LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	**CV 16-00999-BRO (AFMx)**	Date	August 28, 2017
Title	**FEDERAL TRADE COMMISSION V. DAMIAN KUTZNER ET AL.**		

Present: The Honorable	**BEVERLY REID O'CONNELL, United States District Judge**	
Renee A. Fisher	Not Present	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendants:	
Not Present	Not Present	

Proceedings: (IN CHAMBERS)

ORDER RE PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT [295]

I. INTRODUCTION

Pending before the Court is Plaintiff Federal Trade Commission's ("Plaintiff" or the "FTC") Motion for Default Judgment against Defendants Brookstone Law P.C. (California), Brookstone Law P.C. (Nevada), Advantis Law P.C., and Advantis Law Group P.C. (collectively referred to as the "Corporate Defendants")[1] pursuant to Federal Rule of Civil Procedure 55(b)(2). (*See* Dkt. Nos. 295 (hereinafter, "Motion" or "Mot."), 295-1, 295-2.) The FTC requests entry of default judgment against the Corporate Defendants and seeks a permanent injunction enjoining the Corporate Defendants from future violations of Sections 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), and the Mortgage Assistance Relief Services Rule ("MARS Rule"), 16 C.F.R. Part 322, recodified as 12 C.F.R. Part 1015. (*See* Mot. at 2.) The FTC seeks a judgment requiring the Corporate Defendants to pay restitution representing the Corporate Defendants' net revenue gained as a result of the alleged deceptive practices. (*See* Mot. at 8.) After considering the papers filed in support of this unopposed Motion, the Court deems this matter appropriate for resolution without oral argument of counsel.

[1] Brookstone Law P.C (California) and Brookstone Law P.C. (Nevada) will be collectively referred to as "Brookstone." Advantis Law P.C., and Advantis Law Group P.C will be collectively referred to as "Advantis." The six additional Defendants in this action, named individually and in their capacities as officers of the Corporate Defendants, will be referred to as "Individual Defendants." (*See* Dkt. No. 61.)

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See Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15. For the following reasons, the Court **GRANTS** Plaintiff's Motion.

II. BACKGROUND

A. Factual Background

Corporate Defendants Advantis and Brookstone are a common enterprise, using the above names interchangeably while engaging in the unlawful acts alleged by the FTC. (Dkt. No. 61, (hereinafter, "FAC") ¶ 14.) They operated under common control and from the same address while marketing the same services. (*See* FAC ¶¶ 14, 32.) Two Individual Defendants that are officers or attorneys for Corporate Defendants were previously investigated for their prior involvement with mortgage assistance services and others have been disciplined in connection to their mortgage assistance practices. (*See* FAC ¶¶ 8-13.)

The instant action arises from the Corporate Defendants' alleged scheme to fraudulently "extract thousands of dollars in upfront fees" from consumers for mortgage assistance relief services, while "they provide little or nothing" in return. (FAC ¶ 16.) Specifically, Plaintiff claims that the Corporate Defendants are fronts created by Individual Defendants to falsely represent litigation experience to distressed homeowners and convince them that if added to lawsuits against their lender, they can expect a significant recovery of "at least $75,000." (*See* FAC ¶¶ 16–45.)

In order to participate in the mass joinder litigation, the Corporate Defendants required consumers to pay upfront fees, including a large initial fee and subsequent monthly fees to remain as plaintiffs in the mass joinder cases. (*See* FAC ¶¶ 46–52.) According to Plaintiff, the Corporate Defendants failed to keep these fees in client trust accounts. (FAC ¶ 51.) Plaintiff also claims that the Corporate Defendants' mailers, websites, and fee agreements failed to include disclosures required by law. (*See* FAC ¶¶ 28, 29, 35.)

Plaintiff also claims that, despite their representations to the contrary, Brookstone and Advantis have "not won a single mass joinder case" (FAC ¶ 52), that their attorneys lack the experience or resources to litigate the mass joinder cases (*see* FAC ¶¶ 21, 31),

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and that they routinely fail to initiate or prosecute claims on behalf of their paying clients (*see* FAC ¶¶ 55, 57).

B. Procedural History

On May 31, 2016, the FTC filed its original Complaint alleging violations of: (1) Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) (Dkt. No. 1 ¶¶ 69–71); and (2) the MARS Rule, 16 C.F.R. Part 322, recodified as 12 C.F.R. Part 1015 (Dkt. No. 1 ¶¶ 80–82). In its Complaint, the FTC requests that the Court: (1) award preliminary injunctive and ancillary relief to avert further consumer injury during the pendency of the action; (2) permanently enjoin Defendants from violating the FTC Act; (3) permanently enjoin Defendants from violating the MARS Rule; (4) order Defendants to pay restitution, disgorge all funds received from their illegal conduct, and provide other relief necessary to redress injury to consumers; (5) award Plaintiff the costs of bringing this action; and, (6) grant such other and further relief as the Court may determine to be just and necessary. (*See* Dkt. No. 1 ¶ 86.) On July 5, 2016, the FTC filed its First Amended Complaint alleging the same violations, and seeking the same relief, but adding an additional Individual Defendant. (*See* FAC.)

On June 10, 2016, the FTC filed its Proof of Service upon the Corporate Defendants, indicating that a registered California process server personally served an authorized representative of Brookstone Law P.C. (California), Brookstone Law P.C. (Nevada), Advantis Law P.C., and Advantis Law Group P.C. on June 2, 2016. (*See* Dkt. Nos. 30–31, 33–34.) The Proof of Service attached to the First Amended Complaint indicates that a copy of the First Amended Complaint was served through the ECF system and via email to Vito Torchia and Geoffrey Broderick in their personal capacities as the owner, director, or officers of Brookstone Law P.C. (California), Brookstone Law P.C. (Nevada), Advantis Law P.C., and Advantis Law Group P.C. (*See* Dkt. No. 61-2.)

The Corporate Defendants have failed to answer either the Complaint or the First Amended Complaint, and on September 8, 2016, the FTC requested the Clerk to enter default judgment against the Corporate Defendants for failure to respond to the Complaint within the applicable timeframe. (*See* Dkt. No. 112.) On September 8, 2016, the Clerk entered default against Corporate Defendants. (*See* Dkt. No. 113.) On July 31, 2017, the FTC filed the instant Motion for Default Judgment. (*See* Mot.) Along with its

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Motion, the FTC also filed a Proposed Order for Permanent Injunction and Other Equitable Relief as to Defendants Brookstone Law P.C. (California), Brookstone Law P.C. (Nevada), Advantis Law P.C., and Advantis Law Group P.C. (*See* Dkt. No. 295-2.) The Corporate Defendants have not opposed the Motion. Brookstone has yet to appear in this action.

III. LEGAL STANDARD

Entry of default is appropriate "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend." Fed. R. Civ. P. 55(a). A party has no duty to defend, however, unless the plaintiff properly served the defendant with the summons and complaint, or waives such service, pursuant to Federal Rule of Civil Procedure 4. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999) (holding "one becomes a party officially, and is required to take action in that capacity, only upon service of a summons").

Before courts decide whether to grant default judgment, Federal Rule of Civil Procedure 55(b)(2) requires the Clerk's entry of default. In the Central District of California, plaintiffs seeking default judgment must also satisfy the requirements of Local Rule 55-1. However, entry of a defendant's default does not automatically entitle the plaintiff to a court-ordered judgment. *See Draper v. Coombs*, 792 F.2d 915, 924–25 (9th Cir. 1986). Indeed, a district court has discretion in deciding whether to enter a default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In exercising this discretion, courts may consider a number of factors: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and, (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits (collectively, the "*Eitel* factors"). *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). In deciding a motion for default judgment, all factual allegations in the plaintiff's complaint are deemed to be true, except those relating to the amount of damages. *See TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987); *see also DirecTV, Inc. v. Huynh*, 503 F.3d 847, 854 (9th Cir. 2007).

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IV. DISCUSSION

In ruling on Plaintiff's Motion, the Court will consider whether: (1) the Corporate Defendants were properly served under Federal Rule of Civil Procedure 4; (2) Plaintiff satisfied the requirements of Federal Rule of Civil Procedure 55 and Local Rule 55-1; and, (3) the *Eitel* factors weigh in favor of granting default judgment.

A. Whether the Corporate Defendants Were Properly Served Under Federal Rule of Civil Procedure 4

"A federal court does not have jurisdiction over a defendant unless the defendant has been served properly under Fed. R. Civ. P. 4." *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988) (citing *Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 1982)). Federal Rule of Civil Procedure 4(h)(1)(B) provides that a domestic corporation may be served in a judicial district of the United States "by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process . . . ." Fed. R. Civ. P. 4(h)(1)(B). Here, a registered process server personally delivered copies of the Summons and Complaint to Vito Torchia, Jr., an authorized person to accept service of process on behalf of Brookstone Law P.C. (California) and Brookstone Law P.C. (Nevada), and to R. Geoffrey Broderick, an authorized person to accept service of process on behalf of Advantis Law P.C., and Advantis Law Group P.C., on June 2, 2016, at 6 Hutton Centre Drive, Suite 1000, Santa Ana, California 92707. (*See* Dkt. Nos. 30–31, 33–34.) Accordingly, the Court finds that the FTC properly served the Corporate Defendants with the original Complaint and summons pursuant to Federal Rule of Civil Procedure 4(h)(1)(B).

Federal Rule of Civil Procedure 5 governs the service of "a pleading filed after the original complaint." (*See* Fed. R. Civ. P. 5(a)(B).) Under Rule 5, service is completed by "mailing it to the person's last known address—in which event service is complete upon mailing[.]" Fed. R. Civ. P. 5(a)(b)(2)(C). The Proof of Service attached to the First Amended Complaint indicates that a copy of the First Amended Complaint was served through the ECF system and via email and FedEx to Vito Torchia and Geoffrey Broderick in their personal capacities as the owner, director, or officers of Brookstone Law P.C. (California), Brookstone Law P.C. (Nevada), Advantis Law P.C., and Advantis

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Law Group P.C. (*See* Dkt. No. 61-2.) Thus, the Corporate Defendants were properly served with the Amended Complaint.

B. Whether the FTC Has Complied with Federal Rule of Civil Procedure 55(b)(2) and Local Rule 55-1

The FTC has satisfied the procedural requirements of Federal Rule of Civil Procedure 55(b)(2) as well as Local Rule 55-1. As discussed above, Rule 55(b)(2) requires the Clerk to enter default before the Court may grant a motion for default judgment. *See* Fed. R. Civ. P. 55(b)(2). Given that the Clerk entered default against the Corporate Defendants on September 8, 2016 (*see* Dkt. No. 113), Rule 55(b)(2) is satisfied.

Local Rule 55-1 further requires the movant to make a showing as to the following: (1) when and against what party the default was entered; (2) the identification of the pleadings to which the default was entered; (3) whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented; (4) that the Servicemembers Civil Relief Act does not apply; and, (5) that notice has been served on the defaulting party, if required. C.D. Cal. L.R. 55-1.

The FTC has satisfied Local Rule 55-1. As stated above, the Clerk entered default against Defendants Brookstone Law P.C. (California), Brookstone Law P.C. (Nevada), Advantis Law P.C., and Advantis Law Group P.C. on September 8, 2016, based on the FTC's First Amended Complaint. (*See* Declaration of Benjamin Theisman (Dkt. No. 295-1) (hereinafter, "Theisman Decl.") ¶ 3; *see also* Dkt. No. 113.) Further, the Theisman Declaration filed concurrently with Plaintiff's Motion confirms, under penalty of perjury, that Corporate Defendants are not minors or incompetent persons, and that the Servicemembers Civil Relief Act does not apply in this action. (Theisman Decl. ¶ 4.)

Finally, service of written notice of the application for default judgment is required "[i]f the party against whom a default judgment is sought has appeared personally or by a representative." Fed. R. Civ. P. 55(b)(2). Brookstone Nevada and Brookstone California have not appeared in this case (Theisman Decl. ¶ 7); therefore, notice is not required. Nonetheless, the Theisman Declaration indicates that the FTC served Brookstone with the instant Motion on July 31, 2017. (Theisman Decl. ¶ 9.) The

FTC served Charles T. Marshall, attorney of record for Advantis, with the instant Motion on July 31, 2017 via the ECF system, email, and overnight mail. (Theisman Decl. ¶ 8; *see also* Mot. at 11.)

Accordingly, Plaintiff has complied with Federal Rule of Civil Procedure 55(b)(2) and Local Rule 55-1.

C. Whether the *Eitel* Factors Weigh in Favor of Granting Default Judgment

Upon reviewing the relevant *Eitel* factors, the Court finds the factors weigh in favor of granting default judgment. The Court will discuss each factor in turn.

1. First Factor: Prejudice to Plaintiff

The first *Eitel* factor requires the Court to consider whether withholding default judgment would prejudice Plaintiff. Here, absent an entry of default, the FTC "will most likely be without recourse against [the Corporate Defendants], given [the Corporate Defendants'] unwillingness to cooperate and defend." *Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998, 1006 (C.D. Cal. 2014). Because the FTC will not have any recourse against the Corporate Defendants without a default judgment, the Court finds that withholding the default judgment would prejudice the FTC.

2. Second and Third Factors: Merits of Plaintiff's Substantive Claims and Sufficiency of the Complaint

Under the second and third *Eitel* factors, the Court must determine whether Plaintiff's substantive claims have merit and whether Plaintiff's FAC sufficiently sets forth a claim for relief. *Eitel*, 782 F.2d at 1471. "The Ninth Circuit has suggested that these two factors require that a plaintiff 'state a claim on which the [plaintiff] may recover.'" *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002) (citing *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978)).

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a. FTC Act

"Section 5 of the FTC Act prohibits deceptive acts or practices in or affecting commerce and imposes injunctive and equitable liability upon the perpetrators of such acts." *FTC v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1138 (9th Cir. 2010). "An act or practice is deceptive if 'first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material.'" *FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009) (quoting *FTC v. Gill*, 265 F.3d 944, 954 (9th Cir. 2001)).

The FTC alleges that, beginning in 2011, the Corporate Defendants operated as a common business enterprise and maintained a substantial course of trade in or affecting commerce. (*See* FAC ¶¶ 14–16.) The FTC also claims that the Corporate Defendants targeted distressed consumers and made representations regarding their experience in mass joinder litigation (*see* FAC ¶¶ 17–22), the likelihood of achieving a favorable outcome (*see* FAC ¶¶ 38–45), and the origination and continued prosecution of claims on their behalf (*see* FAC ¶¶ 45, 53–62). The FTC thus pleads sufficient facts to show that the Corporate Defendants made representations to consumers.

The FTC's assertion in its FAC that the Corporate Defendants representations to consumers were false adequately establishes that they were likely to mislead reasonable consumers. *See FTC v. Pantron I Corp.*, 33 F.3d 1088, 1096 (9th Cir. 1994) (noting that presenting a theory that representations are false is among ways to prove that a business misled consumers). The FTC alleged that each of the representations listed above lacked basis in fact. For example, the FTC pled that advertisements to consumers stated that the Corporate Defendants would seek to void consumers' mortgages, when in fact any claims actually brought on behalf of their customers did not seek that type of relief. (FAC ¶¶ 70–71.)

Lastly, "[e]xpress product claims are presumed to be material." *Id.* at 1095–96. The FTC pleads that the Corporate Defendants made express claims to consumers at various points in their marketing ploys via their mailers, websites, and client intake meetings. (*See* FAC ¶¶ 37–45.) For example, the Corporate Defendants represented to consumers that their mortgage documents evidenced that they were victims of fraud and entitled to recovery of "at least $75,000." (FAC ¶ 44.)

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Thus, the FTC's has alleged sufficient facts to show Corporate Defendants violated Section 5(a) of the FTC Act.

b. MARS Rule

To prevail on its claim for violations of the MARS Rule, the FTC must first establish that Corporate Defendants offered MARS as defined by the MARS Rule. The FTC must then establish that the Corporate Defendants were in violation of specific provisions of the MARS Rule.

The MARS Rule defines "mortgage assistance relief service provider" as "any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service" other than the dwelling loan holder, the services of a dwelling loan holder, the servicer of a dwelling loan, or any agent or contractor of such individual or entity. 12 C.F.R. § 1015.2. The FTC claims that the Corporate Defendants are law firms "offering mortgage assistance relief services to consumers by representing them in litigation against their lenders." (FAC ¶¶ 6–7.) Specifically, the FTC alleges that the Corporate Defendants targeted distressed homeowners with their advertising and offered to add the consumers to mass joinder lawsuits to prevent home foreclosures and void mortgage notes. (FAC ¶¶ 17–26.) The FTC thus pleads sufficient facts to establish that the Corporate Defendants qualify as MARS providers under the MARS Rule.

The FTC claims that the Corporate Defendants violated provisions of the MARS Rule in three ways. First, the FTC asserts that the Corporate Defendants violated 12 C.F.R. § 1015.3(b)(1), which prohibits a MARS provider from "[m]isrepresenting, expressly or by implication . . . [t]he likelihood of negotiating, obtaining, or arranging any represented service or result[.]" 12 C.F.R. § 1015.3. As stated above, the FTC alleges that the Corporate Defendants overstated their experience in mass joinder litigation against lenders and the likelihood of obtaining monetary relief to consumers, and misrepresented the type of relief sought. (FAC ¶¶ 18, 21–23, 53–67, 82.)

The FTC further claims that the Corporate Defendants failed to include disclosures required in commercial communications made by MARS providers as outlined by 12 C.F.R. § 1015.4. The FTC alleges that the Corporate Defendants did not include the

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required disclosures in mailers sent to consumers from Corporate Defendants or on their websites. (FAC ¶¶ 28–29, 25, 83.)

Finally, the FTC claims that the Corporate Defendants received advanced fees in violation of 12 C.F.R.§ 1015.5(a), which prohibits a MARS provider from "request[ing] or receiv[ing] payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer's dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer." 12 C.F.R. § 1015.5(a). The FTC alleges that the Corporate Defendants solicited upfront payments for legal analysis of consumers' loan agreements and ongoing payments for purportedly managing consumers' claims before obtaining any relief for those consumers. (*See* FAC ¶¶ 43, 46–52, 81.) Thus, the FTC pleads sufficient facts to support its claim that the Corporate Defendants collected fees in violation of the MARS Rule.

Accordingly, the Court finds that Plaintiff alleges sufficient facts to support its claims. As a result, the second and third factors weigh in favor of granting default judgment.

3. Fourth Factor: The Sum of Money at Stake in the Action

"Under the [fourth] *Eitel* factor, the court must consider the amount of money at stake in relation to the seriousness of [the] [d]efendant's conduct." *PepsiCo, Inc.*, 238 F. Supp. 2d at 1176. Here, the FTC seeks restitution in the amount of $18,146,866.34, which is the total amount that the Corporate Defendants received from consumers, taking into account refunds and chargebacks. (Mot. at 8.) The Corporate Defendants are law firms formed by individuals that were the subject of prior federal investigation. (*See* FAC ¶ 8.) They are accused of enacting elaborate fraudulent schemes against thousands of consumers. (*See* FAC.) Thus, when considering the seriousness of the Corporate Defendants' conduct in relation to the amount of money at stake, this factor weighs in favor of granting default judgment.

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4. Fifth Factor: Possibility of Dispute Concerning Material Facts

When a plaintiff has "supported its claims with ample evidence, and defendant has made no attempt to challenge the accuracy of the allegations in the complaint, no factual disputes exist that preclude the entry of default judgment." *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 922 (C.D. Cal. 2010); *see also Elektra Entm't Grp. Inc. v. Crawford*, 226 F.R.D. 388, 393 (C.D. Cal. 2005) ("Because all allegations in a well-pleaded complaint are taken as true after the court clerk enters default judgment, there is no likelihood that any genuine issue of material fact exists."). Here, the FTC has provided the Court with well-pleaded allegations, and has provided the Corporate Defendants with ample opportunity to defend against them. The FTC has alleged sufficient facts establishing that the Corporate Defendants violated the FTC Act and the MARS Rule. (*See supra* § IV.C.2.) Therefore, the Court finds that this factor weighs in favor of granting default judgment.

5. Sixth Factor: Excusable Neglect

Under the sixth *Eitel* factor, the Court considers the issue of excusable neglect. "This factor favors default judgment when the defendant has been properly served or the plaintiff demonstrates that the defendant is aware of the lawsuit." *Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1082 (C.D. Cal. 2012). Here, the record indicates that the FTC properly served the Corporate Defendants, thus they are, or should be, aware of this action. (*See* Dkt. Nos. 30–31, 33–34, 61-2.) Despite being put on notice of this action, the Corporate Defendants have failed to respond. Their failure to respond does not appear to be excusable. Thus, this factor favors granting default judgment. *See Wecosign*, 845 F. Supp. 2d at 1082.

6. Seventh Factor: Policy of Favoring Decisions on the Merits

Finally, the seventh *Eitel* factor requires the Court to consider whether the Court's strong preference for deciding cases on the merits should preclude the Court from granting default judgment. Despite this strong policy, courts often find that granting default judgment is appropriate when a defendant fails to adequately defend against a lawsuit. *See, e.g.*, *Wecosign*, 845 F. Supp. 2d at 1083; *Craigslist, Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1061 (N.D. Cal. 2010). The Corporate Defendants' decision

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to not respond to the FAC and their decision to not oppose the instant Motion mitigates the Court's concern about not deciding this case on the merits. Therefore, this factor does not weigh against granting default judgment.

The FTC has properly served the Corporate Defendants and complied with the applicable procedural requirements. Further, the *Eitel* factors favor granting a default judgment in this case. Accordingly, the Court **GRANTS** the FTC's Motion for Default Judgment.

V. REQUESTED RELIEF

In its Motion, the FTC seeks (1) permanent injunction against the Corporate Defendants, prohibiting them from engaging in future violations of the FTC Act and the MARS Rule; and, (2) restitution for the amount consumers paid, taking into account refunds and chargebacks. (*See* Mot. at 8–10.)

A. INJUNCTIVE RELIEF

As stated above, the FTC requests that the Corporate Defendants be enjoined from committing future violations of the FTC Act and the MARS Rule. (*See* Mot. at 9–10; FAC ¶ 87.)

By statute, the Court has the authority to grant the injunctive relief sought. 15 U.S.C. §53(b). An injunction may be granted "if there is some cognizable danger of recurring violation." *FTC v. Gill*, 71 F. Supp. 2d 1030, 1047 (C.D. Cal. 1999). A Court considers the totality of the circumstances, including past unlawful conduct. *See id.* "When the violation has been predicated upon systematic wrongdoing, rather than isolated occurrences, a court should be more willing to enjoin future conduct." *Id.* (quoting *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir.1979)).

Here, in considering the totality of the circumstances to determine the likelihood of future violations, the Court finds that the FTC has established a reasonable likelihood that the Corporate Defendants will engage in future FTC Act and MARS Rule violations. The degree of scienter here is high. Corporate Defendants orchestrated a complicated

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scheme, spanning more than four years, to extract money from consumers while misrepresenting the services they received in return, which were of little or no value. (*See* FAC ¶ 16.) Through this scheme the Corporate Defendants realized more than $18 million. (Mot. at 8.) The fact that the Corporate Defendants offered legal services also weighs in favor of finding a likelihood of future violations, as the Corporate Defendants' scheme was orchestrated, in part, by licensed attorneys who were presumably aware of the unlawfulness of their practices. (*See generally* FAC.) Furthermore, a law firm offering similar mortgage assistance services and founded by the same individuals was the subject of prior federal investigation. (*See* FAC ¶ 8.) The totality of the circumstances of the alleged violations reveals a significant likelihood that the Corporate Defendants will engage in future violations of the FTC Act and the MARS Rule; therefore, an injunction against further violations is proper.

B. EQUITABLE MONETARY RELIEF

As stated above, the FTC seeks restitution in the amount that consumers paid to the Corporate Defendants. Courts have "broad authority to fashion appropriate remedies for violations of the [FTC] Act." *Pantron I Corp.*, 33 F.3d 1088 at 1102. "This power includes the power to order restitution." *Id*. The Court adheres to the two-step process for determining restitution awards adopted by the Ninth Circuit. *See, e.g., FTC v. Commerce Planet, Inc.*, 815 F.3d 593, 603 (9th Cir. 2016). First, the FTC must prove that "the amount it seeks in restitution reasonably approximates the defendant's unjust gains," measured by the defendant's net revenues. *Id*. "The burden then shifts to the defendant to show that the FTC's figures overstate the amount of the defendant's unjust gains." *Id*. at 604.

In its Motion, the FTC seeks restitution in the amount of $18,146,866.34, representing the amount consumers paid as a result of the Corporate Defendants unlawful acts, taking into account refunds and chargebacks. (*See* Mot. at 8.) In support of its Motion, the FTC submitted the declaration and supporting attachments of its forensic accountant Emil T. George. (*See* Mot. at 8 (citing Dkt. No. 284-5 (hereinafter "George Declaration" or "George Decl.") ¶¶ 2–12, Attachs. A–C) (listing the relevant bank

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accounts of the Corporate Defendants, providing a record of the relevant transactions, and documenting the total net receipts from these accounts).) The calculation provided in the George Declaration of gross receipts, with deductions for refunds, chargebacks, and other transactions not representative of consumer transactions, totals $18,146,866.34. (*See* George Decl. ¶ 9, Attach. B.) After review of the declaration by the FTC's forensic accountant, the Court finds that the amount sought by the FTC is a reasonable approximation of the Corporate Defendants' net revenue during the relevant period, and therefore, the FTC has met its burden. The Corporate Defendants have not disputed the amount requested by the FTC.

Additionally, "a default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings." Fed. R. Civ. P. 54(c). In the FAC, the requested relief included "restitution, the refund of monies paid, and the disgorgement of ill-gotten monies" "necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the MARS Rule[.]" (FAC ¶ 87). This is the same kind of relief sought by the FTC in its instant Motion. Although the numerical amount of restitution sought was not specified in its prayer for relief section in the FAC (*see* FAC ¶ 87), the FTC provided an estimate elsewhere in its FAC that as of 2014, the Corporate Defendants had "received *at least* $15 million." (FAC ¶ 50 (emphasis added).) In support of its Motion, the FTC provided a calculation of consumer receipts since February 27 2015, totaling $1,784,022.61, and has demonstrated that the total amount received from consumers, when considering refunds and chargebacks, totals $18,146,866.34. (*See* George Decl. ¶ 10, Attachs. B–C.) Plaintiff's request for restitution of the total amount that the Corporate Defendants received from consumers (*See* FAC ¶ 87) in the FAC put the Corporate Defendants on notice of the extent of their liability when choosing not to defend the claim. Therefore, granting the requested monetary relief is consistent with the damages limitation in Rule 54(c).

In conclusion, the Court finds that the remedies that the FTC seeks in its Motion are appropriate.

LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	CV 16-00999-BRO (AFMx)	Date	August 28, 2017
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VI. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion. The hearing currently scheduled for Monday, August 28, 2017 is hereby **VACATED**. The Court will enter its Final Judgment as to Defendants Brookstone Law P.C. (California), Brookstone Law P.C. (Nevada), Advantis Law P.C., and Advantis Law Group P.C. Plaintiff is **ORDERED** to file a Proposed Judgment by **September 6, 2017 by 4:00 p.m.**

IT IS SO ORDERED.

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