UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 1:10-cv-23235/HOEVELER

DAVID KARDONICK, individually and on behalf of all others similarly situated and the general public,

Plaintiff,

v.

JPMORGAN CHASE & CO. and CHASE BANK USA, N.A.

Defendants.

GOLOMB & HONIK, P.C.'S OPPOSITION TO CHASE'S MOTION FOR AN ORDER TO SHOW CAUSE

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

JPMorgan Chase & Co. and Chase Bank USA, N.A.(hereinafter, "Chase") has brought the instant Motion asking this Court to issue an order directing the law firm of Golomb & Honik, P.C. ("G&H") to show cause why it should not be held in contempt. Chase argues that G&H should be held in contempt for allegedly violating this Court's September 16, 2011 Order approving the settlement agreement in this case, because G&H is serving as outside counsel to the Attorneys General of West Virginia, Hawaii, and Mississippi in connection with Enforcement Actions they have brought against Chase on behalf of their respective states (hereinafter "Enforcement Actions").

Chase's Motion is without merit and must be denied. This is true for several reasons. First and foremost, G&H has not violated this Court's Final Approval Order. The Order bars: (1) the "Settlement Class Members" from commencing any judicial proceeding against Chase; and (2) any person from commencing any judicial proceeding against Chase "on behalf of any Settlement Class Members." *See* Final Judgment and Order of Dismissal [DE 384] at ¶17. These Enforcement Actions have been brought on behalf of the Attorneys General, who are undisputedly not "Settlement Class Members". Moreover, the Enforcement Actions were brought by the Attorneys General on behalf of their respective states, not on behalf of any of the Settlement Class members. Therefore, since G&H did not bring an action on behalf of any Settlement Class Members, G&H did not violate the injunction set forth in the Court's September 16, 2011 Order.

Second, because Chase has actively litigated the Enforcement Actions for over a year without ever raising the notion that G&H somehow violated this Court's Final Approval Order, Chase has waived its right to assert this argument now. Indeed, Chase is attempting to use this unusual "Rule to Show Cause" motion as a tactic to maneuver around the fact that the law

permits the Attorneys General to bring enforcement actions against Chase, despite the fact that Chase settled with a class of individual consumers. Such unwarranted and vexatious maneuvering should not be countenanced.

Finally, Chase's Motion should be denied because Chase has not provided any legal support for its contention that G&H should be found in contempt. In fact, Chase does not cite to a single case where a law firm was found in contempt for its decision to represent a client. Indeed, it is fundamental in this country that a lawyer has a right to freely practice his profession and represent clients of his choosing. Additionally, litigants have a fundamental right to choose their own lawyer. While Chase's Motion does not make clear the remedy it is seeking, it is presumably asking this Court to trample on these fundamental rights by finding G&H in contempt.

II. BACKGROUND

Over the last several years, G&H has filed several class action lawsuits against credit card companies on behalf of consumers who were harmed as a result of enrollment in "Payment Protection Plans." These Payment Protection Plans are ancillary products offered by credit card companies that purportedly provide debt cancellation under certain circumstances. On September 8, 2010, G&H, on behalf its client David Kardonick, filed a class action lawsuit against Chase in this Court in connection with Chase's tactics regarding its Payment Protection Plan. A little more than a year later, on September 16, 2011, this Court issued an Order Approving a settlement agreement between the parties.

In light of G&H's success and experience in litigating the Payment Protection cases, several Attorneys General have retained G&H to serve as outside counsel in connection with enforcement actions they elected to bring against Chase on behalf of their respective states concerning Chase's Payment Protection Plan. On August 16, 2011, G&H filed the first such

enforcement action against Chase and others on behalf of Darrell McGraw, the Attorney General of West Virginia.[1] Importantly, this West Virginia action was filed a month **before** this Court's September 16, 2011 Order approving the class action settlement in this case. Therefore, this Court's Final Approval Order simply could not have barred G&H from filing the West Virginia action, since that action was filed before the Order was issued. Moreover, at no time between the filing of the West Virginia enforcement action and the Final Approval Order in this case did Chase raise any objection to G&H representing the Attorney General of West Virginia in the West Virginia Enforcement Action. To the contrary, Chase never raised this issue with this Court, the West Virginia state court or G&H until now, more than a year after final approval.

On April 12, 2012, G&H filed an enforcement action against Chase on behalf of David Louie, the Attorney General of Hawaii, and on June 28, 2012, an enforcement action was filed against Chase on behalf of Jim Hood, the Attorney General of Mississippi. Chase has been actively litigating these cases for the last several months without raising, in any court, the argument that G&H was barred from representing the Attorneys General.

However, now, over a year after the first Enforcement Action was filed, Chase has brought this Motion asking the Court to issue a Rule to Show Cause Order directing G&H to show why it should not be held in contempt for representing the Attorneys General in these Actions. Chase argues that G&H should be found in contempt of the Court's September 16, 2011 Order which bars the "Settlement Class Members" and anyone acting on their behalf from commencing future litigation against Chase.

[1] Since filing that Complaint on behalf of West Virginia, G&H has voluntarily withdrawn as counsel.

III. ARGUMENT

A. Civil Contempt Standard.

"A civil contempt proceeding is brought to force a party to act in a defined manner. *Chairs v. Burgess*, 143 F.3d 1432 (11th Cir. 1998).[2] "The burden is on the party seeking contempt to show, by clear and convincing evidence, that the party allegedly in contempt violated the court's earlier order." *Rintin Corp., S.A. v. Domar, Ltd.*, 403 F. Supp. 2d 1201, 1204 (S.D. Fla. 2005) (citing *United States v. Roberts*, 858 F.2d 698, 700 (11th Cir. 1988)). Moreover, the movant must make a *prima facie* showing of a violation before the party alleged to be in contempt is required to explain why it did not violate the Court's order or why it was not able to comply with the order. *Id*. The focus of a court's inquiry in a civil contempt proceeding is simply whether the party alleged to be in contempt complied with the order at issue or has provided sufficient evidence to convince the court that it cannot comply. *Id*.

B. G&H Did Not Violate the Court's Final Approval Order.

Chase has not met its burden of proving by clear and convincing evidence that G&H violated this Court's Final Approval Order. Chase contends that G&H violated Paragraph 17 of the Order when it chose to act as outside counsel to the Attorneys General of West Virginia, Mississippi and Hawaii in connection with the Enforcement Actions. However, the plain language of Paragraph 17 makes clear that Chase's argument is simply wrong. Paragraph 17 states:

> Each and every **Settlement Class Member**, and any **person** actually or purportedly acting on behalf of any Settlement Class Member(s) is hereby permanently barred and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting, or enforcing any Released Claims (including but not limited to any individual, class or putative class, representative or other action or proceeding), directly or indirectly in any judicial,

[2] Notably, Chase does not specify what it wants this Court to force G&H to do or how it wants G&H to act in the future.

> administrative, arbitral, or other forum, against the Released Parties.

See Final Judgment and Order of Dismissal [DE 384] at ¶17 (emphasis added). Thus, under Paragraph 17 there are two groups of individuals who are barred from commencing an action against Chase: (1) "Settlement Class Members"; and (2) any person bringing an action on behalf of the "Settlement Class Members."

Neither the states nor G&H does not fit into either group. Indeed, "Settlement Class Members" are defined as "Persons who are members of the Settlement Class and who do not timely opt-out of the Settlement Class . . ." *See* Stipulation and Agreement of Class Action Settlement [DE 16] at II (qq). The "Settlement Class" is in turn defined as: "All Chase Cardholders who were enrolled or billed for a Payment Protection Product at any time between September 1, 2004 and November 11, 2010." *See id*. at II(pp).

G&H is obviously not a "Settlement Class Member." Moreover, G&H has not filed an action on behalf of any "Settlement Class Member." To the contrary, G&H filed the Enforcement Actions against Chase as an agent of the Attorneys General, who are undisputedly not Settlement Class Members. Moreover, the Attorneys General brought the Enforcement Actions as the legal representatives of their respective states to vindicate the states' interests. Therefore the Enforcement Actions were not brought on behalf of any "Settlement Class Members." Indeed, it is beyond dispute that the states of Hawaii, Mississippi and West Virginia are sovereign entities, not "Settlement Class Members." Therefore, since G&H did not bring an action on behalf of any Settlement Class Members, G&H did not violate the injunction set forth in the Court's September 16, 2011 Order.

However, Chase argues that because some of the Settlement Class Members may end up indirectly benefiting from one of the claims brought by the Hawaii and Mississippi Attorneys General, that means the Enforcement Actions were brought by G&H "on behalf of the

Settlement Class Members." However, this argument is flawed in several respects. First, G&H has not brought any claims against Chase whatsoever; rather G&H is providing legal representation to the Attorneys General. The Attorneys General are the parties that commenced these Enforcement Actions on behalf of their respective states. Second, Chase's argument that the Enforcement Actions are in essence brought on behalf of "Settlement Class Members" because they may benefit from one of the claims brought in the action is entirely contradicted by:

(a) the statutory provisions pursuant to which the Enforcement Actions were brought; and

(b) clear case law addressing this identical issue.

1. The Statutory Provisions Pursuant to Which The Enforcement Actions Were Brought Make Evident That These Actions Were Brought on Behalf of the States, Not Settlement Class Members.

The Hawaii, Mississippi and West Virginia enforcement actions were brought by the Attorneys General pursuant to their authority under the Hawaii, Mississippi and West Virginia consumer protection statutes. The plain language of these statutes makes clear that when the Attorney General brings an Enforcement Action, he is doing so on behalf the states, not individual consumers, even if individual consumers may benefit. Specifically, under Hawaii's Unfair or Deceptive Acts or Practices ("HUDAP"), the Attorney General is authorized to file suit against any defendant that violates the HUDAP in order to protect the general public, to force violators to disgorge the moneys and profits they reap from the scheme, and seek civil penalties. *See* Haw. Rev. Stat, § 480-15; 480-3.1; 480-13.5. The Hawaii law goes on to expressly provide that such Enforcement Actions must be brought in the name of the state. Haw. Rev. Stat. §661-10. Specifically, the law states:

> **Action by State.**
> Whenever it is necessary or desirable for the State in order to collect or recover any money or penalty, or to recover or obtain the possession of any specific property, real or personal, or to enforce any other right (except in respect to criminal prosecutions) to institute judicial proceedings, except as otherwise expressly

> provided by law, the attorney general may bring and maintain an action or actions for any such purpose in any appropriate court or courts. All such actions shall be entitled in the name of the State by the attorney general, against the party or parties or thing sued, as defendants.

Haw. Rev. Stat. §661-10 (emphasis added).

Likewise, under Mississippi's consumer protection law, the Attorney General is expressly authorized to bring an enforcement action on behalf of the state of Mississippi and is expressly ordered to do so in the name of the state:

> Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice prohibited by Section 75-24-5, and that proceedings would be in the public interest, he may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act or practice.

Miss. Code Ann. §75-24-9 (emphasis added).

Similarly, West Virginia's Consumer Credit and Protection Act specifically vests the Attorney General with the power to prosecute complaints and bring civil actions against violators of the Act on behalf of the state. W. Va. Code Ann. §§ 46A-7-108; 46A-7-109.

In accordance with these statutory provisions, the Enforcement Actions were brought on behalf of the States of Hawaii, Mississippi and West Virginia, not individual consumers or any "Settlement Class Members." Therefore, G&H could not have violated this Court's Order by providing legal representation to the Attorneys General for bringing actions on behalf of their respective states.

2. Courts Throughout This Country Have Recognized That Enforcement Actions Are Brought On Behalf of The State, Not Any Individual Consumers, Even When Individual Consumers May Benefit.

Chase's argument that the Enforcement Actions are in essence brought on behalf of the "Settlement Class Members" has been flatly rejected by courts throughout this country. Most

significantly, Chase itself litigated this very question in connection with the West Virginia Enforcement at issue here and lost. Specifically, in *West Virginia ex rel. McGraw v. JP Morgan Chase & Co.*, 842 F. Supp. 2d 984 (S.D. W. Va. 2012), the Attorney General asked the district court to remand the West Virginia enforcement action, which Chase had removed to Federal Court. *Id.* Chase argued that the enforcement action was in essence a consumer class action that should remain in federal court pursuant to the Class Action Fairness Act ("CAFA"). In support of this position, Chase argued, as it argues here, that because the action may provide some relief to individual consumers, the enforcement action was really brought on behalf of a class of individual consumers. *Id*. at 997. The court rejected Chase's argument and granted the Attorney General's Motion for Remand. *Id.* at 995.

In so holding the court found that: "consumer protection actions brought by the Attorney General under the WVCCPA are parens patriae actions, not class actions." *Id*. (citing *West Virginia ex rel. McGraw v. CVS Pharmacy, Inc.*, 646 F.3d 169 (4th Cir.), cert. denied, 132 S. Ct. 761 (2011)). The Court explained that "[t]he WVCCPA specifically authorizes the West Virginia Attorney General to seek both injunctive and monetary relief for violations of the Act … as a parens patriae, that is, as the legal representative of the State to vindicate the State's sovereign and quasi-sovereign interests, as well as the individual interests of the State's citizens." *Id.* at 996 (quoting *CVS Pharmacy*, supra).

In response to Chase's argument that because some consumers may receive some monetary relief as result of the enforcement action, the enforcement action is in essence a consumer class or mass action, the court held: "this kind of claim-by-claim analysis is widely disfavored," and "the appropriate inquiry in determining the real party in interest is to examine the whole complaint, and decide the real party in interest based on the 'essential nature and effect of the proceeding," *Id*. at 997 (*quoting LG Display Co. v. Madigan*, No. 11-8017, 665 F.3d 768,

2011 U.S. App. LEXIS 23036 at * 12-13 (7th Cir. Nov. 18, 2011)). In examining the "essential nature and effect" of this proceeding, the court determined that the state, not any individual consumers, was the real party in interest. *Id*. at 998.

Chase's Motion does not even mention the West Virginia district court decision, let alone explain why this court should depart from its holding. Similarly, Chase fails to distinguish this case from *Spinelli v. Capital One Bank, USA*, No. 8:08-cv-132, 2012 U.S. Dist. LEXIS 118667 (M.D. Fla. Aug, 21, 2012), which is yet another decision in the payment protection context. In *Spinelli*, Capital One argued that the Florida District Court should enjoin the Attorneys General of Hawaii and Mississippi from bringing Enforcement Actions against Capital One in connection with their payment protection plan. *Id.* at *8-9. Indeed Capital One made the very same argument that Chase makes in this case: that the Attorneys General were in essence relitigating the claims that were previously settled and were in essence representing individual consumers, who had already settled their claims with Capital One. *Id.*

Significantly, the enforcement actions at issue in *Spinelli* were the same as in Hawaii and Mississippi Enforcement Actions here, which of course contained the same type of claims for unjust enrichment. Moreover, like Chase, Capital One also asked the Court to sanction G&H for representing the Attorneys General in the Enforcement Actions. In rejecting Capital One's argument, the Court held that the Final Approval Order in the consumer class action could not bind the States of Hawaii and Mississippi from bringing enforcement actions on behalf of their respective states. *Id.* at * 9 ("the Court declines to enter the injunction requested by Defendants and also declines to sanction the Golomb & Honik law firm."). Specifically, the Court explained:

> Here, the Court declines to enter the injunction requested by Defendants and also declines to sanction the Golomb & Honik law firm. The relief requested by Defendants is inappropriate for a number of compelling reasons. The Court's Order approving the

> settlement and closing this case did not bind the States of Mississippi and Hawaii. The Attorney General of Mississippi and Hawaii were not defined as class members and did not have an opportunity to participate in the litigation or opt out of the class. It would be a violation of the Due Process clause to now enjoin such Attorney General via the requested injunction. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985)("due process requires at a minimum that the absent plaintiff be provided with an opportunity to remove himself from the class . . . [and] requires that the named plaintiff at all times adequately represent the interests of the absent class members.")

Id. at *9. The *Spinelli* Court went on to note that: "Capital One does not cite a single case holding that a district court may — or should — issue an injunction to prevent a non-party from litigating its claims." *Id.* at 10.

Chase does not provide any meaningful distinction between our case and *Spinelli*. Instead, it argues that it is not seeking to enjoin the Enforcement Actions, but is only asking this Court to find G&H in contempt for providing the Attorneys General with legal representation. This argument is spurious at best. The fact is that if the Attorneys General have the right to bring the enforcement actions, which as the *Spinelli* court explained, the Due Process Clause dictates they do, than G&H has the right to serve as outside counsel for the Attorneys General.

In addition to *Spinelli* and *West Virginia ex rel. McGraw v. JP Morgan Chase & Co.*, there is an abundance of case law throughout this country holding that enforcement actions brought by Attorneys General are brought on behalf of the states, not the consumers, even if the consumers may benefit from some of the claims the Attorneys General pursue. For example, in *West Virgina v. CVS Pharm., Inc.*, 646 F.3d 169 (4th Cir. 2011), the Fourth Circuit held that where an attorney general "files suit independently of any consumer complaints, as a *parens patriae*, that is, as the legal representative of the State to vindicate the State's sovereign and quasi-sovereign interests, as well as the individual interests of the State's citizens," then the state, not any group of consumer, is the real party in interest. *Id*. at 176.

By way of further example, in *Nevada v. Bank of Am. Corp.*, 672 F.3d 661 (9th Cir. 2012), the Nevada Attorney General sued, pursuant to his statutory authority under Nevada's consumer protection law, to protect hundreds of thousands of homeowners in the state who were defrauded by Bank of America. *Id*. at 670. The Court held that under these circumstances, "Nevada - not the individual consumers - is the real party in interest in the controversy." *Id*. In so holding, the Ninth Circuit stressed that, "Nevada's sovereign interest in protecting its citizens and economy from deceptive mortgage practices is not diminished merely because it has tacked on a claim for restitution." *Id*. at 671 (emphasis added); *see also Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011) (holding that "a statutory parens patriae action may well result in a settlement that does not include restitution to victims of the fraud, but only results in penalties paid to the public treasury. This fact highlights the great distinction between a parens patriae lawsuit and a true class action.").

Similarly, in *LG Display Co., LTD v. Madigan*, 665 F.3d 768 (7th Cir. 2011), the Attorney General of Illinois brought an enforcement action against the defendant who removed the action to federal court. *Id*. at 770. The Attorney General moved to remand the case back to Illinois state court. In opposition to the motion, the defendant argued that the case was essentially a class action or mass action "in disguise" and therefore should proceed in federal court under CAFA. *Id.* In making this argument, the defendant conceded, as Chase concedes here, that the Attorney General "is the real party in interest for the enforcement-related claims, but they den[ied] that the state is the real party in interest for the damages claims. . . ." *Id*. at 772. The Seventh Circuit rejected the defendant's argument that the action was in essence brought on behalf of a class or mass of individual consumers. *Id*. In so holding, the Seventh Circuit explained that it was improper for the court to do a "claim-by-claim analysis" to determine the real party in interest. *Id*. at 773-774. Specifically, the court stated:

> defendants argue that if we consider what's *really* going on in this suit, we will see that Illinois resident purchasers are the real parties in interest and, building on that premise, conclude that the 100 or more plaintiffs, minimal diversity, and amount-in-controversy requirements are met. To reach the conclusion that Illinois resident purchasers are the real parties in interest, however, the petitioners ask us to separately determine the parties in interest in each of the Attorney General's claims. They concede that the state is the real party in interest for the enforcement-related claims, but they deny that the state is the real party in interest for the damages claims
> . . . .
>
> just because CAFA was meant to expand federal courts' jurisdiction over class actions, it does not follow that 'federal courts are required to deviate from the traditional 'whole complaint' analysis when evaluating whether a State is the real party in interest in a parens patriae case.'

Id. (*quoting In re TFT-LCD (Flat Panel) Antitrust Litig.,* 2011 U.S. Dist. LEXIS 17793, 2011 WL 560593, *3.). When looking at the enforcement action as a whole, the Court agreed that the action was brought on behalf of the State, not any individual consumers. *Id*.

Finally, the case of *Herman v. South Carolina Nat'l Bank*, 140 F.3d 1413, 1422-23 (11th Cir. 1998) arose in a context very similar to the one currently before this Court. In *Herman*, private litigants brought a class action against several defendants alleging, *inter alia*, ERISA violations. *Id*. at 1416-17. The class action eventually settled. However, following an investigation, the Secretary of Labor filed claims against two of the defendants also alleging ERISA violations. *Id*. at 1417. These defendants argued that the private settlement agreement that they entered into with the class members barred the Secretary's action against them. *Id*. at 1422. The Eleventh Circuit disagreed with the defendants and found that the Secretary's action was not barred because: (1) the Secretary was not a party to the settlement agreement; (2) the Secretary had a "special statutory role in seeking relief and assessing civil penalties for ERISA violations;" and (3) the Secretary's suit was brought to further the public interest. *Id*. at 1423-24.

As these cases demonstrate, the Enforcement Actions here were brought on behalf of the States of Hawaii, Mississippi and West Virginia, not any of the "Settlement Class Members." Therefore, G&H cannot be found in contempt for representing the Attorneys General in bringing these actions.

C. Chase Waived Its Right to Argue that G&H Should Be Found In Contempt, Because Chase Waited Over A Year To Assert This Argument.

Chase has waived its right to assert the argument that G&H should be found in contempt of the Court's Final Approval Order because it has failed to timely raise that argument, despite having ample opportunity to do so. In this Circuit, when a party chooses to remain silent rather than assert an argument that is available to it, it waives the right to assert that argument. *See National Union Fire Ins. Co. of Pitt. v. Beta Construction LLC*, No: 8:10-cv-1541, 2010 U.S. Dist. LEXIS 119876 (Oct. 26, 2010); *Townhouses of Highland Beach Condominium Assoc., Inc.* v. *QBE Insur. Corp.*, 504 F. Supp.2d 1307; *Williams v. Marriott Corp.*, 864 F. Supp. 1168 (M.D. Fla. 1994).

As set forth above, the first Enforcement Action against Chase was filed over one year ago, on August 16, 2011, by G&H, on behalf the Attorney General of West Virginia. Significantly, this West Virginia action was filed a month **before** this Court's September 16, 2011 Order approving the class action settlement in this case. Therefore, Chase had ample opportunity to raise this issue with this Court before the Court issued its Final Approval Order. However, it choose to remain silent and fully support the Final Approval of the Settlement in this case. Indeed, at no time between the filing of the West Virginia enforcement action and the Final Approval Order in this case did Chase raise any objection to G&H representing the Attorney General of West Virginia in the West Virginia action. To the contrary, Chase never raised this issue with this Court, the West Virginia state court, or G&H until now, more than a year after final approval.

Moreover, the Hawaii and Mississippi Enforcement Actions were filed on behalf of the Attorneys General on April 12, 2012 and June 28, 2012 respectively. Chase has been actively litigating these actions for the last several months without raising, in any court, the argument that G&H was barred from representing the Attorneys General. Chase had more than ample opportunity to raise this argument on several occasions, but chose not to assert its objection to G&H's representation of the Attorneys General until now.

It appears that Chase has now chosen to bring this unusual, unclear and unwarranted Motion for a Rule to Show Cause as a tactic to maneuver around the fact that the law permits the Attorneys General to bring enforcement actions against Chase, despite the fact that Chase settled with a class of consumers. Such maneuvering should not be countenanced. Because Chase did not raise its contempt argument in a timely fashion, it has waived this argument and should be barred from asserting it at this time.

D. Chase Is Asking This Court to Create A Precedent That Would Trample on he Rights Of Attorneys and Their Clients.

Chase's "Motion for A Rule to Show Cause" does not cite to a single case where a court found an attorney or a law firm in contempt for representing a client in a legal proceeding. Moreover, Chase does not even specify what sanction it is asking the Court to impose upon G&H.[3] However, by asking this Court to find G&H in contempt for its decision to serve as outside counsel to the Attorneys General of West Virginia, Hawaii and Mississippi, Chase is asking this Court to create a precedent that would violate the fundamental rights of attorneys and their clients, and render it impossible for attorneys to uphold their ethical responsibilities as set forth in the ABA Rules of Professional Conduct.

[3] Because Chase's Motion does not specify what remedy it is seeking, G&H respectfully requests that the Court permit it to file a surreply brief in this matter, so that it has an opportunity to respond to any Reply Chase may file and address whatever remedy Chase is requesting.

The Supreme Court of the United States has long held that: "everyone must agree that the litigant's freedom to choose his own lawyer in a civil case is a fundamental right." *Richardson-Merrell Inc. v. Koller*, 472 U.S. 424, 442 (1985) (Stevens, J., dissenting). Additionally, a lawyer has a right to freely practice his profession. *See generally*, *Woods v. Covington County Bank*, 537 F.2d 804 (5th Cir. 1976). Therefore, to hold a lawyer in contempt of court for agreeing to represent a client would trample on these fundamental rights. That is precisely what Chase is asking this Court to do in this case. This Court should decline to create such a dangerous precedent.

Furthermore, lawyers have an ethical responsibility pursuant to the ABA Rules of Professional Conduct not to make any agreement restricting their ability to institute litigation against a particular defendant. Specifically, ABA Rule of Professional Conduct 5.6 prohibits a lawyer from making "an agreement settling a client's case if the agreement includes a restriction on the lawyer's ability to represent other plaintiffs against the same defendant." *See ABA Rule 5.6 (b) Commentary* . If this Court finds that G&H cannot commence litigation against Chase on behalf of the Attorneys General, non-parties to the *Kardonik* action, then this Court would be restricting G&H's "ability to represent other plaintiffs against the same defendant." Such a ruling would create great confusion and make it impossible for attorneys to honor the ethical obligations imposed by ABA Rule 5.6(b).

IV. CONCLUSION

For the foregoing reasons, Golomb & Honik, P.C. respectfully request that the Court deny Chase's Motion for a Rule To Show Cause.

Dated: October 9, 2012

Respectfully Submitted,

GOLOMB & HONIK, P.C.

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CERTIFICATE OF SERVICE

I Kenneth J. Grunfeld, hereby certify that a true and correct copy of the foregoing **Golomb & Honik, P.C.'s Opposition to Chase's Motion for an Order to Show Cause** has been filed and served on all counsel of record on the date below via Court's CM/ECF Filing system.

Kenneth J. Grunfeld, Esquire

Dated: October 9, 2012