex rel. Askin v. Dostert*, 170 W. Va. 562, 295 S.E.2d 271 (1982).

> collectors often ran roughshod over the rights of those who were at the mercy of their underhanded tactics. Dishonest debt collectors enjoyed a free hand at plying their trade outside the bounds of decency and morality. The WVCCPA was enacted, in part, to prohibit such fraudulent practices.
>
> On the other hand, the WVCCPA is not designed to regulate the practice of law. "The exclusive authority to define, regulate and control the practice of law in West Virginia is vested in the Supreme Court of Appeals." Syllabus Point 1, *State ex rel. Askin v. Dostert,* 170 W.Va. 562, 295 S.E.2d 271 (1982). *This* Court's exclusive authority to govern the practice of law is a constitutional mandate. *See* W.Va. Const. art. 8, § 3; *State ex rel. Frieson v. Isner, supra.* Pursuant to this authority, this Court has promulgated rules defining the practice of law, prescribed a code of ethics regulating the professional conduct of attorneys, and adopted procedures for disciplining violations thereof. *See* W.Va.Code § 51–1–4a.[197]

77. At the bench trial, Ms. Linville testified that she signed a fee agreement contract with the *Williamson Law Firm.*"[198] Similarly, Ms. Martin testified that she signed the same agreement.[199] Both agreements provide:

> **UTILIZATION OF LOCAL COUNSEL** You authorize Attorneys with the discretion to select an attorney licensed in your jurisdiction ("local counsel") to assist Attorneys in providing services under this Agreement. Attorneys' use of local counsel will not increase the fees and charges you agreed to pay under this Agreement. If Attorneys needs [sic] to transfer your case from one local counsel to another, your consent to such transfer will be implied unless you object in writing within seven (7) days. By signing this Agreement, you are consenting to Attorneys sharing part of the contingent fee or any other fee paid to Attorneys under this Agreement with local counsel.[200]

78. At the bench trial, Mr. Williamson testified that he does not review "all the documents," nor does he negotiate with any creditors.[201] Rather, Mr. Williamson entered into an agreement

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[197] *Chevy Chase Bank v. McCamant*, 204 W. Va. 295, 302–03, 512 S.E.2d 217, 224–25 (1998) (emphasis added) (some internal citations omitted).
[198] Linville Test. 52 (emphasis original); State's ex. 3.
[199] Martin Test., Trial Tr. 122; State's ex. 16.
[200] State's exs. 3 and 16.
[201] Williamson Test. 175:7–17.

with and formed a business relationship with the Howard | Nassiri law firm to use the Howard | Nassiri "local counsel" network in jurisdictions where he is not licensed to practice law.[202] Mr. Williamson's *Affidavit* further states,

> As a part of the agreement that I reached with Howard | Nassiri, I use Rachelle McIntyre-Nicholson as a local counsel for all clients who reside in West Virginia. . . . When a person from West Virginia becomes a client of my law firm, that person immediately becomes a client of Rachelle McIntyre-Nicholson. . . . It is Ms. McIntyre-Nicholson—not I— who provides advice and counsel on all matters related to West Virginia law and procedure. . . . Ms. McIntyre-Nicholson—not I—reviews every proposed settlement offer from unsecured creditors and either accepts, rejects, or counters those offers on behalf of our clients.[203]

79. Ms. Nicholson serves as local counsel in West Virginia.[204] Mr. Williamson, however, does not have a written agreement with Ms. Nicholson.[205] Rather, Howard | Nassiri has a written agreement with Ms. Nicholson, and it reads in part:

> The purpose of this letter is to confirm our law firm's engagement of the services of your law firm, to act as local counsel for our clients in **West Virginia**, to specify what services we expect you will perform on our behalf and on behalf of our clients, and to establish the fee structure for the services that you perform on our and our clients' behalf.
>
> . . .
>
> Related to your duties as local counsel is the review and *prompt approval* of settlement offers that you will receive via e-mail for our service provider, Morgan Drexen. The settlement offers you receive via e-mail—are achieved by virtue of Morgan Drexen's paralegals' competence, focus, perseverance, and determination. . . . Once the parties agree on a settlement, we usually have to forward the clients first payment check within 24 (or at max, 48) hours to complete the settlement. In short, time is of the essence. That is why it is very important for you to review the settlements to make sure there is compliance with your state's laws, if any, and adequately protect the client . . . .

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[202] *Aff. of Lawrence W. Williamson*, State's Ex. 21.
[203] *Id.*
[204] *Local Counsel Engagement Letter*, State's Ex. 10.
[205] Williamson Test. 169:11–13.

> Therefore and in addition to the abovementioned remuneration, **you will receive an additional $250.00 each month to review each settlement and either <u>accept</u> (by clicking on the submit/approval button in the settlement e-mail) or <u>reject</u> (by advising Morgan Drexen of any perceived inadequacy under state law, or lack of sufficient protection for the client) each settlement within 24 hours *for the first 50 settlements*** (Please be mindful that most creditors will reject a settlement offer if too many changes are insisted upon). For every settlement reviewed over the first 50 settlements, as local counsel you will receive an additional $5.00 per settlement.[206]

Ms. Nicholson also entered into a *Confidential Contract* with Morgan Drexen, which states in part:

> **WHEREAS**, MCINTYRE-NICHOLSON provides legal services including but not limited to, family law, criminal defense law, and abuse and neglect law; *and*
>
> **WHEREAS**, these new areas of practice would require engaging experienced paraprofessionals assistants and administrative staff to: (a) evaluate whether prospective clients would be suitable candidates for the unsecured debt negotiation and settlement legal services (referred to for simplicity in this Contract as "**debt settlement**"); (b) answer telephone calls from clients; (c) notify and receive telephone calls from creditors of the firm's clients; (d) manage communications by way of the telephone calls, written communications, and Internet contacts with clients and third parties; (e) handle organizing, indexing, and storing a large volume of electronic data and papers; (f) process settlement agreements and settlement checks for an attorney's review and approval; and (g) to produce management and financial reports . . . .
>
> . . .
>
> MCINTYRE-NICHOLSON will practice law with independent judgment when providing legal services to clients, without obligation to MD [Morgan Drexen], with the exception that MCINTYRE-NICHOLSON shall be bound by all terms of this Contract for the entire term of this Contract with respect to debt settlement services. With regard to such services, the parties agree that before accepting any client MCINTYRE-NICHOLSON will evaluate the best course of action for each client.
>
> . . .
>
> **MONTHLY PAYMENTS BY MD TO MCINTYRE-NICHOLSON:** As compensation for MCINTURE-

[206] *Local Counsel Engagement Letter*, State's Ex. 10 (emphasis original).

> NICHOLSON'S supervision and approval of client debt settlements, a minimum of $500.00 shall be advanced to MCINTYRE-NICHOLSON each month for up to the first 300 clients, from all fees received by MD from the MCINTYRE-NICHOLSON client base. . . .[207]

Via the *Confidential Contract*, Morgan Drexen also dictates the maximum fees that Ms. Nicholson is allowed to charge clients.[208] Attached to the *Confidential Contract* is a sample attorney client agreement identical to the ones that Ms. Linville and Ms. Martin signed along with letter templates, disclosure statements identical to the ones Ms. Linville and Ms. Martin signed, a script for attorneys to use when contacting customers, a script for customers to use when contacted by creditors, and other templates that include statements of the law with regard to the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and defamation of character, among others.

80. At the bench trial, Ms. Nicholson testified that she began working with Morgan Drexen in August 2009 after seeing an ad on Craigslist showing that Morgan Drexen was hiring.[209] Ms. Nicholson responded to the ad and was given an interview with Howard | Nassiri.[210] Ms. Nicholson testified that she was "hired through Howard | Nassiri, and . . . assigned to Williamson Law Firm" and is "actually local counsel for Williamson."[211] Ms. Nicholson testified that her agreement with Howard | Nassiri did not explicitly mention Williamson Law Firm, but that she understood the clause—"We will provide you with the names and other pertinent information about the clients you will be assigned to act for as local counsel"—to mean that other law firm's clients may be involved, including Williamson Law Firm's clients.[212] Ms. Nicholson testified

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[207] *Confidential Contract* at 1–2, 7, State's Ex. 13 (emphasis original).
[208] *Id.* at 7–8.
[209] Nicholson Test., Trial Tr. 72:20.
[210] *Id.* at 77.
[211] *Id.* at 78.
[212] *Id.* at 84–85.

that she has no agreement with Williamson Law Firm.[213] Ms. Nicholson also testified that Morgan Drexen created and maintained a website bearing her name.[214]

81. Attached to said "confidential contracts" is an "Exhibit B," which is an itemized list of the fees that Morgan Drexen charges attorneys for its services:

EXHIBIT B

Morgan Drexen Fee Schedule

Base Services:			
Client Hardship Analysis	$	10.99	per client
Client Intake by qualified paralegals	$	32.96	per client
ACH Payment Processing	$	1.75	per payment
Client Statements	$	6.49	per client
Trust Statements	$	4.76	per client
Trust Services	$	57.76	per hour
Client Services	$	22.85	per hour
Attorney Calendaring Services for all pending litigation	$	24.85	per hour
Creditor Services	$	19.85	per hour
Creditor Settlement Negotiations by qualified Paralegals	$	7.50	per client
Settlement Management (including issuing checks to creditors)	$	325.00	per settlement
Quality Control & Auditing Services	$	27.21	per hour
IT Support	$	4.25	per client
MDIS Software	$	3.16	per client
Accounting Support Services	$	2.55	per client

Additional Services Available:
Payroll Processing for your Firm
Human Resources Services
Insurance Services
Full Service Accounting Package
Tax Services
ACH Services for all your clients

[215]

82. Upon review of the *Confidential Contract* and said attached documents that were sent to attorneys who signed up to work for Morgan Drexen, it is apparent that Morgan Drexen dictated

[213] *Id.* at 87:16–20.
[214] *Id.* at 106–107.
[215] Def.'s ex. 2; *see* State's exs. 13, 21.

and controlled attorneys' interactions with Morgan Drexen customers. Morgan Drexen hires attorneys and then requires attorneys to pay Morgan Drexen a portion of what customers pay the attorneys as evidenced by the "confidential contracts" and the attorney fee schedule. Morgan Drexen solicits and thereafter communicates with customers. Attorneys review paperwork and "propose" changes to said paperwork with little to no interaction with customers or creditors. The bulk of Morgan Drexen's services are not completed by lawyers or by the direction of lawyers. From this and as discussed with regard to the State's first cause of action, it is evident that Morgan Drexen hides behind attorneys who perform or complete little to no work, exert little to no control over Morgan Drexen, and play little to no role in Morgan Drexen's debt settlement negotiations. Moreover, Morgan Drexen does not purport to satisfy the certain "licensed attorney" exception in the W. Va. Code § 61-10-23, but in fact, Morgan Drexen adamantly claims to be a paralegal service—as discussed *supra*. The Court is not purporting to regulate the practice of law. Because the Court finds that Morgan Drexen, not attorneys, performs the debt settlement services, the Court also finds that the Defendants do not satisfy the "licensed attorney" exception as contained in W. Va. Code § 61-10-23.

(2) Whether Morgan Drexen Violates West Virginia's Debt Pooling Statute.

83. W. Va. Code § 61-10-23 defines debt pooling as "the rendering in any manner of advice or services of any and every kind in the establishment or operation of a plan pursuant to which a debtor would deposit or does deposit funds for the purpose of distributing such funds among his creditors."[216]

84. Said section declares: "It shall be unlawful for any person, except licensed attorneys, to make any charge for a debt pooling by way of fee, reimbursement of costs, or otherwise, in

[216] W. Va. Code § 61-10-23.

excess of an amount equal to two percent of the total amount of money actually deposited pursuant to a debt pooling."[217]

85. With regard to whether Morgan Drexen charges "in excess of an amount equal to two percent of the total amount of money actually deposited pursuant to a debt pooling," Morgan Drexen required Ms. Linville to pay an "engagement fee" of $4,101.53 and Ms. Martin to pay an "engagement fee" of $1,304.26.[218] Ms. Martin was required to pay $360 per month for 42 months, and Ms. Linville to pay $771.25 per month for 60 months in "installment payments."[219] Both Ms. Linville and Ms. Martin testified that they paid the monthly installment fees.[220] Ms. Martin paid "four or five" months' worth of installment fees, and Ms. Linville paid "eight or nine" months' worth installment fees.[221] Thus, in terms of W. Va. Code § 61-10-23, Ms. Martin "actually deposited" either $1,440 or $1,800, and Ms. Linville "actually deposited" either $6,170 or $6,941.25.

86. According to the *Williamson Law Firm Unsecured Debt Negotiation/Settlement Attorney/Client Fee Agreement* (*Agreement*), which is a sample agreement included in the attorneys' *Confidential Contract* packet, Morgan Drexen collected engagement fees from the amounts actually deposited along with the following fees:

> A $10.00 per check handling fee for each settlement payment made to a creditor;
>
> A $15.00 fee for any ACH payment not honored by your bank;
>
> A monthly fee of $45.00 to cover costs and expenses for the following: facsimile transmissions, telephone charges, postage and file maintenance; and

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[217] *Id.*
[218] Linville Test., Trial Tr. 47:2; Martin Test., Trial Tr. 149:23.
[219] Martin Test., Trial Tr. 148–149; State's ex. 3, 15, 16; *see* Linville Test., Trial Tr. 20.
[220] Linville Test., Trial Tr. 22; Martin Test., Trial Tr. 126.
[221] Linville Test., Trial Tr. 30; Martin Test., Trial Tr. 126.

> Upon settlement of an account listed as your Debt, a contingent fee equal to twenty-five percent (25%) of the difference between the full amount demanded by your creditor at the time of settlement and the amount for which that account has settled.[222]

Said fees were to be satisfied from the installment payments: "You agree to pay the following fees, all of which will be collected from, and paid through your monthly installments."[223] Further, as was disclosed to Ms. Linville and Ms. Martin, Morgan Drexen does not pay creditors until the engagement fee and monthly maintenance fees are satisfied in full.[224] Thus, of Ms. Linville's total payments of either $6,170 or $6,941.25, Morgan Drexen charged $4,101.53 in engagement fees and at the least $360 or at the most $405 in "maintenance fees" (fees for faxes, telephone calls, postage and etc.). Not counting the "maintenance fees," Morgan Drexen's "engagement fees" greatly exceed 2% of the monies actually deposited by Ms. Linville. The engagement fee accounts for either 66% or 59% of Ms. Linville's total payments, depending on whether she paid her monthly installments for eight or nine months. Similarly, of Ms. Martin's total payments of either $1,440 or $1,800, Morgan Drexen charged $1,304.26 in engagement fees. Not counting the "maintenance fees," Morgan Drexen's "engagement fees" greatly exceed 2% of the monies actually deposited by Ms. Martin. The engagement fee accounts for either roughly 90.5% or 72.5% of Ms. Martin's total payments, depending on whether she paid her monthly installments for four or five months. Thus, Morgan Drexen violated W. Va. Code § 61-10-23 by charging by way of fee, reimbursement of costs, or otherwise, in excess of an amount equal to two percent of the total amount of money actually deposited pursuant to a debt pooling.

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[222] State's ex. 3 at ¶ 7; State's ex. 16 at ¶ 7.
[223] State's ex. 3, 16.
[224] *See* State's exs. 6, 19.

Fifth Cause of Action:
Failure to Disclose that Lawyers do not Engage in Negotiations with Creditors

87. In its fifth cause of action, the State alleges that: (1) Morgan Drexen causes the likelihood of misunderstanding and confusion with its representations that lawyers will provide legal representation for consumers for debt settlement when the lawyers do not in violation of W. Va. Code § 46A-6-104, as defined by W. Va. Code § 46A-6-102(7)(I) and (L), and (2) "Howard | Nassiri, Lawrence Williamson, and Howard and Nassiri have received fees from consumers and have failed to provide any services to those consumers in violation of W. Va. Code § 46A-6-104, as defined by W. Va. Code § 46A-6-102(7)(M) and (L)."[225]

88. As this Court previously discussed, the evidence shows that attorneys working for Morgan Drexen provide little to no debt settlement services.

89. With regard to Howard | Nassiri and Mr. Howard and Mr. Nassiri, Ms. Nicholson and Mr. Williamson both testified that Howard | Nassiri was responsible "for providing any local counsel that we needed in any jurisdictions" or for "matching up the appropriate local counsel with the appropriate engagement counsel."[226] This testimony is supported by Ms. Nicholson's contract with Howard | Nassiri, which states, "We are engaging your law firm to perform whatever legal services are necessary for our client that we cannot provide in your jurisdiction because we are not licensed there. . . . A fifteen percent (15%) referral fee paid to HOWARD | NASSIRI, LLP will apply."[227] Further, both Ms. Linville and Ms. Martin signed an agreement with Williamson Law Firm, indicating that Mr. Williamson would provide local counsel for Ms. Linville and Ms. Martin in West Virginia, which Mr. Williamson did via Ms. Nicholson.[228] From these facts, it is

[225] Compl. ¶¶ 171–74.
[226] Williamson Test., Trial Tr. 166:5–9; Nicholson Test., Trial Tr. 89:4–6.
[227] State's ex. 10.
[228] State's exs. 3, 16.

clear that Howard | Nassiri's role in Morgan Drexen's operations was to refer Ms. Nicholson to Williamson Law Firm, who would then use Ms. Nicholson as local counsel in West Virginia.[229] This is the extent of Howard | Nassiri's role.

90. As the Court has previously found with regard to Mr. Williamson and Ms. Nicholson, the Court is of the opinion that Howard | Nassiri and Mr. Howard and Mr. Nassiri fail to provide any services to West Virginia consumers. However, the State has failed to produce any evidence that Howard | Nassiri, Mr. Howard, or Mr. Nassiri received fees from West Virginia consumers.

Sixth Cause of Action:
Whether Mr. Williamson's Unauthorized Practice of Law is Deceptive

91. In its sixth cause of action, the State alleges that Mr. Williamson's involvement, whether categorized as the practice of law or not, deceives consumers under the WVCCPA. Specifically, the State alleges

> To the extent Williamson is providing no meaningful legal services to West Virginia consumers, he is engaged in unfair and deceptive acts and practices misleading consumers into paying for legal services not rendered in violation of W. Va. 46A-6-104, as defined by W. Va. Code § 46A-6-102(7)(E), (I), (L), and (M).
>
> Alternatively, to the extent Williamson is providing meaningful legal services to West Virginia consumers, he is engaged in the unauthorized practice of law since he is not admitted to practice in West Virginia . . . [which is] an unfair or deceptive act or practice in violation of West Virginia Code § 46A-6-104.[230]

92. The WVCCPA defines "unfair and deceptive acts and practices" as, *inter alia*: (1) "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval,

[229] *See* State's ex 8, 10, 14.
[230] Compl. ¶¶ 184–186.

status, affiliation or connection that he does not have;"[231] (2) "[a]dvertising goods or services with intent not to sell them as advertised;"[232] (3) "[e]ngaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;"[233] and (4) "[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby."[234]

93. Mr. Williamson is licensed to practice law in Kansas, not West Virginia, which is of little consequence because Mr. Williamson provides no services to West Virginia consumers. As discussed with regard to the State's fourth cause of action, the attorneys who work for Morgan Drexen perform or complete little to no work and exert little to no control over Morgan Drexen. Morgan Drexen, in turn, attempts to legitimize its services by advertising that attorneys perform debt settlement services and negotiations.

94. Several of the documents sent to Ms. Linville and Ms. Martin bear the letterhead "Williamson Law Firm," yet most if not all of the documents were templates and samples sent to Mr. Williamson by Morgan Drexen, and none of these documents reveal that Mr. Williamson is not licensed to practice law in West Virginia. Rather, Mr. Williamson sent Ms. Linville a letter on November 2, 2008, stating, "WILLIAMSON LAW FIRM, LLC, . . . is our attorney who is

[231] W. Va. Code § 46A-6-102(7)(E).
[232] W. Va. Code § 46A-6-102(7)(I)
[233] W. Va. Code § 46A-6-102(7)(L)
[234] W. Va. Code § 46A-6-102(7) (M).

licensed to practice law in your jurisdiction, [and] will help you represent yourself in a court of law by providing you with legal advice and suggested pleadings."[235]

95. Mr. Williamson testified that the November 2, 2008, letter was "just a mistake."[236] Mr. Williamson explained: "[T]his letter is just an example of the, of an error in the automated process. I mean, I make errors in court documents, I've had my assistants . . . make errors in dates, case numbers. Essentially we approve the, we approve the general letter that individuals at Morgan Drexen enter fields and then they—the fields are populated by the computer software program as it's filled out."[237]

96. Based on the foregoing, the Court is of the opinion Mr. Williamson creates the likelihood of confusion or of misunderstanding by representing to consumers that his law firm will provide services when it does not in violation of W. Va. Code § 46A-6-104. Mr. Williamson has deceived consumers by representing that his law firm will provide legal services to consumers in West Virginia when it does not.

Seventh Cause of Action: Whether Ms. Nicholson Misleads Consumers Regarding Mr. Williamson's Representation

97. In its seventh cause of action, the State alleges that Ms. Nicholson "assisted Williamson, Howard | Nassiri, Howard, Nassiri, and Morgan Drexen in misleading consumers to believe they were receiving legal representation, when in fact, they were not, in violation of W. Va. Code § 46A-6-104, as defined by W. Va. Code § 46A-6-102(7)(B), (C), (E), and (I)."

[235] State's ex. 7.
[236] Williamson Test., 196:15–16.
[237] *Id.* at 195:15–22.

98. Aside from demonstrating Ms. Nicholson's role with Mr. Williamson, Morgan Drexen, and Howard Nassiri, the State has produced no evidence that Ms. Nicholson assisted the other defendants in misleading consumers to believe that Mr. Williamson was representing them.

Eighth Cause of Action: Whether Morgan Drexen Violated the Credit Services Organization Act

99. In its eighth cause of action, the State contends that Morgan Drexen and Mr. Williamson are a credit services organization subject to the Credit Services Organization Act, W. Va. Code §§ 46A-6C-1 through -12 (CSOA). The State contends that Morgan Drexen and Mr. Williamson violated the CSOA by failing to post a bond and by failing to register with the Secretary of State, which the State alleges also violates the WVCCPA by being an unfair or deceptive act or practice under W. Va. Code § 46A-6-102(7)(L).[238] The State further contends that Morgan Drexen leads "consumers to believe that their credit scores should improve over time if they complete the Morgan Drexen program."[239]

100. The CSOA defines "credit services organization" as:

> (a) A credit services organization is a person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides, or represents that the person can or will provide, any of the following services:
> (1) Improving a buyer's credit record, history or rating;
> (2) Obtaining an extension of credit for a buyer; or
> (3) Providing advice or assistance to a buyer with regard to subdivision (1) or (2) of this subsection.[240]

In West Virginia, a credit services organization shall file a registration statement and post a surety bond with the secretary of state before conducting business in this state.[241]

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[238] Compl. ¶¶ 197–217.
[239] Compl. ¶ 204.
[240] W. Va. Code § 46A-6C-2.
[241] W. Va. Code §§ 46A-6C-5(a), 46A-6C-3 and -4.

101. The CSOA defines "extension of credit" as "the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, household or agriculture purposes."[242] The CSOA does not define "defer." Black's Law Dictionary defines "defer" as "[t]o postpone; to delay."[243]

102. The CSOA prohibits certain activities of a credit services organization:

> A credit services organization . . . may not . . . (3) Make or use a false or misleading representation in the offer or sale of the services of a credit services organization, including: (A) Guaranteeing to "erase bad credit" or words to that effect unless the representation clearly discloses that this can be done only if the credit history is inaccurate or obsolete; and (B) Guaranteeing an extension of credit regardless of the previous credit problem or credit history unless the representation clearly discloses the eligibility requirements for obtaining an extension of credit.[244]

103. The CSOA exempts, among other categories, "a person licensed to practice law in this state acting within the course and scope of the person's practice as an attorney."[245] The State alleges that Mr. Williamson is not exempt as a licensed attorney under the CSOA because he is not licensed in West Virginia, but rather Kansas.[246] As discussed above, Mr. Williamson provides little to no legal services to West Virginia consumers, so the exemption is of little consequence here.

104. With regard to whether Mr. Williamson is a credit services organization, Ms. Linville and Ms. Martin signed a *Williamson Law Firm, LLC, Unsecured Debt Negotiation/Settlement Attorney/Client Fee Agreement*, stating, "Attorneys cannot and do not predict or guarantee the outcome or resolution of your Debt. Any discussion or speculation about what may happen is made solely to provide you with an understanding of the range of

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[242] W. Va. Code § 46A-6C-1(3).
[243] *Black's Law Dictionary* 466 (9th ed. 2009).
[244] W. Va. Code § 46A-6C-3.
[245] W. Va. Code § 46A-6C-2.
[246] Compl. ¶ 212.

possibilities based upon Attorneys' experience and knowledge regarding similar situations."[247] The State has produced no evidence to indicate that Mr. Williamson purported to improve a consumer's credit record or to obtain an extension of credit. Thus, the Court is of the opinion that Mr. Williamson is not a credit services organization.

105. With regard to whether Morgan Drexen violates the CSOA by failing to post a bond and by failing to register with the Secretary of State, the State alleges specifically and entirely, "Morgan Drexen is not registered with the West Virginia Secretary of State to provide credit services."[248] Morgan Drexen responds, "Morgan Drexen denies the allegations in paragraph 206 of the Complaint to the extent they allege that Morgan Drexen provides credit services or is required to be registered with the West Virginia Secretary of State. Morgan Drexen denies the remaining allegations in paragraph 206."[249] The State elicited no testimony and produced no evidence to indicate that Morgan Drexen has failed to register with the West Virginia Secretary of State as a credit services organization. The Court recognizes that "[p]roof by a preponderance of the evidence requires only that a party satisfy the court or jury by sufficient evidence that the existence of a fact is more probable or likely than its nonexistence."[250] Thus, the Court must find that the State has failed to meet its burden of showing that it is more likely than not that Morgan Drexen has neglected to register with the West Virginia Secretary of State to provide credit services.

106. However, the Court finds that Morgan Drexen is a credit services organization and, based on the following evidence, violated the CSOA by purporting to improve credit

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[247] State's ex 3, 16.
[248] Compl. ¶ 206.
[249] Answer ¶ 206.
[250] *Hovermale v. Berkeley Springs Moose Lodge No. 1483*, 165 W. Va. 689, 697, 271 S.E.2d 335, 341 (1980).

without qualifying that it can be done only if a consumer's credit history is inaccurate or obsolete.

107. Ms. Linville testified that Morgan Drexen never assisted her in obtaining loans or credit cards.[251] Ms. Linville provided no testimony that Morgan Drexen talked to her specifically about her credit rating.[252]

108. The *Legal Intake Specialist Training Manual* provides the following script for Morgan Drexen employees:

> I'm a Morgan Drexen Legal Intake Specialist who works with (name the firm). . . . Ultimately, they work with you to pay back the debt at a reduced amount, without the scar of filing for bankruptcy. Your attorney will set you up with the law firm's trust account. You will pay into this account. Your attorney will communicate with your creditors and notify them that you have retained a law firm to represent you. At this point, they'll be able, with the support of Morgan Drexen, to negotiate legally on your behalf. The law firm will not be paying off your debt when they receive these funds from you. Rather, your attorney will work to negotiate a manageable settlement to extinguish your debt. Once you accumulate at least 20% of the balance of any one account in the trust account, negotiations will begin to reach a settlement to pay your creditor and eliminate that debt. Only once a settlement is reached, your attorney will your funds to pay off the settlement. Plus your creditors are told to call us regarding your account. Ultimately, we will administer the distribution of your funds, with attorney direction, from the attorney's trust account. . . .[253]

The Q&A portion of the script addresses credit ratings: "Q: Will this affect my credit? Response: Yes, it may adversely affect it, but you will have a chance to reestablish your credit once you complete the program. In addition, the only way to get out of debt is to not acquire any more."[254] The *Training Manual* also states: "Once these debts are settled, your attorney will have your creditor issue a letter, showing the account has been paid off! The best thing is even the credit

[251] Linville Test., Trial Tr. 10.
[252] *See id.* at 65:21–24.
[253] State's ex. 12.
[254] *Id.*

bureaus get a copy of this too. ***It shows that you did the right thing and amended your relationship with the creditor.***"[255]

109. Ms. Martin testified that Morgan Drexen told her: "That, that [Morgan Drexen] would—to stop paying our credit card payments . . . And to—they would start taking money out of our checking account. . . . Our credit rating, they said, would be bad for about a year, and then it would initially start getting better after that."[256]

110. In a letter to Brenda Martin from Morgan Drexen dated March 30, 2010, Morgan Drexen informed Ms. Martin of her total amount of unsecured debts and wrote, "it may take over 20 years, making minimum payments, to fully pay these obligations. As we discussed, the program is designed to negotiate mutually agreeable settlements between you and your creditors over an approximate period of 42 months."[257] Ms. Martin testified that Morgan Drexen was supposed to "pay our—we were supposed to make them one payment, and then they were supposed to have us debt free, like, in 42 or 46 months" after Morgan Drexen took "money out of my checking account every month."[258] Ms. Martin testified that Morgan Drexen "asked me not to make no payments, and they gave me statements to say to the creditors when they called me."[259]

111. Both Ms. Linville and Ms. Martin signed a *Disclosure Statement* that reads, "during the course of my engagement, monthly payments to my/our listed creditors will not be made and this will be reflected on my/our credit report. I/We also understand that once I/we have

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[255] *Id.* (emphasis added).
[256] Martin Test., Trial Tr. 118:20–24, 119:16–18.
[257] State's ex. 15.
[258] Martin Test., Trial Tr. 124:1–4, 126:14–15; State's ex. 16, 18.
[259] Martin Test., Trial Tr. 130:9–11.

completed the program and the settlements are paid, the creditors are required to report these settlements so they appear on my/our credit report."[260]

112. Both Ms. Linville and Ms. Martin admitted being advised by Morgan Drexen that "monthly payments will not be paid to your creditors and that this may adversely affect your credit."[261]

113. According to the testimony of Ms. Martin, Ms. Linville, and the documentary evidence discussed above, it is the opinion of this Court that Morgan Drexen does not obtain an extension of credit by requiring its customers to stop paying creditors because such requirement is not a "right" that Morgan Drexen obtains for its customers—it is a requirement under their program. However, Morgan Drexen does represent that it will improve a customer's credit record, history, or rating, as reflected in the *Legal Intake Specialist Training Manual.* After advising that credit may be adversely affected, the *Manual* states:

> you will have a chance to reestablish your credit once you complete the program. In addition the only way to get out of debt is to not acquire any more. . . . Once these debts are settled, your attorney will have your creditor issue a letter, showing the account has been paid off! ***The best thing is even the credit bureaus get a copy of this too. It shows that you did the right thing and amended your relationship with the creditor.***[262]

The Court is of the opinion that this excerpt creates the likelihood that a consumer will believe that his or her credit will be repaired. Thus, Morgan Drexen is a credit service organization under the CSOA. Further, Morgan Drexen violates the CSOA by purporting to improve credit without qualifying that it can be done only if a consumer's credit history is inaccurate or obsolete.[263]

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[260] State's ex. 6, 19.
[261] Martin Test., Trial Tr. 149:17–20; Linville Test., Trial Tr. 46:20–23.
[262] State's ex. 12 (emphasis added).
[263] *See* W. Va. Code § 46A-6C-1(3).

Ninth Cause of Action:
Whether Morgan Drexen Violated the Telemarketing Act and Thereby Violated the WVCCPA

114. In its ninth cause of action, the State avers that Morgan Drexen violated the West Virginia Telemarketing Act, W. Va. Code § 46A-6F-101 through -703, by maintaining toll-free numbers displayed in radio and television advertisements for consumers to call and inquire about debt-settlement services and an automated telephone service to contact consumers directly.[264] Specifically, the State alleges that: (1) Morgan Drexen engages in telemarketing solicitation without posting a surety bond or registering with the West Virginia Tax Department; and (2) Said telemarketing solicitation violates the Telemarketing Act, and consequently the WVCCPA, because the solicitations seek "to request or receive payment of any fee . . . for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating" prior to the completion of said credit services, which creates the likelihood of confusion or misunderstanding.[265]

115. In its *Answer*, Morgan Drexen counters, "[Morgan Drexen] maintains a website which invites attorneys to call its toll free number[s] . . . for further information about Morgan Drexen's software and support services."[266] Morgan Drexen denies calling consumers.[267] But Morgan Drexen admits creating "television and radio advertisements for the attorneys with whom Morgan Drexen contracts, and as the administrative support for the attorneys, when a consumer responds to such advertising, consumers' calls are routed to Morgan Drexen."[268] Morgan Drexen denies trying to sell debt settlement services to consumers who call, denies that consumers call, denies it is engaged in telemarketing services that require registration with the

[264] Compl. ¶¶ 218–233.
[265] W. Va. Code § 46A-6F-501(2), (5), and (8).
[266] Answer ¶¶ 220, 224.
[267] *Id.* at ¶ 221.
[268] *Id.* at ¶¶ 223, 225.

state tax department and a surety bond, denies accepting payment from consumers prior to the completion of all credit services, denies causing consumers to think that payment was required before services could be rendered, and denies that it misleads consumers into believing that they are calling an enrollment lawyer's office in response to an ad when they are in fact calling Morgan Drexen.[269]

(1) Whether Morgan Drexen Engages in Telemarketing Solicitation

116. The West Virginia Telemarketing Act defines "telemarketing solicitation" as:

> (a) . . . [A]ny communication between a telemarketer and a prospective purchaser for the purpose of selling or attempting to sell the purchaser any consumer goods or services, if it is intended by the telemarketer that an agreement to purchase the consumer goods or services will be made after any of the following events occur:
>
> (1) The telemarketer makes an unsolicited telephone call to a consumer, attempting to sell consumer goods or services to the consumer, when the consumer has not previously expressed an interest to the telemarketer in purchasing, investing in, or obtaining information regarding, the consumer goods or services offered by the telemarketer; or
>
> (2) The telemarketer communicates with a consumer by any means and invites or directs the consumer to respond by any means to the telemarketer's communications, and the telemarketer intends to enter into an agreement with the consumer for the purchase of consumer goods or services at some time during the course of one or more subsequent telephone communications with the consumer.
>
> (b) For purposes of this article, "communication" means a written or oral notification or advertisement transmitted from a telemarketer to a consumer ***by any means***.[270]

Said Act defines "telemarketer" as "any person who initiates or receives telephone calls to or from a consumer in this state for the purpose of making a telemarketing solicitation as defined in section one hundred twelve of this article."[271]

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[269] *Id.* at ¶¶ 226–233.
[270] W. Va. Code § 46A-6F-112 (emphasis added).

117. Thus, from a plain reading of the statute, "telemarketing solicitation" includes outgoing calls and incoming calls that result from advertisements or notifications in any medium. Further, the statute covers third parties with the language "any person who initiates . . . telephone calls."[272]

118. Ms. Linville testified that she learned of Morgan Drexen by Morgan Drexen calling her: "I received several calls with—where it says 'not provided—the name not provided.' I didn't answer until, you know, several times, and then I finally answered. And they asked me did I want to be debt free? And, and each time I listened to a little bit more. And then they asked me if I wanted to speak to a live person, to press '1,' and I did. . . . They were telling me that, that they could let me be debt free from 18 to 24 months."[273] Ms. Linville testified that the person with whom she spoke said he or she was from Morgan Drexen.[274] After several phone calls, Morgan Drexen sent Ms. Linville paperwork laying out the program and seeking her enrollment.[275]

119. Ms. Martin testified that she saw a Morgan Drexen television ad about "getting out of debt in half the time.[276] The television ad included a phone number to call to "be out of debt within months instead of 25 years."[277] She testified that she called the number, and a Morgan Drexen representative answered and informed her of Morgan Drexen's program.[278]

120. Mr. Williamson and Ms. Nicholson testified that they were aware that Morgan Drexen had television ads airing in West Virginia.[279]

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[271] W. Va. Code § 46A-6F-113.
[272] *Id.*
[273] Linville Test., Trial Tr. 10:11–22.
[274] *Id.* at 11:2–4.
[275] State's ex. 1.
[276] Martin Test., Trial Tr. 117:21–22.
[277] Martin Test., Trial Tr. 118:1–2.
[278] *Id.* at 118–119.
[279] Williamson Test., Trial Tr. 183:19–24; Nicholson Test., Trial 107: 20–24.

121. Mr. Walker testified that, to his knowledge, Morgan Drexen has never engaged in telemarketing itself or through a third party.[280] Later in the bench trial, however, Mr. Walker admitted that Ms. Linville "probably did" receive telemarketing calls from "lead providers" purchased by Morgan Drexen.[281] Mr. Walker testified that around August 2009, Morgan Drexen "stopped accepting any kind of leads provided by any other entity."[282] Mr. Walker also admitted that client intake specialists

> receive . . . phone calls from clients. They'll talk to them about the program, they'll go through their income, their expenses to try and determine the disposable income that they can put into the program, decided if they're suitable. If they meet the criteria that the attorneys establish for acceptance, they explain what the program is, and then they go through a, a series of disclaimers with the client. And if the client wants to move forward, they go through an intake process of notifying the attorney of that, sending out a contract between the attorney and the person for them to review. It's called the kit.[283]

122. It is the opinion of the Court that Morgan Drexen engaged in telemarketing solicitation by either calling consumers directly or through a third-party and by receiving calls as a result of advertisements from various media.

(2) Whether Morgan Drexen Posted a Surety Bond and Registered with the West Virginia Tax Department

123. The State elicited no testimony and produced no evidence to indicate that Morgan Drexen has not posted a surety bond or registered as a telemarketer with the West Virginia Tax Department. The Court recognizes that "[p]roof by a preponderance of the evidence requires only that a party satisfy the court or jury by sufficient evidence that the existence of a fact is

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[280] Walker Test., Trial Tr. at 217–218.
[281] *Id.* at 218:14–21.
[282] *Id.* at 225:2–3.
[283] *Id.* at 219:5–18.

more probable or likely than its nonexistence."[284] The Court must find and conclude that the State has failed to meet its burden of showing it is more likely than not that Morgan Drexen has neglected to post a surety bond or register with the West Virginia Tax Department as a telemarketer.

(3) Whether said Telemarketing Solicitation violates the Telemarketing Act and the WVCCPA by seeking payment for improving a person's credit history, credit record, or credit rating prior to the completion of said credit services

124. The Telemarketing Act prohibits a telemarketer from requesting or receiving payment

> of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:
> (A) The time frame in which the telemarketer has represented all of the goods or services will be provided to that person has expired; and
> (B) The telemarketer has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved.[285]

The Act also prohibits a telemarketer from engaging in "any other unfair or deceptive conduct which will create a likelihood of confusion or misunderstanding to any reasonable consumer" or from engaging in any "unfair methods of competition and unfair or deceptive acts or practices" proscribed by the WVCCPA.[286] As discussed with regard to the State's eighth cause of action, the evidence shows that Morgan Drexen represents that it will remove derogatory information

[284] *Hovermale v. Berkeley Springs Moose Lodge No. 1483*, 165 W. Va. 689, 697, 271 S.E.2d 335, 341 (1980).
[285] W. Va. Code § 46A-6F-501(2).
[286] W. Va. Code § 46A-6F-501(5), (8).

from or improve a person's credit history, credit record, or credit rating.[287] Furthermore, Morgan Drexen concedes that its fees must be paid before creditors are paid.[288]

125. Accordingly, it is the Court's opinion that Morgan Drexen violated the West Virginia Telemarketing Act by purporting to remove derogatory information from or improve a person's credit history after fees are paid.

Tenth Cause of Action:
Whether Defendants have Collected Excess Charges from Consumers in Violation of W. Va. Code §§ 46A-7-111 and 61-10-23

126. In its tenth cause of action, the State contends that the Defendants have "collected from each West Virginia consumer more than two percent (2%) of the amount of money deposited by the consumers with Morgan Drexen for distribution to their creditors" in violation of "W. Va. Code §§ 61-10-23 and 46A-7-111," West Virginia's debt pooling statute and the WVCCPA, respectively.[289]

127. W. Va. Code § 46A-7-111 provides the procedure for an attorney general to bring a civil action and what violations may be imposed for violations of the WVCCPA.

> (1) After demand, the attorney general may bring a civil action against a creditor for making or collecting charges in excess of those permitted by ***this chapter***. If it is found that an excess charge has been made, the court shall order the respondent to refund to the consumer the amount of the excess charge. If a creditor has made an excess charge in a deliberate violation of or in reckless disregard for ***this chapter***, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the consumer or the attorney general, the court may also order the respondent to pay to the consumer a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the sales finance charge or loan finance charge or ten times the amount of the excess charge. Refunds and penalties to

[287] *See supra* ¶¶ 98–112 (addressing the State's eighth cause of action).
[288] *See supra* ¶ 55.
[289] Compl. ¶¶ 234–238.

> which the consumer is entitled pursuant to this subsection may be set off against the consumer's obligation. . . . If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.
>
> (2) The attorney general may bring a civil action against a creditor or other person to recover a civil penalty for willfully violating ***this chapter***, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this chapter, it may assess a civil penalty of no more than five thousand dollars for each violation of this chapter. No civil penalty pursuant to this subsection may be imposed for violations of this chapter occurring more than four years before the action is brought.[290]

128. The State's contends that the Defendants have charged fees violative of chapter 61 of the Code, and the State cites to chapter 46A of the Code for its authority to prosecute said alleged chapter 61 violation. However, W. Va. Code § 46A-7-111 only grants the attorney general the authority to pursue violations of chapter 46A: "The attorney general may bring a civil action against a creditor or other person to recover a civil penalty for willfully violating ***this chapter***."[291]

129. Further, this Court has already concluded that the Morgan Drexen's practices violate W. Va. Code § 61-10-23 as alleged in the State's fourth cause of action.

Eleventh Cause of Action:
Whether Documents Morgan Drexen Supplies to Consumers are Unclear and Incoherent

130. In its eleventh cause of action, the State contends that "Morgan Drexen uses and has used contracts and other documents with its consumer customers that are not written in a

[290] W. Va. Code § 46A-7-111 (emphasis added).
[291] W. Va. Code § 46A-7-111 (emphasis added).

clear and coherent manner and are not easily understood by consumers in violation of W. Va. Code § 46A-6-109."[292]

131. Specifically, W. Va. Code § 46A-6-109 states:

> (a) Every written agreement entered into by a consumer after the first day of April, one thousand nine hundred eighty-two, for the purchase or lease of goods or services in consumer transactions, whether for the rental of space to be occupied for residential purposes or for the sale of goods or services for personal, family, household or agricultural purposes, must: (1) Be written in a clear and coherent manner, using words with common and everyday meanings; (2) use type of an easily readable size and ink which adequately contrasts with the paper; and (3) be appropriately organized and captioned by its various sections to be easily understood.
> (b) A violation of the provisions of this section shall not render any agreement void or voidable: Provided, That if a consumer at the time of entering into a consumer transaction or anytime thereafter, requests of the other party thereto that the agreement evidencing the consumer transaction be changed or written in a manner to conform with this section, and that request is refused, then a consumer shall have a cause of action to require a consumer agreement not in conformity with the provisions of this section to be reformed. . . .[293]

132. The State's exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, and 19 are various documents that Morgan Drexen sent directly, or indirectly via samples and templates it provided to Williamson Law Firm and Ms. Nicholson, to Ms. Linville and Ms. Martin. Because the letters do not clarify who is responsible for creating and sending the documents or which entity provides the services discussed in the documents, the Court is of the opinion that said documents are not written in a clear and coherent manner and are not easily understood by consumers. Thus, Morgan Drexen has violated W. Va. Code § 46A-6-109.

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[292] Compl. ¶ 240.
[293] W. Va. Code § 46A-6-109.

Twelfth Cause of Action:
Whether Morgan Drexen is the Alter Ego of Walter Ledda

133. In its twelfth cause of action, the State alleges that Morgan Drexen is the alter ego of Walter Ledda and is therefore "liable for all violations of West Virginia law committed by Morgan Drexen and its agents."[294]

134. Under West Virginia law, "decisions to look beyond, inside and through corporate facades must be made case-by-case, with particular attention to factual details."[295] Generally, certain factors guide a court's determination of whether a corporation's veil must be pierced in light of it being an alter ego of an overreaching corporate officer. These factors include: "gross undercapitalization, insolvency, siphoning of funds, failure to observe corporate formalities and maintain proper corporate records, non-functioning of officers, control by a dominant stockholder, and injustice or fundamental unfairness."[296]

135. Upon review of the evidence adduced at the September 7, 2011, bench trial and the applicable law, the Court finds and concludes that the State produced no evidence of the factors listed above to show that Morgan Drexen is the alter ego of Walter Ledda.

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[294] Compl. ¶¶ 242–243.
[295] *Southern Elec. Supply Co. v. Raleigh Cnty. Nat. Bank*, 173 W. Va. 780, 787, 320 S.E.2d 515, 522 (1984).
[296] *Ost-West-Handel Bruno Bischoff GmbH v. Project Asia Line, Inc.*, 160 F.3d 170 (4th Cir. 1998).

CONCLUSIONS OF LAW

136. The Court finds and concludes that Morgan Drexen violated W. Va. Code § 46A-6-104 by failing to "clearly and conspicuously disclose that it provides all the debt relief services" and by misrepresenting "lawyers will provide debt relief services to consumers." Said failures cause a likelihood of confusion as to the source and approval of services and constitute the misrepresentation and concealment of a material fact with the intent that others rely upon such concealment and misrepresentation in connection with the sale of services.[297]

137. The Court finds and concludes that Morgan Drexen caused likelihood of confusion or misunderstanding as to the certification of services thereby violating W. Va. Code § 46A-6-104 by not disclosing its lack of a West Virginia business license.[298]

138. The Court finds and concludes that Morgan Drexen failed to clearly and conspicuously disclose to consumers that fees must be paid before debt relief services begin in violation of W. Va. Code § 46A-1-102(11)[299]

139. The Court finds and concludes that Morgan Drexen clearly and conspicuously disclosed to consumers the potential adverse credit consequences for participating in debt settlement in violation of W. Va. Code § 46A-1-102(11). [300]

140. The Court finds and concludes that Morgan Drexen did not violate W. Va. Code § 46A-6-104 by collecting fees for services not rendered. While the State demonstrated that attorneys, who are paid by consumers, compensate Morgan Drexen for its services, the State did not demonstrate by a preponderance of the evidence that Morgan Drexen does not provide debt

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[297] W. Va. Code §§ 46A-6-104, 46A-6-102(7)(B), (L), and (M); *see supra* ¶¶ 28–35 (discussing the State's first cause of action).
[298] W. Va. Code §§ 11-12-2, 46A-6-104, 46A-6-102(7)(B), (C), (L), and (M); *see supra* ¶¶ 38–52 (discussing the first part of the State's second cause of action).
[299] *See supra* ¶¶ 53–56 (discussing the second part of the State's second cause of action).
[300] *See supra* ¶¶ 57–63 (discussing the third and final part of the State's second cause of action).

relief services to consumers and does not refund money to consumers who have withdrawn from the program.[301]

141. The Court finds and concludes that Morgan Drexen violated West Virginia's debt pooling statute by charging, by way of fees, reimbursement of costs, or otherwise, in excess of an amount equal to two percent of the total amount of money actually deposited pursuant to a debt pooling in violation of W. Va. Code § 61-10-23.[302] "Any person, whether acting as agent or otherwise, who violates any provision of this section [W. Va. Code § 61-10-23] shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred nor more than two hundred fifty dollars or confined in jail not less than thirty nor more than sixty days or both. Justices of the peace and other competent courts shall have concurrent jurisdiction of offenses under this section. It shall not be necessary in any warrant issued or indictment returned under this section to allege exceptions or provisos contained in this section but in the trial of an offense subject thereto it shall be the duty of the State to negative such exceptions and provisos."[303]

142. The Court finds and concludes that Morgan Drexen violated W. Va. Code § 46A-6-104 via W. Va. Code §§ 46A-6-102(7)(I) and (L) by falsely representing that lawyers will provide legal representation and debt relief services for consumers.[304] Further, the Court finds and concludes that the State failed to demonstrate by a preponderance of the evidence that Howard | Nassiri received fees from consumers without providing services to those consumers in violation of W. Va. Code § 46A-6-104 via W. Va. Code §§ 46A-6-102(7)(L) and (M).[305]

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[301] W. Va. Code §§ 46A-6-104, 46A-6-102(7)(I), (L); *see supra* ¶¶ 64–72 (discussing the State's third cause of action).
[302] *See supra* ¶¶ 83–86 (discussing the State's fourth cause of action).
[303] W. Va. Code § 61-10-23.
[304] *See supra* ¶¶ 87–88 (discussing the State's fifth cause of action); *see also* ¶¶ 28–35 (discussing the State's first cause of action)
[305] *See supra* ¶¶ 89–90 (discussing the State's fifth cause of action).

143. The Court finds and concludes that Defendant Mr. Williamson creates the likelihood of confusion or of misunderstanding by representing to consumers that his law firm will provide services when it does not, which, in terms of the West Virginia Code, amounts to advertising services with intent not to sell them as advertised and misrepresenting a material fact with the intent that others rely upon such misrepresentation in connection with the sale or advertisement of services.[306]

144. The Court finds and concludes that the State failed to prove by a preponderance of the evidence that Ms. Nicholson misled consumers to believe they were receiving legal representation in violation of West Virginia Code W. Va. Code § 46A-6-104.[307]

145. The Court finds and concludes that Morgan Drexen is a credit services organization under the Credit Services Organization Act, W. Va. Code §§ 46A-6C-1 through -12. The Court finds and concludes that Mr. Williamson is not a credit services organization under the Credit Services Organization Act. The Court finds and concludes that the State failed to prove by a preponderance of the evidence that Morgan Drexen violated the Credit Services Organizations Act by failing to post a bond, by failing to register with the West Virginia Secretary of State, and by failing to provide consumers with notices as required under the Credit Services Organization Act.[308] The Court finds and concludes that Morgan Drexen violated the Credit Services Organization Act by purporting to improve credit history without qualifying that such improvements can only be made if a consumer's credit history is obsolete or inaccurate. "A person who violates the provisions of [the Credit Services Organizations Act] is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one thousand dollars,

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[306] W. Va. Code §§ 46A-6-104, 46A-6-102(7)(I), (L), (M); *See supra* ¶¶ 91–96 (discussing the State's sixth cause of action).
[307] *See supra* ¶¶ 97–98 (discussing the State's seventh cause of action).
[308] W. Va. Code §§ 46A-6C-5(a), 46A-6C-3 and -4; *see supra* ¶¶ 99–113 (discussing the State's eighth cause of action).

imprisoned in the county jail not more than one year, or both fined and imprisoned."[309] "The remedies provided by this article are in addition to other remedies provided by law."[310].

146. The Court finds and concludes that Morgan Drexen violated the West Virginia Telemarketing Act, W. Va. Code §§ 46A-6F-101 through -703, by purporting to remove derogatory information from or improve a person's credit history but only after fees are paid.[311]

147. Pursuant to section 46A-6F-303 of the West Virginia Telemarketing Act:

> (a) Any person is subject to a civil administrative penalty, to be levied by the department of tax and revenue, of not more than five thousand dollars if the person:
> (1) Acts as a telemarketer without first registering pursuant to section three hundred one of this article;
> (2) Acts as a telemarketer without first meeting the security requirements set forth in section three hundred two of this article;
> (3) Acts as a telemarketer after failing to maintain a certificate of registration accompanied by a surety bond as required by sections three hundred one and three hundred two of this article;
> (4) Includes any material information on a registration application that is false or misleading; or
> (5) Misrepresents that a telemarketer is registered.
> In assessing a civil administrative penalty, department of tax and revenue shall take into account the seriousness of the violation, any good faith efforts to comply with applicable requirements, any benefit obtained by the act or omission, and any other appropriate factors as the department of tax and revenue may establish by rules proposed for promulgation by the legislature in accordance with the provisions of article three, chapter twenty-nine-a of this code.
>
> . . .
>
> (d) The department of tax and revenue may seek an injunction, or may institute a civil action against any person allegedly in violation of the provisions of this section, sections three hundred one and three hundred two of this article. An application for injunctive relief or civil action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought. Upon request of the department of tax and revenue, the division or the prosecuting attorney of the county in which the

[309] W. Va. Code § 46A-6C-10.
[310] W. Va. Code § 46A-6C-12.
[311] *See* W. Va. Code §§ 46A-6F-501(2), (5), 46A-6F-301(a), 46A-6F-302(a).

> violation occurs shall assist the department of tax and revenue in any civil action under this section.
> (e) Independently of the department of tax and revenue, with respect to any action brought by the division or a private citizen regarding unfair or deceptive acts or practices, or abusive acts or practices under the provisions of this article or under other applicable consumer protection laws set forth in this code, the division or a private citizen may also apply to the court for appropriate relief under this section.[312]

Further, the Telemarketing Act states: "Any consumer that suffers harm as a result of any abusive act or practice shall receive injunctive or declaratory relief. . . . The state, on behalf of its residents who have suffered a loss or harm as a result of a violation of this article, may seek injunctive or declaratory relief, actual damages, consumer restitution, civil penalties, forfeiture of bond, attachment of property, costs, attorney's fees and any other remedies available to the division [attorney general] under the provisions of this chapter or otherwise provided by law."[313]

148. With regard to W. Va. Code § 46A-6F-303, the Court finds and concludes that Morgan Drexen's violations of the Telemarketing Act resulted in two hundred and forty five (245) West Virginia consumers signing up for and paying into the Morgan Drexen debt settlement program. Morgan Drexen purports that it does not conduct any business in West Virginia, when in fact it does. The Court further finds and concludes that Morgan Drexen has not made any good faith efforts to comply with the Telemarketing Act.

149. The Court finds and concludes that documents that Morgan Drexen sends to consumers are not written in a clear and coherent manner and are not easily understandable.[314]

150. The Court finds and concludes that the State failed to prove by a preponderance of the evidence that Morgan Drexen is the alter ego of Walter Ledda.[315]

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[312] W. Va. Code § 46A-6F-303.
[313] W. Va. Code 46A-6F-701(c)–(d).
[314] W. Va. Code § 46A-6-109; *see supra* ¶¶ 130–132 (discussing the State's eleventh cause of action).
[315] *See supra* ¶¶ 133–135 (discussing the State's twelfth cause of action).

151. Pursuant to W. Va. Code § 46A-7-111, "[t]he attorney general may bring a civil action against a creditor or other person to recover a civil penalty for willfully violating this chapter, and if the court finds that the defendant has engaged in a course of repeated and willful violation of this chapter, it may assess a civil penalty of no more than five thousand dollars for each violation of this chapter."

152. The Court finds and concludes that Morgan Drexen has engaged in willful and repeated violations of chapter 46A of the West Virginia Code—the West Virginia Consumer Credit and Protection Act.

153. The Court finds and concludes that Morgan Drexen and Lawrence Williamson have engaged in unfair methods of competition and unfair or deceptive acts or practices with regard to 245 consumers in West Virginia. The Court finds and concludes, with regard to each customer, Morgan Drexen violated the West Virginia Consumer Credit Protection Act six times, and Lawrence Williamson violated the West Virginia Consumer Credit Protection Act once. Thus, it is the opinion of this Court that, pursuant to W. Va. Code § 46A-7-111, Morgan Drexen must be assessed a $7,350,000.00 penalty and Lawrence Williamson must be assessed a $1,225,000.00 penalty for their willful and repeated violations of the WVCCPA.

154. The Court finds and concludes that Morgan Drexen has violated W. Va. Code § 61-10-23 twice. Thus, it is the opinion of this Court that, pursuant to W. Va. Code § 61-10-23, Morgan Drexen must be assessed a $500.00 penalty.

155. The Court finds and concludes that Morgan Drexen has violated the West Virginia Credit Services Organizations Act with regard to 245 West Virginia consumers. Thus, it is the opinion of this Court that, pursuant to W. Va. Code §§ 46A-6C-10 and 46A-6C-12, Morgan Drexen must be assessed a $1,225,000.00 fine.

DECISION

Accordingly, the Court does hereby **ORDER** that Morgan Drexen, its directors, managers, agents, and employees be **PERMANENTLY ENJOINED** and **RESTRAINED** from conducting business activity, telemarketing activity, or debt relief activity in West Virginia. The Court does **ORDER** that Morgan Drexen **PAY** $8,575,500.00 as penalty for Morgan Drexen's violations of the West Virginia Consumer Credit Protection Act, the Credit Services Organizations Act, and W. Va. Code § 61-10-23. The Court does **ORDER** that Lawrence Williamson **PAY** $1,225,000.00 as penalty for Lawrence Williamson's violations of the West Virginia Consumer Credit Protection Act. All said penalties shall be placed in the State Treasury to be appropriated by the West Virginia Legislature. The Court does **ORDER** that Morgan Drexen **REFUND** all monies and fees paid to it directly or indirectly by West Virginia consumers. Any such refunded money owed to a consumer, but unable to be paid to such consumer, shall be held in a trust account, pending a later determination by this Court as to the proper distribution of such money. The Court does further **ORDER** that the State is awarded judgment against Morgan Drexen for all of its costs, including its reasonable attorneys' fees. There being nothing further, the Court does **ORDER** that the above-styled action be **DISMISSED** and **STRICKEN** from the docket of this Court.

The Clerk is **DIRECTED** to send a certified copy of this *Final Order* to all parties and counsel of record.

ENTERED this 15 of July 2014.

Louis H. Bloom, Judge

COUNTY OF KANAWHA, SS:
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY AND IN SAID STATE DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS DAY OF
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA