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14 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

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16 **FEDERAL TRADE
COMMISSION,**

17
18 Plaintiff,

19 v.

20 **LIGHTS OF AMERICA, INC., ET
AL.,**

21 Defendants.
22

Case No. SACV10-01333 JVS
(MLGx)

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' SUPPLEMENTAL
BRIEF**

Hearing Date: March 28, 2011
Time: 1:30 p.m.
Judge: Hon. James V. Selna

23 Defendants' Supplemental Brief¹ provides neither new law nor any reason
24 for the Court to alter its Tentative Order re Motion to Dismiss Individual

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26 ¹ Without leave of the Court and without prior notice to Plaintiff,
27 Defendants Usman Vakil and Farooq Vakil ("Vakils") filed a Supplemental Brief
28 in Support of Motion to Dismiss yesterday. Docket. No. 79. The FTC objects to
the Supplemental Brief as the Vakils had ample opportunity to argue these issues
in either or both of their briefs submitted in support of their Motion to Dismiss.

1 Defendants (“Tentative Decision”). First, the Court correctly identified the
2 applicable legal standard to measure the sufficiency of the allegations in the
3 FTC’s Amended Complaint. Second, the Court applied that standard, and
4 appropriately concluded that the allegations in the FTC’s Amended Complaint,
5 taken as true and drawing all reasonable inferences in the FTC’s favor, plausibly
6 state a claim for equitable monetary relief against the Vakils.² In fact, the FTC
7 has done far more than affix the label “general allegation” to its claims related to
8 the Vakils’ knowledge, and thus, has stated a plausible claim for equitable
9 monetary relief against the Vakils.

10 First, the Court correctly identified the applicable legal standard in the
11 Tentative Decision: “[a]llegations of the individuals’ knowledge are subject to the
12 general pleading standard of Rule 8(a) rather than the heightened pleading
13 standard of Rule 9(b).” Tentative Decision, at 5. In the Supplemental Brief, the
14 Vakils do not propose a new or different standard than that announced by this
15 Court.

16 Second, the Court reviewed the Amended Complaint under this standard
17 and concluded that “the FTC’s allegations of the Vakils’ knowledge are sufficient
18 to plead entitlement to restitutionary relief.” *Id.* In support of this holding, the
19 Court cites to multiple factual allegations in the Amended Complaint which
20 support the FTC’s claims that the Vakils had the requisite knowledge of the
21 misrepresentations made about their light-emitting diode lamps (“LED lamps”).
22 For example, the Court cited to the FTC’s allegations indicating the Vakils’ active
23 involvement in LOA’s business and the Vakils’ awareness of the unsubstantiated
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26 ² The Vakils’ Supplemental Brief addresses only the portion of the Motion
27 to Dismiss related to the FTC’s claim for monetary relief against the Vakils. It
28 ignores the Court’s finding that the “FTC has stated a claim against the Vakils” for
injunctive relief. Tentative Decision, at 4-5.

1 representations made regarding their LED lamps. Tentative Decision, at 5-6,
2 citing to Amend. Compl. ¶¶ 25-26, 56-57, 59, 71-72, 74, 79, 81; *see also*
3 Plaintiff’s Opposition to Motion to Dismiss, at 11-13.³ Thus, in the Tentative
4 Decision, the Court correctly concludes that:

5 At the pleading stage, these allegations are sufficient to raise the inference
6 that the Vakils knew of the misrepresentations or, at least, were recklessly
7 indifferent to the truth or falsity of the representations made. Thus, the AC
8 adequately pleads entitlement to restitution.

9 Tentative Decision, at 6.

10 The Vakils’ Supplemental Brief offers no basis for this Court to alter its
11 findings in the Tentative Decision. Rather, in the Supplemental Brief, the Vakils
12 once again attempt to convert their Motion to Dismiss into something it is not by
13 arguing the FTC has not alleged facts that support a “*determination* that the
14 Vakil’s [sic.] knew of any wrongdoing by the company.” Supplemental Brief, at 2
15 (emphasis added). Viewing the FTC’s allegations under the correct legal standard
16 identified by the Court in the Tentative Decision, the FTC has alleged ample facts
17 in support of its claims for relief against the Vakils which, taken as true and with
18 all reasonable inferences drawn in the FTC’s favor, plausibly state a claim for
19 equitable monetary relief against the Vakils.

20 Accordingly, the Court should deny the Vakils’ Motion to Dismiss and
21 enter its Tentative Decision as its ruling on this matter.

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26 ³ Although not cited by the Court in its Tentative Decision, multiple
27 additional factual allegations support the FTC’s allegations. *See* Amend. Compl. ¶¶
28 55, 61, 64, 70, 73, 75-76, 82.

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Respectfully submitted,

Date: March 30, 2011

/s/ Kimberly L. Nelson

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