

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Consumer Financial Protection Bureau,

Plaintiff,

v.

Sprint Corporation,

Defendant.

Civil Action No. 14-CV-09931 (WHP)

Memorandum in Support of Joint  
Motion to Intervene to Modify Stipu-  
lated Final Judgment and Order

**MEMORANDUM IN SUPPORT OF JOINT MOTION TO INTERVENE  
TO MODIFY STIPULATED FINAL JUDGMENT AND ORDER**

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## **I. PRELIMINARY STATEMENT**

The Attorneys General of Connecticut, Vermont, Indiana and Kansas (collectively, the "Intervenors") seek to intervene in this Action to ensure that monies remaining after full consumer redress under the terms of the Stipulated Final Judgment and Order are used for consumer protection purposes.

The intervention is appropriate under Rule 24(b) of the Federal Rules of Civil Procedure because the motion to intervene is timely and will not cause undue delay or prejudice to any party. The Intervenors are government officials charged with enforcement of state consumer protection laws and the Consumer Financial Protection Act, under which the Consumer Financial Protection Bureau ("CFPB") brought this Action, and they adopt the claims asserted in the CFPB's Complaint. The Court should therefore allow their intervention as within the public interest.

By the terms of the Stipulated Final Judgment and Order, this Court retains jurisdiction to modify the Stipulated Final Judgment and Order, and it should do so in its discretion under Rule 60(a) of the Federal Rules of Civil Procedure to correct a mistake in the terms relating to funds remaining after consumer redress. Specifically, the Court should modify those terms, consistent with the underlying intent of the parties, to order the CFPB to direct the remaining redress funds to the National Association of Attorneys General ("NAAG") to continue and complete the development of the National Attorneys General Training and Research Institute ("NAGTRI") Center for Consumer Protection.

Neither the CFPB nor the Sprint Corporation ("Sprint"), the defendant in this Action, opposes the intervention or modification of the Stipulated Final Judgment and Order.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

This Action was filed on December 17, 2014.<sup>1</sup> The CFPB alleged that Sprint unfairly allowed unauthorized third-party charges on its customers' wireless telephone bills. In particular, the CFPB alleged that Sprint created and maintained a third-party billing system that invited unauthorized charges by, among other things, (i) enrolling customers in third-party billing without their authorization; (ii) giving third-parties access to Sprint's customers and billing system without implementing adequate compliance controls; (iii) failing to adequately resolve customer disputes; and (iv) ignoring warnings from customers, government agencies, and public-interest groups about the increasing incidence of unauthorized wireless charges.<sup>2</sup>

On May 12, 2015, the Federal Communications Commission ("FCC") entered a Consent Decree requiring Sprint to pay \$6,000,000 to the U.S. Treasury and imposing certain changes to Sprint's third-party billing practices.<sup>3</sup> Among the changes, Sprint agreed to implement systems to obtain express informed consent before customers could incur third-party charges.

On that same date, Sprint entered into separate agreements (the "State Agreements") with all fifty states and the District of Columbia.<sup>4</sup> The State Agreements re-

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<sup>1</sup> Complaint, ECF No. 1.

<sup>2</sup> See Complaint, ECF No. 1, ¶¶ 10-31, pp. 3-7.

<sup>3</sup> See FCC Consent Decree, ECF No. 18-6.

<sup>4</sup> See, e.g., State of Vermont's Assurance of Discontinuance, ECF No. 18-7.

solved an extensive multistate consumer protection investigation of Sprint's third-party billing practices. Under the terms of the State Agreements, Sprint agreed to pay a total of \$12,000,000 to the states.

### **A. The Stipulated Final Judgment and Order**

On June 30th, 2015, this Court entered the Stipulated Final Judgment and Order (the "Stipulated Judgment").<sup>5</sup> In addition to the injunctive terms reforming Sprint's third-party billing practices consistent with the FCC Consent Decree, the Stipulated Judgment's "Redress" provision<sup>6</sup> required Sprint to implement the "Sprint Consumer Redress Plan" (the "Redress Plan").<sup>7</sup>

#### **1. The Redress Plan and Remaining Funds**

Under the terms of the Redress Plan, Sprint was required to provide up to \$50,000,000 in refunds to customers pursuant to a claims process. Sprint customers had until December 31, 2015, (the "Claims Deadline") to submit claims through that process, affirming that they incurred unauthorized third-party charges. Within 90 days of the Claims Deadline, Sprint was to refund all charges for approved customer claims.<sup>8</sup> "If there [was] any balance remaining after nine months from the Claims Deadline... Sprint [was to] pay that amount to the [CFPB] or the [CFPB's] agent by wire transfer and according to the [CFPB's] wiring instructions."<sup>9</sup> Thereafter, the CFPB, in consultation with the states and the FCC, was to determine if additional redress to consumers "is

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<sup>5</sup> Stipulated Judgment, ECF No. 25.

<sup>6</sup> Stipulated Judgment, ECF No. 25, Sec. III, pp. 14-15.

<sup>7</sup> ECF No. 18-5.

<sup>8</sup> ECF No. 18-5, ¶¶ 16-19, pp. 7-9.

<sup>9</sup> ECF No. 18-5, ¶ 22, p. 9.



wholly or partially impracticable or otherwise inappropriate."<sup>10</sup> Upon a determination that additional redress to consumers is wholly or partially impracticable or otherwise inappropriate, the CFPB, again in consultation with the states and the FCC, could "apply any such remaining funds for such other equitable relief, including consumer information remedies, as determined to be reasonably related to the allegations set forth in the Complaint."<sup>11</sup> "Any funds not used for such equitable relief [were to] be deposited in the U.S. Treasury as disgorgement."<sup>12</sup>

As of today, approximately \$14,000,000 of the Sprint's consumer redress funds remain unused (the "Remaining Funds"). Upon information and belief, the CFPB, in consultation with the Vermont Attorney General<sup>13</sup> and the FCC, has concluded that additional redress to consumers is wholly or partially impracticable or otherwise inappropriate. Upon information and belief, the CFPB, after consultation with the Vermont Attorney General and the FCC, did not identify any other equitable relief, reasonably related to the allegations set forth in the complaint, towards which the CFPB could apply the Remaining Funds. Absent modification of the Stipulated Judgment, the Remaining Funds will therefore be deposited in the U.S. Treasury as disgorgement.

## **B. The NAGTRI Center for Consumer Protection**

The Intervenor now move to intervene in this Action, without objection by either the CFPB or Sprint, to modify the Stipulated Judgment to order the CFPB to direct the

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<sup>10</sup> ECF No. 18-5, ¶ 29, p. 11.

<sup>11</sup> ECF No. 18-5, ¶ 29, pp. 11-12.

<sup>12</sup> ECF No. 18-5, ¶ 29, pp. 11-12.

<sup>13</sup> The Vermont Attorney General is the compliance liaison for the states pursuant to the terms of the State Agreements.

Remaining Funds to NAAG<sup>14</sup> to continue and complete the development of the NAGTRI Center for Consumer Protection. As set forth in the "NAGTRI Proposal for the Use of Fund from Sprint Settlement: NAGTRI Center for Consumer Protection, 'Resources, Training and Research for America's Attorneys General in the Fight Against Consumer Fraud and Abuse,'" attached hereto as Exhibit B, the Remaining Funds would be put to use to train, support and improve the coordination of the state consumer protection attorneys charged with enforcement of the laws prohibiting the type of unfair and deceptive practices alleged by the CFPB in this Action.

### III. LEGAL ANALYSIS

#### A. The Court Should Allow the Intervention Under Rule 24(b) of the Federal Rules of Civil Procedure.

The Court should allow the intervention under Rule 24(b) of the Federal Rules of Civil Procedure, which governs permissive interventions in District Court cases, because (1) the intervention is timely and will cause no undue delay or prejudice, (2) the Intervenor is state officers statutorily authorized to enforce the Consumer Financial Protection Act ("CFPA"), under which this Action was brought by the CFPB, and (3) the Intervenor adopts the claims asserted by the CFPB in the Complaint. *See* Fed. R. Civ. P. 24(b).

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<sup>14</sup> NAAG is a public entity identified by the Internal Revenue Service as an "instrumentality of the States." *See* IRS Letter to NAAG dated January 16, 1985, attached hereto as Exhibit A. NAAG's mission is to facilitate interaction among Attorneys General as peers and to facilitate the enhanced performance of Attorneys General and their staffs. It fosters interstate cooperation on legal and law enforcement issues, conducts policy research and analysis of issues, conducts training, and facilitates communication between the states' chief legal officers and all levels of government.

**1. The Court Should Allow the Intervention Because It Is Timely and Will Cause No Undue Delay or Prejudice.**

The Joint Motion to Intervene to Modify the Final Judgment and Order is timely and will cause no undue delay or prejudice to any party. Rule 24(b) requires motions for intervention to be timely filed. Fed. R. Civ. P. 24(b). "Factors to consider in determining timeliness include: (a) the length of time the applicant knew or should have known of its interest before making the motion; (b) prejudice to existing parties resulting from the applicant's delay; (c) prejudice to the applicant if the motion is denied; and (d) the presence of unusual circumstances militating for or against a finding of timeliness." *MasterCard Int'l Inc. v. Visa Int'l Serv. Ass'n, Inc.*, 471 F.3d 377, 390 (2d Cir.2006) (citation, internal quotation marks, and brackets omitted).

Here, Intervenor's motion was brought promptly upon notice that the CFPB, in consultation with the states and the FCC, could not identify any equitable relief, reasonably related to the allegations set forth in the Complaint, towards which the CFPB could apply the Remaining Funds. Moreover, because the CFPB and Sprint have already settled the dispute, intervention cannot cause undue delay or prejudice their rights. *See Diversified Grp., Inc. v. Daugerdas*, 217 F.R.D. 152, 158 (S.D.N.Y. 2003); *quoting United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1427 (10th Cir.1990) ("Rule 24(b)'s timeliness requirement is to prevent prejudice in the adjudication of the rights of the existing parties, a concern not present when the existing parties have settled their dispute and intervention is for a collateral purpose.").

Neither the CFPB nor Sprint opposes the intervention. The Court should therefore grant the Intervenor's Motion to Intervene to Modify the Final Stipulated Judgment and Order.

**2. The Court Should Allow the Intervention Because the Intervenorers Are State Officials Statutorily Authorized to Enforce the Statute Under Which the CFPB Brought This Action.**

The Court should grant the Joint Motion to Intervene to Modify the Final Judgment and Order because the Intervenorers are state officers seeking to enforce the CFPA. Rule 24(b)(2)(A) allows courts to "permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on a statute or executive order administered by the officer." Fed. R. Civ. P. 24(b)(2)(A)

This Action was brought by the CFPB under the CFPA.<sup>15</sup> Just as the CFPA authorizes the CFPB to bring actions like this one against parties engaging in unfair acts and practices (*see* 12 U.S.C. §§ 5531 and 5536(a)(1)(B)), it also authorizes state attorneys general to bring such actions. *See* 12 U.S.C. § 5552(a)(1); *see Gingras v. Rosette*, No. 5:15-CV-101, 2016 WL 2932163, at \*22 (D. Vt., May 18, 2016) (The CFPA "authorizes enforcement actions by state attorneys general and state regulators.").

Because the CFPB's claims were brought under the CFPA, and because the Intervenorers are state officers that also enforce the CFPA, the Court should allow the intervention under Rule 24(b)(2)(A) in the public interest. *See, e.g., Disability Advocates, Inc. v. Paterson*, No. 03-CV-3209 (NGG), 2009 WL 4506301, at \*2 (E.D.N.Y. Nov. 23, 2009) ("[T]he Second Circuit has instructed courts to take a 'hospitable attitude'" toward allowing government intervention.") *quoting Blowers v. Lawyers Coop. Publishing Co.*, 527 F.2d 333, 334 (2d Cir.1975); *see also Boehnen v. Walston & Co.*, 358 F. Supp. 537, 542 (D.S.D. 1973) ("The whole thrust of the 1948 Amendment to Civil Rule 24(b)(2), permitting government intervention where a statute is involved, is in the direction of al-

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<sup>15</sup> Complaint, ECF No. 1, ¶¶ 35-37, p. 8.

lowing intervention liberally to governmental agencies and officers to speak for the public interest.") (internal quotation marks omitted).

### **3. The Court Should Allow the Intervention Because the Intervenor's Have Adopted the CFPB's Claims.**

The Court should grant the Joint Motion to Intervene to Modify the Final Judgment and Order because the Intervenor's have adopted the CFPB's claims. Under Rule 24(b)(1)(B), the Court "may permit anyone to intervene who has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B); *see also U.S. ex rel. O'Donnell v. Bank of Am. Corp.*, No. 12 CIV. 1422 JSR, 2012 WL 5974137, at \*1 (S.D.N.Y. Nov. 27, 2012) (Permissive intervention determination "is committed to the very broad discretion of the Court.") (internal quotation marks omitted).

Here, the Intervenor's expressly adopt the claims asserted by the CFPB in its Complaint.<sup>16</sup> The Intervenor's claims thus necessarily raise the same questions of law

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<sup>16</sup> *See* Motion to Intervene to Modify Stipulated Final Judgment and Order, IMF No. 27. Rule 24(c) provides that "[a] person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5." Fed. R. Civ. P. 24(c). "The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought." *Id.* When parties seeking to intervene adopt claims already asserted by other parties, however, courts have held that Rule 24(c)'s pleading requirements are satisfied in the absence of prejudice to any party. *See, e.g., Official Comm. of Asbestos Claimants of G-I Holding, Inc. v. Heyman*, No. 01 CIV.8539 RWS, 2003 WL 22790916, at \*3-4 (S.D.N.Y. Nov. 25, 2003); *Werburgs und Commerz Union Austalt v. Collectors' Guild, Ltd.*, 782 F.Supp. 870, 874 (S.D.N.Y.1991) ("Although usually, the movant may not merely adopt a pleading of another party, a certain amount of leeway is allowed where such a practice will not prejudice any of the parties."); *Tachiaona v. Mugabe*, 186 F.Supp.2d 383, 393 n. 8 (S.D.N.Y.2002) ("Where ... the position of the movant is apparent from other filings and where the opposing party will not be prejudiced, Rule 24(c) permits a degree of flexibility with technical requirements."). Because the dispute between the CFPB and Sprint has been settled, allowing the Intervenor's to adopt the CFPB's claims will not prejudice any party. *See United Nu-*

and fact as the CFPB's claims, namely, whether Sprint's practices were unfair and thus violated the CFPA. Because the Intervenor's claims raise the same questions of law and fact as the CFPB's adopted claims, the Court should allow the intervention under Rule 24(b)(1)(B). *See, generally, H.L. Hayden Co. of N.Y., Inc. v. Siemens Med. Sys., Inc.*, 797 F.2d 85, 89 (2d Cir.1986).

Moreover, no party opposes intervention by the Intervenor under either Rule 24(b)(1)(B) or 24(b)(2)(A) of the Federal Rules of Civil Procedure. The Court should therefore grant the State's Motion to Intervene to Modify the Final Stipulated Judgment and Order.

**B. This Court Expressly Retained Jurisdiction to Modify the Stipulated Judgment as Sought by the Intervenor, Judicial Efficiency Is Served by the Court Retaining Jurisdiction, and No Party Opposes It.**

This Court has expressly retained jurisdiction to modify the Stipulated Judgment. Under Section XI of the Stipulated Judgment, "[t]he Court will retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order."<sup>17</sup>

Moreover, this Court's retention of jurisdiction to modify the Stipulated Judgment best serves the goal of judicial efficiency. *See, generally, Mauro v. S. New England Telecommunications, Inc.*, 208 F.3d 384, 388 (2d Cir. 2000) ("Declining jurisdiction over the state-law claims in this case would have furthered neither fairness nor ju-

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*clear Corp.*, 905 F.2d at 1427 ("[P]rejudice in the adjudication of the rights of the existing parties [is] a concern not present when the existing parties have settled their dispute and intervention is for a collateral purpose."). The Intervenor seeks to intervene in this Action for the Collateral purpose of modifying the Stipulated Judgment consistent with the underlying intent of the parties. The Court should therefore find Rule 24(c)'s pleading requirements satisfied by the Intervenor's adoption of the CFPA's claims.

<sup>17</sup> ECF No. 25, Sec. XI, ¶ 52, p. 18.

dicial efficiency, nor did those causes of action require the district court to resolve any novel or unsettled issues of state law."). The far less efficient alternative would be for each state to pursue separate actions under the terms of the State Agreements, which confer certain rights to the states respective of the Remaining Funds.<sup>18</sup>

Again, no party opposes this Court's retention of jurisdiction to modify the Stipulated Judgment. The Court should therefore grant the Intervenor's Motion to Intervene to Modify the Stipulated Final Judgment and Order.

**C. The Court Should Enter the Proposed Order Modifying the Stipulated Final Judgment and Order Because the Stipulated Final Judgment and Order Inaccurately Reflects This Court and the Parties' Intent with Respect to the Remaining Funds.**

The language in the Stipulated Judgment inaccurately reflects its underlying intent to apply the Remaining Funds for consumer protection purposes. The Court should therefore grant the Intervenor's motion and modify that language to reflect that true intent by ordering the CFPB to direct the Remaining Funds to NAAG to continue and complete the development of the NAGTRI Center for Consumer Protection.

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<sup>18</sup> The State Agreements all provide "To the extent residual monies remain at the cessation of the Redress Period, the Participating States will collaborate with the FCC and the CFPB in determining how to dispose of the funds, including whether additional restitution is practicable. To the extent the CFPB transfers any residual amounts to the Participating States following cessation of the Redress Period, the Participating States shall use such money in the manner and for the purposes identified in [the residual payment provision]." State of Vermont's Assurance of Discontinuance, ECF No. 18-7, ¶23, p. 10.

The residual payment provisions in the State Agreements direct the states to use the residual payments to advance consumer protection. For example, under Paragraph 20 of Vermont's agreement, Vermont must use any residual payment "[f]or purposes that may include, but are not limited to, attorneys' fees and other costs of investigation and litigation, or be placed in, or applied to, any consumer protection or privacy enforcement, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of the Attorney General." Id., ECF No. 18-7, ¶20, p. 10.



Under Rule 60(a), "[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice." Fed.R.Civ.P. 60(a). "The general purpose of Rule 60(a) is to afford courts a means of modifying their judgments in order to ensure that the record reflects the actual intentions of the court." *Highland Capital Mgt., L.P. v. Schneider*, 2008 WL 3884363, at \*14 (S.D.N.Y. Aug. 20, 2008) (internal quotation marks and citations omitted).

The Rule "permits the correction not only of clerical mistakes, but also of inadvertent errors arising from oversight or omission." *In re Marc Rich & Co. A.G.*, 739 F.2d 834, 836 (2d Cir.1984) (internal quotation marks and citation omitted). Thus, "[a] motion under Rule 60(a) is available only to correct a judgment for the purpose of reflecting accurately a decision that the court actually made." *Hodge v. Hodge*, 269 F.3d 155, 158 (2d Cir.2001) (internal quotation marks and citation omitted). "In sum, then, Rule 60(a) allows a court to clarify a judgment in order to correct a failure to memorialize part of its decision, to reflect the necessary implications of the original order, to ensure that the court's purpose is fully implemented, or to permit enforcement." *L.I. Head Start Child Dev. Servs., Inc. v. Econ. Opportunity Comm'n of Nassau Cty., Inc.*, 956 F. Supp. 2d 402, 408–10 (E.D.N.Y. 2013) (internal quotation marks omitted).

"The Second Circuit has taken a broad view of Rule 60(a)." *Id.* at 409. In *Dudley ex rel. Estate of Patton v. Penn–America Ins. Co.*, the Second Circuit explained that the "heart of the distinction between an error that is correctable under Rule 60(a) and one that is not is that a correction under Rule 60(a) cannot alter the substantive rights of the parties, but rather may only correct the record to reflect the adjudication that was actu-



ally made." 313 F.3d 662, 675 (2d Cir.2002) (citation omitted). The Federal Circuit has stated: "Courts enjoy broad discretion to correct clerical errors in previously issued orders in order to conform the record to the intentions of the court and the parties." *Agro Dutch Indus. Ltd. v. United States*, 589 F.3d 1187, 1192 (Fed.Cir.2009).

This Court, the CFPB, Sprint, the states and the FCC all clearly intended to apply the Remaining Funds to aid consumers. The Stipulated Judgment required Sprint to reserve \$50,000,000 "for the purpose of providing redress to Consumers."<sup>19</sup> The Redress Plan required the CFPB to consult with the FCC and the states before making a determination that additional redress to consumers is wholly or partially impracticable.<sup>20</sup> Upon such determination the CFPB, again in consultation with the states and the FCC, was required under the Redress Plan to apply the Remaining Funds toward a source for equitable relief reasonably related to the allegations in the Complaint.<sup>21</sup> Only in the absence of such source was the CFPB to deposit the Remaining Funds in the U.S. Treasury.<sup>22</sup>

Under the terms of the Redress Plan, however, it is unclear whether the continuation and completion of the Center for Consumer Protection through NAGTRI qualifies as a source for equitable relief reasonably related to the allegations in the Complaint. The Center for Consumer Protection would not provide direct assistance to consumers affected by Sprint's putative third-party billing practices. The work of the Center would, however, benefit all consumers, including those affected by those practices, by training, supporting and improving the coordination of the state consumer protection attorneys

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<sup>19</sup> ECF No. 25, Sec. III, ¶35, pp. 14-15.

<sup>20</sup> ECF No. 18-5, ¶ 29, pp. 1112.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

charged with enforcement of the laws prohibiting the type of unfair and deceptive practices alleged by the CFPB in the Complaint. *See* "NAGTRI Proposal for the Use of Fund from Sprint Settlement: NAGTRI Center for Consumer Protection, 'Resources, Training and Research for America's Attorneys General in the Fight Against Consumer Fraud and Abuse'" (Exh. B).

Rule 60(a) of the Federal Rules of Civil Procedure affords the Court the discretion to modify the Stipulated Judgment to reflect the clear intent of this Court and the parties. *See Schneider*, 2008 WL 3884363, at \*14. Modifying the Stipulated Judgment to order the CFPB to direct the Remaining Funds to NAAG to continue and complete the development of the NAGTRI Center for Consumer Protection would not alter the substantive rights of the parties to this Action, and neither the CFPB nor Sprint opposes such modification. The Court should therefore use its discretion and grant the Motion to Intervene to Modify the Stipulated Final Judgment and Order.

## **CONCLUSION**

The Intervenors respectfully request that the Court grant the Motion to Intervene to Modify the Stipulated Final Judgment and Order, and order the CFPB to direct the Remaining Funds to NAAG to continue and complete the development of the NAGTRI Center for Consumer Protection.

FOR THE STATES OF CONNECTICUT, INDIANA, KANSAS AND VERMONT:

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*Liaison Counsel*

Dated: January 3, 2017

**CERTIFICATE OF SERVICE**

I, Kimberly Massicotte, counsel for the Intervenor, hereby certify that on January 3, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses of all counsel of record in this action.

/s/ Kimberly Massicotte  
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# **EXHIBIT A**

**Internal Revenue Service**

Department of the Treasury

Index No.: 0170.04-00

Washington, DC 20224

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(202) 566-3626

Refer Reply to:

CC:IND:I:3:2 - 4H4792

Date: **JAN 16 1985**

Association = National Association of Attorneys General  
TIN: 52-1322260

Dear Mr. Marvin:

This is in reply to your request for a ruling that donations to the Association are deductible under section 170(c)(1) of the Internal Revenue Code.

The Association is an unincorporated association that was founded in 1907. The present membership consists of the Attorneys General of the states and Territories of the United States. These are the only active members with the right to vote. Former attorneys general may obtain "honorary membership" which entitles them to attend annual meetings but grants them no right to vote in any proceedings.

The Association does not engage in any political activity. The staff or organization resources are not used to support such activities.

The Association's source of funds is from dues, sale of publications, and grants.

The Association publishes one quarterly and five monthly reports of significant state and federal legal developments and legislative activities in areas of interest to attorneys general. It also holds seminars for attorneys general and their staffs and handles requests for information from the offices of attorneys general, members of congress and officials of the federal government.

Section 170(a) of the Internal Revenue Code provides that a deduction is allowable for charitable contributions, as defined in section 170(c), made within the taxable year.



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Mr. C. Raymond Marvin

Section 170(c)(1) of the Code defines "charitable contribution" as a contribution or gift to or for the use of a state, a possession of the United States or any political subdivision of the foregoing, but only if the contribution or gift is made exclusively for public purposes.

The Service has also held that gifts or contributions to an instrumentality of a state or an instrumentality of a political subdivision of a state are deductible as a contribution "for the use of" the state or political subdivision. See Rev. Rul. 75-359, 1975-2 C.B. 79.

In order to determine whether an organization is an instrumentality of a state or a political subdivision, it is necessary to determine whether the organization is controlled by the state or a political subdivision and, in this respect, the following factors are relevant:

(1) Whether the organization was created by governmental action pursuant to action of state or local officials or whether it was created by private initiative.

(2) Whether members of the board of directors are appointed by state or local officials and can be removed by them for any cause or whether the removal power is more restricted.

(3) Whether the state or local government must approve all plans or expenditures of the organization or whether the organization has sole discretion over its expenditures.

(4) Whether the organization is financially dependent on the state or local government or whether it is a self-sustaining entity.

(5) Whether there is any guarantee that the organization will actually use its funds in a manner consistent with the aims and purposes of a public body.

Based on the information submitted, we have concluded that the Association is an instrumentality of the States and, therefore, contributions or gifts to the Association are deductible under section 170(c)(1) of the Code as gifts or contributions for the use of the states.

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Mr. C. Raymond Marvin

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

No opinion is expressed as to the federal income tax consequences of the organization described above under any other provision of the Code.

You should attach a copy of this ruling to your tax return for the taxable year in which the transaction covered by this ruling is consummated. We are enclosing a copy for that purpose.

In accordance with the power of attorney submitted, we are sending a copy of this ruling to your authorized representative.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Richard H. Manfreda". The signature is fluid and cursive, with the first name "Richard" being more prominent.

Chief, Individual Income  
Tax Branch

Enclosures 2  
Copy of this letter  
Copy for section 6110 purposes



## **EXHIBIT B**

**NAGTRI Proposal for the Use of Funds from Sprint Settlement:**

**NAGTRI Center for Consumer Protection**

**“Resources, Training and Research for America’s Attorneys General in the Fight against Consumer Fraud and Abuse”**

**Handling of funds:**

The \$15,000,000 will be put in an investment account. NAGTRI would utilize the investment income to put this proposal into action. At an average rate of return over time of 5%, this amounts to \$750,000 per annum. Use of this money would be subject to approval of the NAAG AG Training Committee, subject in turn to the oversight of the NAAG Executive Committee.

**Use of Funds:**

The projected annual investment income will be used to create and operate the **NAGTRI Center for Consumer Protection**. The Center will be the nation’s only entity solely dedicated to providing training, research, expertise, and other resources to government attorneys who are dedicated to protecting the public against consumer fraud and abuse. **The use of only the investment income and not the corpus of the \$15,000,000 will allow the Center to exist in perpetuity.**

**Initial staffing:**

- One director, who will be a seasoned attorney with a widely recognized level of expertise
- One staff attorney
- Research fellow (funded in part by NAAG)
- One program specialist

**Training deliverables: 5-6 trainings/seminars per year to include the following topics:**

- Basic multistate training, to include sections on formation, negotiations and common interest agreements
- Consumer 101 training for new consumer staff
- New consumer chief seminar
- Bi-annual intensive consumer protection academy
- Protecting underprivileged and vulnerable communities from consumer fraud

- State enforcement of federal consumer protection laws (with CFPB)
- Joint training with CFPB on consumer protection case intake and initial investigation
- Increased regional trainings for geographical regions
- Consumer protection/IT seminar
- Joint attorney/investigator trial skills/trial testimony course
- Regular webinars on timely issues

Research deliverables – papers and monographs on the following:

- Identification of common scams, to include identification of common actors operating under different names
- Consumer fraud targeting undocumented workers
- Protecting consumers on the internet
- Scams on social media
- Consumer fraud targeting low income workers
- Consumer fraud targeting elderly Americans
- Consumer issues affecting veterans and active duty military
- Topical issues such as non-disparagement clauses and Bitcoin
- Impact of private equity firms on consumers

Resources:

- In-house expertise and advice
- Coordination of regular meetings between state and federal partners to share information on trends and developments
- Comprehensive monthly newsletter on consumer protection trends and developments
- Identification, development and acquisition assistance of/for electronic document review software and database
- Development and coordination of mentoring program for new consumer chiefs
- Development and production of a consumer protection case scenario and manual to support consumer related trial and litigation skills trainings
- Increase focus on consumer related evidentiary issues for NAGTRI's "Evidentiary Foundations for Government Attorneys" manual
- Development of educational brochures that can be adopted by attorney general offices