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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FEDERAL TRADE COMMISSION,

Plaintiff - Appellee,

v.

BURNLOUNGE, INC., a Corporation and JUAN ALEXANDER ARNOLD, an individual,

Defendants - Appellants,

and

JOHN TAYLOR, an individual and ROB DEBOER, an individual,

Defendants.

No. 12-55926

D.C. No. 2:07-cv-03654-GW-FMO

MEMORANDUM*

FEDERAL TRADE COMMISSION,

Plaintiff - Appellee,

v.

BURNLOUNGE, INC., a Corporation; et al.,

No. 12-56197

D.C. No. 2:07-cv-03654-GW-FMO

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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Before: PREGERSON, BERZON, and CHRISTEN, Circuit Judges.

Appellants BurnLounge, Inc., Juan Alexander Arnold, and John Taylor appeal the district court's order of monetary awards against them as improper or, in the alternative, excessive. The FTC in a cross-appeal argues the district court's disgorgement award against Rob DeBoer was too low and was erroneously calculated. We review a district court's order granting equitable monetary relief for abuse of discretion. *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009). We have jurisdiction over this appeal and cross-appeal under 28 U.S.C. § 1291. We affirm in part and vacate and remand in part.[1]

1) The district court ruled that defendants BurnLounge and Arnold violated § 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1). It ordered a permanent injunction and payment of $16,245,799.70. This court and others have repeatedly recognized that § 13(b) of the FTCA, 15 U.S.C. § 53(b), "gives the federal courts broad authority to fashion appropriate remedies for violations of the Act. . . . [And that authority] is not limited to the power to issue an injunction; rather, it includes the 'authority to grant any ancillary relief necessary to

[1] In a separate published opinion we discuss BurnLounge's, Arnold's, and Taylor's appeals from the district court's holding that BurnLounge was an illegal pyramid scheme, and BurnLounge and Arnold's appeal from the district court's denial of their joint motion to exclude the FTC expert's testimony.

accomplish complete justice.'" *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir. 1994) (quoting *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982)); *see also Stefanchik*, 559 F.3d at 931; *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571 (7th Cir. 1989) (collecting other circuits' cases). Such ancillary relief may include restitution or disgorgement. *See Pantron I*, 33 F.3d at 1102, 1103 n.34. The district court did not abuse its discretion by ordering monetary awards under § 13(b) of the FTCA.

2) The district court found BurnLounge liable for the total amount of consumer harm. The FTC provided evidence that the amount of consumer harm was $21.4 million öç7VÙ` ×W&äÆ÷VævP

"spearheaded the making of the compensation plan;" and that he was referred to as the "boss" or "ultimate authority." These findings were supported by the record. The district court held Arnold jointly and severally liable with BurnLounge for the total amount of consumer harm ($16,245,799.70), on the understanding that the FTC would use that award to reimburse individuals who lost money in the BurnLounge scheme. It alternatively held that if the money was not used to reimburse customers of BurnLounge, then Arnold must disgorge $1,664,566.45, the amount Arnold personally received from the BurnLounge scheme. Given Arnold's central involvement in the scheme, the evidence amply supports the finding that he either had knowledge or was at least recklessly indifferent to the truth of the misrepresentations and omissions BurnLounge made to consumers. *See FTC v. Affordable Media*, 179 F.3d 1228, 1235 (9th Cir. 1999). Therefore, the district court did not abuse its discretion by holding Arnold jointly and severally liable with BurnLounge for the total amount of consumer harm. *See Stefanchik*, 559 F.3d at 927, 930–31; *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170–71 (9th Cir. 1997).

The disgorgement award ordered in the alternative was also appropriate and "include[d] all gains flowing from the illegal activities." *SEC v. JT Wallenbrock & Assocs.*, 440 F.3d 1109, 1114 (9th Cir. 2006) (citation and internal quotation marks

omitted). The award against Arnold properly included: Arnold's salary ($568,941.95); Arnold's bonuses ($202,500); and Arnold's reimbursement for expenses ($893,124.50). The district court did not abuse its discretion when it calculated the disgorgement award attributable to Arnold.

4) The district court found that, given Taylor's involvement in raising the capital necm in ra

disgorge $150,000. Our case law regarding disgorgement is clear: expenses are not deducted from total gains when disgorgement is calculated. *Id.* We grant the FTC's cross-appeal and vacate and remand the disgorgement award against DeBoer for recalculation.

We AFFIRM the district court's judgment holding Arnold jointly and severally s judgment holding Arnold jointly and