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1 **SBSC CORPORATION, also doing
business as FEDERAL LOAN
MODIFICATION**)

2 **and**)

3 **LEGAL TURN. LLC**)

4 **and**)

5 **NABILE “BILL” ANZ**)

6 **and**)

7 **BOAZ MINITZER**)

8 **and**)

9 **JEFFREY BROUGHTON**)

10 **and**)

11 **STEPHEN OSCHEROWITZ**)

12 **Defendants,**)

13 **and**)

14 **MGO CAPITAL**)

15 **Relief Defendant.**)

16
17 **INTRODUCTION AND BACKGROUND**

18
19 Before the Court is the Federal Trade Commission’s (“FTC”) motion for summary
20 judgment against Defendant Boaz Minitzer. For the reasons explained below, FTC’s
21 motion for summary judgment is GRANTED.
22

23
24 FTC’s Second Amended Complaint (“SAC”) alleges that Mr. Minitzer is the
25 President of corporate Defendants Federal Loan Modifications and SBSC Corporation,
26 President and an owner of corporate Defendant LegalTurn, Inc., an owner of corporate
27 Defendant Legal Turn. LLC, and the owner of corporate Defendant Federal Loan
28 Modification, LLC. (SAC ¶ 14.) FTC asserts that Mr. Minitzer, through these entities,

1 directed and participated in a scheme to purport to offer federal loan modification and
2 foreclosure relief services while charging up-front fees from distressed homeowners
3 facing foreclosure. (SAC ¶ 23.) To promote their fraudulent services, Mr. Minitzer and
4 other Defendants “conducted an extensive national advertising campaign” through
5 nationally broadcast television and radio stations and the internet. (SAC ¶ 24.) This
6 campaign prominently featured the word “federal,” and several corporate Defendants
7 have names that include the word “federal.” (SAC ¶¶ 23, 25.) Defendants also utilized
8 an internet site, “www.fedmod.com,” to market their services. (SAC ¶ 27.)
9

10 When victims responded to Defendants’ advertisements, Defendants’ telemarketers
11 typically promised that they could obtain modifications of consumers’ loan obligations
12 and even prevent foreclosure. (SAC ¶ 34.) These telemarketers would represent “a
13 success rate in the high ninetieth percentile,” and “instruct consumers that they must pay”
14 up-front fees. (SAC ¶¶ 35, 37.) Once they obtained those fees, Defendants frequently
15 “fail[ed] to answer or return consumers’ telephone calls or provide updates about the
16 status of Defendants’ purported communications with the consumers’ lenders.” (SAC
17 ¶ 39.) In reality, Defendants “ha[d] not even contacted the [consumers’] lender[s] or . . .
18 had only minimal, non-substantive contacts with the lender[s].” (SAC ¶ 41.) In addition,
19 Defendants often “encouraged consumers to stop paying their mortgages” and “not to
20 contact their lenders.” (SAC ¶ 40.) Although Defendants represented that they had full
21 refund policies, consumers had difficulties obtaining such refunds without numerous
22 requests or complaints to “entities such as the Better Business Bureau.” (SAC ¶¶ 38, 42.)
23

24 Based on these factual allegations, FTC’s SAC alleges two counts of violating
25 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a)(1), which prohibits “unfair or deceptive
26 acts and practices in or affecting commerce.” The first count asserts that Defendants
27 represented to consumers that they would obtain loan modifications or stop foreclosures
28 but failed to do so “in all or virtually all instances.” (SAC ¶¶ 45–46.) The second count

1 contends that Defendants falsely represented that they were “affiliated with, or endorsed
2 by the United States government or one or more federal government programs.” (SAC
3 ¶¶ 48–49.) FTC seeks a judgment for the “full amount of consumer loss” caused by Mr.
4 Minitzer and corporate Defendants and “permanent injunctive relief to prevent him from
5 engaging in the same or reasonably related conduct that would injure consumers,
6 specifically bans on his sale or marketing of any mortgage relief service and any
7 financial-related good or service.” (Mem. Supp. Mot. Summ. J. at 1–2.)

8
9 **ANALYSIS**

10
11 As an initial matter, Mr. Minitzer has failed to file an opposition to FTC’s motion
12 for summary judgment. Local Rule 7-12 of the Central District of California addresses a
13 party’s failure to file required papers. It states:

14
15 The Court may decline to consider any memorandum or other
16 paper not filed within the deadline set by order or local rule.

17 The failure to file any required paper, or the failure to file it
18 within the deadline, may be deemed consent to the granting or
19 denial of the motion.

20
21 Local Rule 7-12. Accordingly, the Court could grant FTC’s motion on this ground alone.
22 The Court acknowledges and appreciates that Mr. Minitzer appeared and represented
23 himself *pro se* in the hearing on this motion. His arguments during that hearing,
24 however, were not timely nor the type of evidence that could defeat FTC’s well-
25 supported motion.

26
27 Summary judgment is proper if the evidence before the Court “show[s] that there is
28 no genuine issue as to any material fact and that the movant is entitled to judgment as a

1 matter of law.” Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317,
2 322 (1986). A factual issue is “genuine” when there is sufficient evidence such that a
3 reasonable trier of fact could resolve the issue in the non-movant’s favor, and an issue is
4 “material” when its resolution might affect the outcome of the suit under the governing
5 law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party bears
6 the initial burden of demonstrating either that there are no genuine material issues or that
7 the opposing party lacks sufficient evidence to carry its burden of persuasion at trial.
8 *Celotex Corp.*, 477 U.S. at 325; *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*,
9 809 F.2d 626, 630-31 (9th Cir. 1987). Once this burden has been met, the party resisting
10 the motion “must set forth specific facts showing that there is a genuine issue for trial.”
11 *Anderson*, 477 U.S. at 256. In considering a motion for summary judgment, the court
12 must examine all the evidence in the light most favorable to the non moving party.
13 *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). The court does not make
14 credibility determinations, nor does it weigh conflicting evidence. *Eastman Kodak Co. v.*
15 *Image Tech. Servs., Inc.*, 504 U.S. 451, 456 (1992).

16
17 FTC has met its burden to warrant summary judgment on both counts alleged in
18 the SAC. Mr. Minitzer has not properly opposed FTC’s motion and has not produced
19 evidence rebutting FTC’s detailed allegations and substantial evidence—including
20 consumer and former employee declarations, deposition testimony, undercover calls,
21 sales scripts, and company records—that would permit him to meet his burden of
22 persuasion at trial on either count. He has also failed to raise any genuine issues that
23 would not be appropriate for resolution on a motion for summary judgment.
24 Accordingly, summary judgment is appropriate.

1 Although some of Defendants' advertisements contained disclaimers stating that
2 Defendants were not associated with the government, FTC has presented evidence that
3 these disclaimers were legally insufficient and that the advertisements were likely to
4 mislead consumers despite these disclaimers. Defendants also cannot escape liability
5 based on their subsequent calls to existing customers to notify them that the corporate
6 Defendants were not associated with the federal government. *See Resort Car Rental Sys.,*
7 *Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir. 1975) (per curiam) (deception may be unlawful
8 despite a subsequent truthful disclosure (citing *Exposition Press, Inc. v. FTC*, 295 F.2d
9 869, 873 (2d Cir. 1961)). Even if the calls were effective, Defendants did not begin
10 making them until December 2008, and consumers that hired Defendants after that time
11 did not receive calls.

12
13 Defendants' representations creating the impression that they were associated with
14 the federal government or its programs were also material. Consumers were more likely
15 to hire Defendants when they believed Defendants to be associated with the federal
16 government. Not surprisingly, FTC has produced corroborating evidence that reasonable
17 consumers were misled into believing that Defendants were associated with the federal
18 government. *See Cyberspace.com LLC*, 453 F.3d at 1201.

19
20 **B. Monetary & Injunctive Relief**


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22 The relief FTC seeks is appropriate in this case. The FTC Act permits the Court to
23 order restitution of fraudulently obtained moneys as well as injunctive relief.
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1 **CONCLUSION**

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3 For the foregoing reasons, FTC's motion for summary judgment against Mr.
4 Minitzer is GRANTED. An appropriate judgment providing for a restitution award and
5 injunctive relief consistent with this Order will also be entered.

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8 DATED: November 17, 2010



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11 CORMAC J. CARNEY
12 UNITED STATES DISTRICT JUDGE
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