UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONSUMER FINANCIAL PROTECTION BUREAU,	:	
Plaintiff,	:	14cv9931
-against-	:	MEMORANDUM & ORDER
SPRINT CORPORATION,	:	
Defendant.	:	

WILLIAM H. PAULEY III, District Judge:

On December 17, 2014, the Consumer Financial Protection Bureau (the "CFPB") filed this action against Sprint, alleging that Sprint allowed unauthorized third-party charges on its customers' wireless telephone bills. In May 2015, the CFPB sought judicial approval of a proposed consent order memorializing a settlement with Sprint (the "Consent Order"). (ECF No. 19.) But the CFPB's application was bereft of any legal authority. This Court responded by directing the CFPB to explain why the proposed settlement was fair, reasonable, and consistent with the public interest. Consumer Financial Protection Bureau v. Sprint Corp., 2015 WL 3395581, at *1 (S.D.N.Y. May 19, 2015) (citing SEC v. Citigroup Global Mkts., Inc., 752 F.3d 285, 294 (2d Cir. 2014)).

Thereafter, the CFPB and Sprint submitted separate memoranda in support of the CFPB's application for entry of the Consent Order. (ECF Nos. 23 and 24.) The proposed Consent Order required, among other things, that Sprint pay $50 million in redress to its customers for unauthorized third party charges and deposit any funds remaining after distribution with the U.S. Treasury as disgorgement.

In a parallel proceeding before the Federal Communications Commission, Sprint agreed to pay $6 million to the U.S. Treasury and make significant changes to its third-party billing practices. Concurrently, Sprint also entered into agreements with the Attorneys General of all fifty states and the District of Columbia, agreeing to pay another $12 million to resolve a multi-state consumer protection investigation.

In June 2015, this Court approved the proposed Consent Order. (ECF No. 25.) The Consent Order authorized implementation of the Sprint Consumer Redress Plan (the "Redress Plan") which directed payment of any claims filed by aggrieved consumers. (ECF No. 25, at ¶ 36.) The Redress Plan specifically provided that if any balance remains nine months after the claims deadline, Sprint will "pay that amount to the Bureau . . . by wire transfer." (ECF No. 18–5, at ¶ 22.) Further, if the "Bureau determines . . . that additional redress to Consumers is wholly or partially impracticable" it may "apply such remaining funds for such other equitable relief . . . as determined to be reasonably related to the allegations" of the Complaint. (ECF No. 18–5, at ¶ 29.) Finally, any "funds not used for such equitable relief will be deposited in the U.S. Treasury as disgorgement." (ECF No. 18–5, at ¶ 29.) Following approval of the Consent Order, this Court heard nothing further from the parties.

Eighteen months later, with redress complete, the siren song of $15.14 million in unexpended funds lured some new sailors into the shoals of this litigation. The reason is easy to understand. Despite full restitution to Sprint customers and subsequent consultations with the Attorneys General and the FCC, the CFPB could not identify any equitable relief to which $15.14 million in unexpended settlement funds could be applied. Apparently, the prospect of simply complying with the Consent Order by paying the funds into the U.S. Treasury lacked sufficient imagination.

So, on January 3, 2017, the Connecticut Attorney General, on behalf of the Attorneys General of Indiana, Kansas, and Vermont, sought to intervene in this action and modify the Consent Order. (ECF No. 28.) The proposed modification involved redirecting the undistributed settlement funds to the National Association of Attorneys General ("NAAG") for the purpose of developing the National Attorneys General Training and Research Institute ("NAGTRI") Center for Consumer Protection. Perhaps a noble cause worthy of consideration. The Connecticut Attorney General explained that neither the CFPB nor Sprint opposed their application, but that assertion turned out to be premature. On January 23, 2017, Sprint filed a memorandum in opposition to the intervention motion.

Subsequently, the Attorneys General and Sprint reached a consensus. On February 13, 2017, they filed a joint submission adopting the Attorneys General's proposed modification of the Consent Order to redirect $14 million of settlement funds from the U.S. Treasury to NAGTRI. Sprint proposed redirecting the remaining $1.14 million to a community organization that provides internet access to underprivileged high school students (ECF No. 40)—perhaps another noble undertaking worthy of consideration. Remarkably, their joint submission stated that the CFPB—the plaintiff in this lawsuit responsible for securing the $50 million settlement—was consulted about this application but "[took] no position on the proposed modification." (ECF No. 40, at 2.) That leaves this Court in a quandary.

The Attorneys General and Sprint's application seeks to alter the Consent Order in a fundamental way by redirecting elsewhere $15.14 million earmarked for the U.S. Treasury. It also may raise an issue implicating the Miscellaneous Receipts Act, which provides that Government officials "receiving money for the Government from any source shall deposit that money with the Treasury." 31 U.S.C. § 3302(b). Moreover, the proposed modification does not

appear, at least at first blush, to be "reasonably related to the allegations set forth in the Complaint." (Sprint Consumer Redress Plan, ECF No. 18–5, ¶ 29.) The movants appear to acknowledge as much. (ECF No. 29, at 12 ("Under the terms of the Redress Plan, however, it is unclear whether . . . 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.").) And the Attorneys General and Sprint's argument that Rule 60(a) permits the proposed modification to correct a clerical mistake is particularly galling. (ECF No. 29, at 11.) The CFPB and Sprint unmistakably understood that the Consent Order related to federal claims and that any undistributed settlement funds would be paid to the U.S. Treasury. Finally, Sprint concurrently entered into separate agreements with all of the states and already paid them $12 million.

Given the peculiar posture of the intervention application, this Court needs to hear from the Government. As the plaintiff in this action, the CFPB must take a position. Equally important, the United States government has a direct interest because, under the Consent Order, unexpended funds are to be paid to the U.S. Treasury.

Therefore, this Court directs the CFPB and the Department of Justice to respond separately to the proposed intervenors' motion and application to modify the Consent Order. In its responsive submission, the CFPB should advise this Court where the unexpended funds have been deposited during the pendency of the intervenors' application. While the CFPB has independent litigation authority and can speak for itself (see 12 U.S.C. § 5564(b)), the Department of Justice should set forth the Department of Treasury's position on the proposed modification.

The CFPB and the Department of Justice are directed to file their respective

memoranda by May 10, 2017. The Attorneys General and Sprint may file responsive memoranda by May 24, 2017. When the submissions are complete, this Court will be better positioned to decide the pending application for intervention and modification of the Consent Order.

The Clerk of Court is directed to mail copies of this Memorandum and Order to Joon H. Kim, Acting U.S. Attorney for the Southern District of New York, One St. Andrew's Plaza, New York, New York 10007, and Chad A. Readler, Acting Associate Attorney General, U.S. Department of Justice, Civil Division, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001.

Dated: April 10, 2017
New York, New York

SO ORDERED:

WILLIAM H. PAULEY III
U.S.D.J.