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JUL 18 2002
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FEDERAL TRADE COMMISSION,) No. CV 01-1896 CBM (Ex)
Plaintiff,) **ORDER GRANTING PLAINTIFF'S**
vs.) **MOTION FOR SUMMARY JUDGMENT**
MEDICOR, LLC, et al.,)
Defendants.)

The matter before the Court, the Honorable Consuelo B. Marshall, United States District Judge presiding, is Plaintiff Federal Trade Commission's ("FTC") Motion for Summary Judgment (docket #203). Counsel appeared before the Court on June 17, 2002, Defendant Matthew Rubin appearing in pro per. Defendant Andrew Rubin did not appear. Upon consideration of the papers and arguments presented, the Court GRANTS Plaintiff's Motion for Summary Judgment.

JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345 and 15 U.S.C. § 53(b). Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b).

BACKGROUND AND PROCEDURAL HISTORY

The FTC brought this action under Sections 5(a) and 13(b) of the Federal Trade Commission

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1 Act ("FTC Act") to obtain injunctive relief, rescission of contracts, restitution, disgorgement and
2 other equitable relief against Defendants Medicor LLC ("Medicor"), Andrew Rubin, and Matthew
3 Rubin. Medicor sells an electronic claims processing package for approximately \$359.00 to
4 customers who wish to work from home part or full time submitting medical bills from doctors to
5 benefits programs such as Medicare and Medicaid. The FTC alleges that Medicor made material
6 misrepresentations to consumers about the amount of potential income they could earn, arranging
7 for consumers to work with doctors, and Medicor's refund policy. On April 12, 2001, this Court
8 granted a preliminary injunction and asset freeze as to Medicor and Andrew Rubin, and appointed
9 Byron Z. Moldo as permanent receiver for Medicor.

10 Plaintiff filed a Motion for Summary Judgment as to Defendants Andrew Rubin, Matthew
11 Rubin, and Medicor.¹ Defendants Andrew and Matthew Rubin filed an Opposition. Plaintiff filed
12 a Reply.

13 DISCUSSION

14 I. Evidentiary Objections

15 Plaintiff and Defendants filed evidentiary objections.

16 A. Defendants' Objections

17 Defendants' objections to the Deposition of Nami Bahrami ("Bahrami Depo.") at 1548:7-17,
18 1558:2-25, 1617:2-20, 1628:11-17, and 1629:6-18 as hearsay are OVERRULED. Defendants'
19 objections to the Bahrami Depo. at 1562:12-18, 1584:1-22, 1721:6-17 as inadmissible lay opinion
20 are OVERRULED.

21 Defendants object to the Bahrami Depo. at 1561:14-25 as hearsay. In this portion of the
22 deposition, Bahrami states that 110 people successfully became medical billers using Medicor's

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25 ¹Defendant Medicor was served with the complaint in this action and failed to answer or otherwise
26 respond. Default was entered by the Clerk of Court as to Defendant Medicor on April 30, 2001. The
27 Receiver was served with the present Motion on behalf of Defendant Medicor, and stated in a
28 declaration that he did not oppose the entry of summary judgment as to Defendant Medicor. The
Court deems the present Motion as a request to enter judgment against Defendant Medicor, and finds
that the evidence presented shows that the FTC is entitled to the relief sought as to Defendant
Medicor.

1 software, based on a statement by Brian Demorest. Plaintiff argues Demorest's statement to
2 Bahrami is a nonhearsay admission because Demorest was an agent of Medicor speaking within the
3 scope of his employment during the existence of the relationship. Plaintiff has not shown that
4 Demorest made the statement during the course of his employment. Therefore, Defendants'
5 objection is SUSTAINED. Bahrami further states that he was personally aware of ten customers
6 who had successfully become medical billers. Defendants' objection is OVERRULED as to this
7 portion of Bahrami's testimony.

8 Defendants object to the Bahrami Depo. at 1598:11-28² as hearsay. Bahrami's testimony is
9 that Demorest told him to create a document that would describe a new procedure for handling
10 requests for refunds to reduce the number of refunds being issued. Demorest was the Director of
11 Medicor's Customer Service Department, and the statement was made in the course of his
12 employment. The statement is admissible as a nonhearsay admission. Therefore, Defendants'
13 objection is OVERRULED.

14 Defendants object to the Bahrami Depo. at 1625:7-1626:13 as hearsay. Defendants'
15 objection is OVERRULED as to Matthew Rubin's statement because it is a nonhearsay admission
16 and SUSTAINED as to Mark Haining's statements.

17 Defendants' objections to the Deposition of Tina Stern ("Stern Depo.") at 1776:3-6, 1776:16-
18 21, and 1853:1-11 as hearsay are SUSTAINED.

19 Defendants' objection to the Deposition of Brian Demorest ("Demorest Depo.") at 1934:1-25
20 as irrelevant is OVERRULED. Defendants' objections to the Demorest Depo. at 1976:1-11 as
21 hearsay, speculation, lacking foundation, and non-responsive are SUSTAINED. Defendants'
22 objection to the Demorest Depo. at 1979:8-17 as hearsay is OVERRULED.

23 Defendants object to the Demorest Depo. at 2044:5-15 as hearsay. The objection is
24 OVERRULED, and the statements are admissible as nonhearsay admissions to the extent the
25 statements show that Medicor had knowledge of the customer complaints.

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28 ²The Court assumes that Defendants are referring to lines 11-25 because page 1598 contains only
25 lines.

1 Defendants objections to the Deposition of Elli Sabeti ("Sabeti Depo.") at 2886:11-12 as non-
2 responsive and lacking foundation are SUSTAINED.

3 **B. Plaintiff's Objections**

4 Plaintiff objects to paragraph 5 of the Declaration of Margaret Simmons ("Simmons Decl.")
5 on the ground that there is no foundation for her statement that Matthew Rubin had no hiring or
6 firing authority and had no involvement with the company's marketing or advertising. Plaintiff also
7 objects on the ground that Simmons is not competent to testify regarding Medicor's operations prior
8 to May 1, 2000 because she was not employed by Medicor at that time. Plaintiff's objections are
9 SUSTAINED.³

10 Plaintiff conditionally objects to Andrew Rubin's reliance on his employment contract in
11 Plaintiff's Exhibit 49 at 1333-35 if the Court determines that the Requests for Admissions are not
12 deemed admitted. This objection is MOOT because Plaintiff's Requests for Admissions have been
13 deemed admitted. Plaintiff's objection to the portions of the Declaration of Danielle Goldey
14 ("Goldey Decl.") containing statements made by Haining to Goldey is OVERRULED.

15 **II. Motion for Summary Judgment**

16 **A. Standard of Law**

17 Summary judgment against a party is appropriate when "the pleadings, depositions, answers
18 to interrogatories, and admissions on file, together with the affidavits, if any, show that there is *no*
19 *genuine issue as to any material fact* and that the moving party is *entitled to a judgment as a matter*
20 *of law.*" FED. R. CIV. P. 56(c) (emphasis added). A party seeking summary judgment bears the
21 initial burden of informing the court of the basis for its motion and of identifying those portions of
22 the pleadings and discovery responses which demonstrate the absence of a genuine issue of material
23 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the nonmoving party will have the
24 burden of proof at trial, the movant can prevail merely by pointing out that there is an absence of

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26 ³Simmons can testify to items based on her observations during her time at Medicor. Because her
27 declaration does not describe her duties and responsibilities as Controller of Medicor, the Court
28 cannot determine which of the remaining portions of her declaration are within her personal
knowledge. Therefore, the Court does not consider the portions of her testimony that are not based
upon on her observations during her time at Medicor.

1 evidence to support the nonmoving party's case. *See id.* If the moving party meets its initial burden,
2 the nonmoving party must then set forth, by affidavit or as otherwise provided in Rule 56, "specific
3 facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); *Anderson v. Liberty*
4 *Lobby, Inc.*, 477 U.S. 242, 250 (1986).

5 In judging evidence at the summary judgment stage, the Court does not make credibility
6 determinations or weigh conflicting evidence and draws all inferences in the light most favorable
7 to the nonmoving party. *See T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626,
8 630-31 (9th Cir. 1987). The evidence presented by the parties must be admissible. FED. R. CIV. P.
9 56(e). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise
10 genuine issues of fact and defeat summary judgment. *See Thornhill Publ'g Co., Inc. v. GTE Corp.*,
11 594 F.2d 730, 738 (9th Cir. 1979).

12 **B. Analysis**

13 **1. Self-Incrimination**

14 Plaintiff argues that it served Requests for Admissions upon Defendants, and that their failure
15 to respond results in admission of the matters requested. Plaintiff further argues that the Court
16 should draw an adverse inference from Defendants invocation of the Fifth Amendment right against
17 self-incrimination during their depositions. Defendants argue that Plaintiff filed no motion to deem
18 the requests for admission admitted and that no adverse inference should be drawn from the exercise
19 of the right against self-incrimination because they were targets of a criminal investigation.

20 Failure to timely respond to requests for admissions results in automatic admission of the
21 matters requested. SCHWARZER, TASHIMA & WAGSTAFFE, FED. CIV. PROC. BEFORE TRIAL at ¶¶ 811-
22 12 (2002). No motion to establish the admissions is needed because Federal Rule of Civil Procedure
23 36(a) is self executing. *See id.* at ¶ 812.

24 "Parties are free to invoke the Fifth Amendment in civil cases, but the court is equally free
25 to draw adverse inferences from their failure of proof." *SEC v. Colello*, 139 F.3d 674, 675 (9th Cir.
26 1998). There must, however, be evidence in addition to the adverse inference to support a court's
27 ruling. *See id.* at 678. Defendants cited authority supports the proposition that Defendants' silence
28 may not lead "directly and without more to the conclusion of guilt or liability." *LaSalle Bank Lake*

1 *View v. Seguban*, 54 F.3d 387, 391 (7th Cir. 1995); *see also Doe v. Glanzer*, 232 F.3d 1258, 1264
2 (9th Cir. 2000) (“[A]n adverse inference can be drawn when silence is countered by *independent*
3 *evidence* of the fact being questioned . . .”).

4 The Court’s ruling on Plaintiff’s Motion for Summary Judgment rests on the evidence
5 presented by the parties, not on any adverse inference. For the purpose of deciding this Motion, the
6 only deemed admission upon which the Court relies is the authenticity of the employment agreement
7 between Andrew Rubin and Medicor.

8 2. Medicor’s Deceptive Acts and Practices

9 Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting
10 commerce.” 15 U.S.C. § 45(a)(1). An act or practice is deceptive under Section 5 if (1) there is a
11 representation, omission or practice; (2) which is likely to mislead consumers acting reasonably
12 under the circumstances; and (3) is material to the consumer. *FTC v. Pantron I Corp.*, 33 F.3d 1088,
13 1095 (9th Cir. 1994) (adopting the FTC’s articulation of the deception standard). First, Plaintiff
14 argues that Medicor misrepresented that Medicor would arrange for consumers to receive medical
15 billing work from doctors. Second, Plaintiff argues that it was highly unlikely that a consumer
16 would ever make the earnings claimed by Medicor’s advertisements and telemarketers. Third,
17 Plaintiff argues that Medicor misrepresented its refund policy and refused to pay refunds to many
18 consumers.

19 Defendants argue that Medicor’s advertising and sales were not deceptive or misleading
20 because the advertisements stated that “results may vary.” Although Defendants have not presented
21 any evidence supporting their contention, assuming that their advertisements did include such
22 language, the advertisements are still misleading because consumers could reasonably believe that
23 the statements of earnings potential represent typical or average earnings. *See FTC v. Febre*, No.
24 94 C 3625, 1996 WL 396117 at *2 (N.D. Ill. July 3, 1996), *aff’d on other grounds*, 128 F.3d 530 (7th
25 Cir. 1997) (stating that where the advertisements did not guarantee the stated level of earnings but
26 made express claims regarding the earnings potential, the earnings claims were still deceptive); *FTC*
27 *v. Arlington Press, Inc.*, No. CV-98-9260, 1999 U.S. Dist. Lexis 2055 at *11 (C.D. Cal. January 18,
28 1999). Plaintiff provides uncontroverted evidence showing that advertisements contained earning

1 potentials of \$20,000 to \$45,000 per year and that telemarketers told consumers that they could make
2 \$20 to \$40 per hour or \$300 to \$600 per week, at a rate of approximately \$3 per claim processed.
3 Plaintiff also provides uncontroverted evidence that from 1999 to March 1, 2001, Medicor sold its
4 medical billing software to approximately 40,420 consumers. In addition, Plaintiff provides
5 uncontroverted evidence that, as of February 2001, Medicor had 64 people who had actually
6 processed one medical claim and the total number of claims processed by Medicor customers was
7 2,641. Thus, the evidence indicates that the vast majority of consumers did not earn the amount
8 represented as the earning potential.

9 Next, Defendants argue that triable issues of fact exist regarding whether Medicor's refund
10 policy was deceptive or misleading. Plaintiff presents evidence from consumers indicating that they
11 had been told that they could obtain refunds of the purchase price if they were not satisfied with the
12 software, and that once they tried to obtain the refunds, they were told that they could not have
13 refunds. Defendants present deposition testimony from Brian Demorest, the Director of Medicor's
14 Customer Service Department, stating that he tried to improve the refund policy to ensure that
15 consumers who requested refunds were able to obtain them. Taking Defendants' evidence in the
16 light most favorable to the Defendants, Demorest did not begin working at Medicor until it had
17 already been operating for a year, and even if every consumer who requested a refund received one
18 after Demorest revamped the refund policy, Defendants' evidence does not create a dispute regarding
19 whether consumers were deceived regarding the refund policy prior to Demorest's employment at
20 Medicor.

21 Defendants further argue that triable issues of fact exist as to the frequency of alleged
22 misleading representations, citing to testimony from Stern, a telesales representative at Medicor,
23 stating that she did not guarantee consumers that they would have a doctor for whom to bill.
24 Defendants' evidence does not contradict Plaintiff's evidence that some representatives other than
25 Stern led consumers to believe that they were guaranteed a doctor.

26 Defendants also argue that a triable issue of fact exists as to whether sales people were fired
27 for making misrepresentations. That sales people may have been fired for making
28 misrepresentations does not controvert Plaintiff's evidence showing that misrepresentations were

1 made by Medicor's agents and that Medicor's scripts and advertisements contained
2 misrepresentations. Therefore, whether sales people were fired for making misrepresentations is not
3 a material fact.

4 Based on the foregoing, the Court finds that Defendants have not raised a genuine issue of
5 material fact regarding whether Medicor engaged in deceptive practices under Section 5 of the FTC
6 Act.

7 3. Individual Liability

8 To enjoin an individual defendant from engaging in wrongful conduct, the FTC must show
9 that the individual participated directly in the wrongful practices or acts, or that the individual had
10 authority to control the corporation. *FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1170
11 (9th Cir. 1997); *FTC v. Am. Standard Credit Sys., Inc.*, 874 F. Supp. 1080, 1089 (C.D. Cal. 1994).
12 Authority to control the corporation can be evidenced by active involvement in business affairs.
13 *American Standard*, 874 F. Supp. at 1089. An individual may be held liable for monetary redress
14 of consumer injury under the FTC Act if the FTC also shows that the individual had knowledge of
15 the deception. *FTC v. Affordable Media*, 179 F.3d 1228, 1234 (9th Cir. 1994); *Publishing Clearing*
16 *House*, 104 F.3d at 1171. The knowledge requirement is satisfied by establishing actual knowledge,
17 reckless indifference to the truth or falsity of the representations, or an awareness of a high
18 probability of fraud coupled with intentional avoidance of truth. *Pantron I Corp.*, 33 F.3d at 1103.

19 a. Matthew Rubin

20 Plaintiff presents the following evidence to support its contention that Matthew Rubin should
21 be held liable:

22 Matthew Rubin shared an office with Andrew Rubin at Medicor, and had discussions and
23 meetings regarding Medicor business with Medicor employees. Medicor's Controller occasionally
24 faxed cash flow statements to Matthew Rubin. Matthew Rubin was involved in negotiating
25 Medicor's distribution agreement with the maker of the software sold by Medicor. Matthew Rubin
26 was involved in staffing decisions at Medicor, interviewing potential employees, salary negotiations,
27 and the hiring and firing of Medicor employees. Matthew Rubin assisted in establishing procedures
28 used by Medicor's Customer Service Department. Medicor employees told Matthew Rubin about

1 telemarketers who received frequent complaints from consumers for making misrepresentations.
2 Matthew Rubin was present in the Customer Service and Sales Departments of Medicor. He
3 received \$1,162,000 from Medicor, either directly or through the S&M Trust. Plaintiff's evidence
4 indicates that, although Matthew Rubin may have had the title of "consultant," he was very active
5 in Medicor's operations. He had the authority to formulate and implement Medicor's policies and
6 procedures and had knowledge of Medicor's deceptive policies and practices.

7 Defendants cite to testimony of Medicor's Controller, Margaret Simmons, stating that her
8 work was reviewed by Andrew Rubin, that wire transfers of money required authorization and
9 verification from Andrew Rubin, that Matthew Rubin did not receive checks for consulting services
10 on a frequent basis, that Simmons never discussed Medicor's financial information with Matthew
11 Rubin, that she occasionally faxed cash flow statements to Matthew Rubin, and that Matthew Rubin
12 did not attend employee or management meetings attended by Simmons.

13 Defendants next present testimony from Brian Demorest, Director of Medicor's Customer
14 Service Department, stating that Matthew Rubin described himself as a consultant or adviser to
15 Medicor, not an officer or owner. Demorest further states that the three heads of the company were
16 Mark Haining, Dan Rogress, and Andrew Rubin. Defendants also cite to a declaration from Marcus
17 Ballin, a telesales representative for Medicor, who states that Matthew Rubin was not a manager of
18 Medicor and that Ballin "did not understand" that Matthew Rubin had any ability to control or direct
19 Medicor's operations, personnel, or advertising or marketing activities. Defendants cite also to the
20 Declaration of Brian Baumhor, who states that he worked as a telesales representative for Medicor
21 from October 16, 2000 until December 18, 2000. Baumhor states that he neither received
22 instructions from Matthew Rubin nor saw anyone else obtain instructions from him. He "did not
23 understand" that Matthew Rubin had hiring or firing authority at Medicor, never saw Medicor
24 documents signed by Matthew Rubin, and "never understood" that Matthew Rubin had anything to
25 do with the management of Medicor.

26 To support the assertion that Matthew Rubin did not provide sales scripts to sales personnel,
27 Defendants cite to testimony by Bahrami stating that Demorest gave Bahrami a copy of the sales
28 script. Defendants also cite to deposition testimony from Stern that her managers on the sales floor

1 were Mike, Mike, Will, Stan, and Leanne. Stern further testified that Mark Haining was the general
2 manager. To support the position that Matthew Rubin did not determine which employees to hire,
3 Defendants cite to deposition testimony of Demorest, stating that Demorest made the decision to hire
4 Bahrami to run the Customer Service Department when Demorest was not there. Defendants present
5 testimony from Stern stating that Cornell Hines and Haining conducted weekly sales meetings.
6 Defendants also present testimony from Elli Sabeti, a Medicor telesales representative, stating that
7 she never had conversations with Matthew or Andrew Rubin regarding her work.

8 The evidence presented by Defendants is not inconsistent with Plaintiff's evidence. It does
9 not contradict Plaintiff's evidence regarding actions taken by Matthew Rubin.

10 Defendants also argue that Plaintiff's evidence that the S&M Trust, a trust of which Matthew
11 Rubin is a beneficiary, received money from Medicor is not evidence that he was an owner of
12 Medicor. The fact that the money was placed in a trust does not change the fact that Medicor gave
13 the money to Matthew Rubin. Defendants next argue that Matthew Rubin was merely a consultant
14 to Medicor. Defendants cite no authority supporting the contention that Matthew Rubin's title is
15 determinative of, or even relevant to, whether he had the required control. *See FTC v. J.K.*
16 *Publications, Inc.*, 99 F.Supp.2d 1176, 1181-82 (C.D. Cal. 2000) (holding "consultant" liable
17 because he had "ownership in and/or control over" the company).

18 Therefore, Defendants have not created a genuine issue of material fact with respect to
19 Matthew Rubin's control over, and knowledge of, Medicor's deceptive practices. The Court finds
20 that Matthew Rubin is liable for restitution and is subject to a permanent injunction.

21 **b. Andrew Rubin**

22 Plaintiff presents the following evidence to show that Andrew Rubin should be held liable
23 for Medicor's deceptive practices:

24 Andrew Rubin set up, operated, and was the General Manager of Medicor. Andrew Rubin
25 had control of Medicor's bank accounts. He was involved in authorizing refunds and other financial
26 aspects of Medicor. He was involved in negotiating the agreement with the manufacturer of the
27 billing software sold by Medicor. He received at least \$900,000 from Medicor, either directly or
28 through monies transferred to the Maven Trust. Andrew Rubin was involved in the hiring, firing,

1 and supervising of employees. Andrew Rubin was aware of misrepresentations made by sales
2 representatives. Andrew Rubin had discussions with Medicor employees about refunds and sales.
3 Andrew Rubin was aware that Medicor had received complaints from the Better Business Bureau
4 and state Attorney Generals' offices. Andrew Rubin was also involved in a meeting with the Nevada
5 Department of Consumer Affairs regarding Medicor's practices.

6 Defendants argue that the Medicor LLC-Employment Agreement between Medicor and
7 Andrew Rubin limited Andrew Rubin's authority to make changes to the advertising and marketing
8 templates. Assuming as true that Andrew Rubin's authority to alter sales scripts was limited,
9 Plaintiff's evidence shows that he had knowledge of misrepresentations made by telemarketers and
10 authority to control Medicor, which is sufficient to hold him individually liable. Defendants next
11 argue that persons other than Andrew Rubin were responsible for the direction and control of
12 Medicor's operations. Defendants' evidence shows that people other than Andrew Rubin did have
13 control over certain aspects of Medicor's business, but it does not controvert Plaintiff's evidence
14 showing Andrew Rubin's control over the day-to-day operations of Medicor. Defendants, in
15 addition, argue that Medicor was owned by two trusts, the Maven and S&M Trusts. Defendants
16 argue that although the Rubins were beneficiaries, Plaintiff has provided no evidence that the Rubins
17 had any ability to control the activities of the trusts. As discussed above with regard to Matthew
18 Rubin, Andrew Rubin's status as a beneficiary of his asset protection trust does not controvert the
19 evidence showing his control over the day-to-day operations of Medicor. Finally, Defendants argue
20 that Plaintiff cannot simultaneously argue that both Andrew Rubin and Matthew Rubin controlled
21 Medicor because "two separate people" cannot have the authority to control. Defendants cite no
22 authority to support this proposition.

23 Therefore, Defendants have not created a genuine issue of material fact with respect to
24 Andrew Rubin's control over, and knowledge of, Medicor's deceptive practices. The Court finds
25 that Andrew Rubin is liable for restitution and is subject to a permanent injunction.

26 4. Permanent Injunctive Relief and Restitution

27 Under Section 13(b) of the FTC Act, the FTC may obtain a permanent injunction and
28 ancillary relief, including restitution, for violations of Section 5 of the FTC Act. *See Pantron I*, 33

1 F.3d at 1101-03. Permanent injunctive relief is appropriate when there is a "some cognizable danger
2 of recurring violation." *FTC v. Gill*, 72 F.Supp.2d 1030, 1047 (C.D. Cal. 1999). Plaintiff presents
3 evidence of unlawful conduct by Andrew Rubin and Matthew Rubin prior to their involvement with
4 Medicor. Plaintiff also presents evidence of possible unlawful conduct by Matthew Rubin
5 subsequent to his involvement with Medicor. Therefore, the Court finds that the FTC is entitled to
6 a permanent injunction.

7 In addition, the FTC seeks disgorgement of \$16,562,364.51 from Defendants. First,
8 Defendants object to the amount on the grounds that employee salaries, cost of product, rent, the cost
9 of the Receiver, and other expenses have not been deducted. Second, Defendants object on the
10 ground that the damage demand does not account for refunds. Third, Defendants argue that the
11 amount allegedly received by the Defendants' trusts should be the measure of damages with a
12 deduction for any amounts that were repatriated. Defendants do not support their contentions with
13 any evidence or authority.

14 Plaintiff present the declaration of an accountant indicating that refunds, charge backs, and
15 returns have been deducted to obtain the disgorgement amount. The amount represents Medicor's
16 net sales. Section 13(b) of the FTC Act permits the Court to order disgorgement regardless of the
17 amount of the defendant's profits. *See FTC v. Febre*, 128 F.3d 530, 537 (7th Cir. 1997). The full
18 amount lost by consumers is an appropriate measure of damages. *See id.* at 536. The FTC must
19 show that its calculations reasonably approximate the amount of customers' net losses. Defendants
20 must then show that the FTC's figures are inaccurate. *See id.* at 535. The declaration of the
21 accountant provided by FTC indicates that its calculations reasonably approximate customers' net
22 losses. Because Defendants have not provided any evidence in support of their arguments, they have
23 not shown that the FTC's figures are inaccurate. Therefore, the Court holds Defendants jointly and
24 severally liable for the disgorgement amount of \$16,562,364.51.

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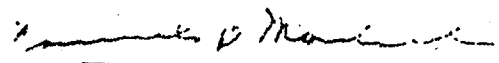
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CONCLUSION

Based on the foregoing, the Court GRANTS the FTC's Motion for Summary Judgment as to Defendants Andrew Rubin and Matthew Rubin. Judgment will also be entered against Defendant Medicor.

SO ORDERED.

DATE: July 18, 2002



CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE