UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Federal Trade Commission, Plaintiff v. Ideal Financial Solutions, Inc., et al., Defendants	2:13-cv-00143-JAD-GWF Order Granting in Part Motion for Summary Judgment and Motion for Default Judgment, Entering Final Judgment, and Closing Case [ECF 224, 225]

The Federal Trade Commission sued Ideal Financial Solutions, Inc., its related entities, an the people who control them alleging a wide-ranging fraud scheme in which Ideal, through a host shell entities, purchased consumer bank and credit card information from payday-loan vendors an charged unwitting consumers a fee for financial services never provided.[1] Defaults have been entered against the corporate defendants,[2] and on June 30, 2015, I granted summary judgment on liability against the individual defendants.[3]

The FTC now moves for summary judgment on relief against the individual defendants,[4] and for default judgment against the corporate defendants.[5] The FTC requests a final judgment of over $43 million in equitable damages and injunctive relief against all defendants. I find that the FTC h carried its burdens to establish the claimed damages and to show that injunctive relief is appropri but I decline to grant the entirety of the injunctive relief sought by the FTC. Accordingly, I grant th

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[1] ECF 1 (complaint); ECF 32 (amended complaint).

[2] ECF 191 (Clerk•s entry of default against Ascot Crossing, LLC; Avanix, LLC; Bracknell Shore, Ltd.; Chandon Group, Inc.; Fiscal Fitness, LLC; and Ideal Financial Solutions, Inc.).

[3] ECF 223 (order granting summary judgment on liability against Jared Mosher Christopher Sun Melissa Sunyich Gardner, Michael Sunyich, and Steven Sunyich). Consent judgments have bee entered against defendants Kent Brown and Shawn Sunyich. ECF 192, 193.

[4] ECF 224.

[5] ECF 225.

FTC•s motion for summary judgment and motion for default judgment in part, enter final judgment consistent with my findings below, and close this case.[6]

Procedural History

The FTC filed this action against Ascot Crossing, LLC; Avanix, LLC; Bracknell Shore, Ltd.; Chandon Group, Inc.; Fiscal Fitness, LLC; and Ideal Financial Solutions, Inc. (corporate defendan and the people who control them: Kent Brown, Jared Moscher,[7] Christopher Sunyich, Melissa Sunyich Gardner, Michael Sunyich, Shawn Sunyich, and Steven Sunyich (individual defendants),[8] alleging that they orchestrated a fraud scheme using unfair billing practices (count 1), deceptive requested damages.[15] This was largely because I declined to consider the unsworn expert report of Lisa T. Wilhelm.[16] I gave the FTC 30 days to file a motion for summary judgment on relief if it could produce sufficient admissible evidence to support its damages calculation.

The FTC now moves for summary and default judgments that would result in a final monetary judgment and permanent injunctive relief against all defendants except Kent Brown and Shawn Sunyich.[17] In support, the FTC submits two attorney affidavits,[18] the affidavit of an FTC data analyst,[19] and Wilhelm•s now properly-authenticated expert report.[20] I thus consider whether with the aid of Wilhelm•s report the FTC has now sufficiently demonstrated its entitlement to summa and default judgments. For the reasons discussed below, I find that the FTC has sufficiently established the defendants• monetary liability and that it is entitled to a narrowly-drawn injunction prevent the defendants from committing future, similar violations of the FTC Act and to monitor their compliance.

Motion for Summary Judgment Against the Individual Defendants

A. Summary-judgment standards

Summary judgment is appropriate when the pleadings and admissible evidence •show the is no genuine issue [of] any material fact and that the movant is entitled to judgment as a matter o law.Ž[21] If the moving party satisfies Rule 56 by demonstrating the absence of any genuine issue o

[15] *Id.*

[16] *Id.* at 26.

[17] ECF 224 (motion for summary judgment for monetary and injunctive relief against individual defendants Jared Mosher, Christopher Sunyich, Melissa Sunyich Gardner, Michael Sunyich, and Steven Sunyich); ECF 225 (motion for default judgment against corporate defendants Ascot Crossing, LLC; Avanix, LLC; Bracknell Shore, Ltd.; Chandon Group, Inc.; Fiscal Fitness, LLC; an Ideal Financial Solutions, Inc.).

material fact, the burden shifts to the party resisting summary judgment to •set forth specific facts showing that there is a genuine issue for trial.Ž[22] The nonmoving party •must do more than simply show that there is some metaphysical doubt as to the material factsŽ; he •must produce specific evidence, through affidavits or admissible discovery material, to show thatŽ there is a sufficient evidentiary basis on which a reasonable fact finder could find in his favor.[23]

B. Monetary liability under the FTC Act

The FTC Act was designed to protect consumers from economic injuries. Courts thus •hav often awarded the full amount lost by consumers rather than limiting damages to defendant[s•] profits.Ž[24] The FTC need not prove that every consumer was injured; it must simply show that the defendants• unlawful practices impacted an overwhelming number of consumers and caused actu consumer injury.[25] Once the FTC meets this burden, it must then •show that its calculations reasonably approximated the amount of customers• net loss.Ž[26] The burden then •shifts to the defendants to show that [the FTC•s] figures [are] inaccurate.Ž[27]

•An individual is personally liable for a corporation•s FTC Act § 5 violations if he •participated directly in the acts or practices or had authority to control them• and •had actual knowledge of material misrepresentations, was recklessly indifferent to the truth or falsity of a

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[22] *A de c . L be b bb , I c.*, 477 U.S. 242, 256 (1986); *Ce e C . . Ca e* , 477 U.S. 317, 323 (1986).

[23] *Ba c f A . . O* , 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted); *Bh . NME H , ., I c.*, 929 F.2d 1404, 1409 (9th Cir. 1991); *A de c,* 477 U.S. at 248 49.

[24] *F.T.C. . S efa ch* , 559 F.3d 924, 931 (9th Cir. 2009) (internal citation omitted); *ee F.T.C. . P b he B . Se . I c.*, 540 Fed. Appx. 555, 557 (9th Cir. 2013) (finding that •the district court applied an incorrect legal standard when it focused on the defendants• gain rather than the loss consumers.Ž).

[25] *See F.T.C. . I c21.c C .*, 745 F. Supp. 2d 975, 1011 (N.D. Cal. 2010) (citing *S efa ch* , 559 F.3d at 929, n. 12).

[26] *F.T.C. . C e ce P a e , I c.*, 878 F. Supp. 2d 1048, 1091 (C.D. Cal. 2012) (internal citations omitted).

[27] *Id.* (internal citation omitted).

2010[35] and $10.6 million through Ideal shell company Zeal Money Solutions in 2012.[36] These charges total $43,083,720 in net consumer losses.[37] The FTC argues that defendants Christopher Sunyich, Melissa Sunyich Gardener, Michael Sunyich, and Steven Sunyich, all of whom played pivotal roles in the scheme from its inception, are jointly and severally liable for the full amount.[38] Defendant Jared Mosher is jointly and severally liable for only $36,575,542 the losses that the scheme caused since he joined it in late 2010.[39]

I find that the FTC has reasonably approximated the consumer-loss amount attributable to defendants: they are jointly and severally liable for $43,083,720, except for Jared Mosher, who is jointly and severally liable for $36,575,542.[40] The burden thus shifted to the individual defendants to raise genuine issues of fact as to the accuracy of these amounts.[41]

The individual defendants fail to rebut the FTC's calculations. Only Melissa Sunyich Gardner and Christopher Sunyich offered any response to the FTC's motion.[42] Melissa Sunyich Gardner argues that she "did absolutely nothing wrong" and that the court should not order mone

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[35] ECF 226-3 at 4 60 (spreadsheets produced by Litle & Co showing charge and return data for Elimination Systems).

[36] ECF 226-2 at 23 49 (spreadsheets produced by Payment Data Systems showing charges and data for Zeal Money Solutions).

[37] ECF 224-1 (Table). This is the net amount lost by consumers and does not include chargeba refunds, and returns. *See* ECF 226-1 at ¶ 58; ECF 226-4 at ¶¶ 15, 22; ECF 226-2 at 15, 80.

[38] ECF 224-1 at 15.

[39] *See* ECF 223 at 14 (finding that Jared Mosher joined the scheme in late 2010).

[40] This approximation is not only reasonable, but generous to defendants. It does not include ot costs incurred by the already cash-strapped victims as a result of defendants' misconduct, like overdraft fees due to the unexpected charges to their accounts. *See* ECF 223 at 8 (finding that "[c]onsumers suffered additional harm in the form of insufficient funds fees and other bank assessments caused by the unexpected charges. . . .").

[41] *Miller v. Glenn Miller Prods., Inc.*, 454 F.3d 975, 987 (9th Cir. 2006).

[42] ECF 223, 234, 236.

or injunctive relief,[43] but she points to no evidence to show that the FTC•s calculations are inaccurate. In his response, Christopher Sunyich likewise disclaims liability for the underlying offenses and conclusorily argues that the requested relief is inappropriate.[44] Also completely absent from his response is any evidence to show that the FTC•s damages calculations are inaccurate.

The responding defendants dispute their liability for the underlying offenses rather than the FTC•s damages calculations. I previously found that the evidence •overwhelminglyŽ demonstrate their liability:[45] the lines between the corporate defendants were so blurred that they formed a •common enterprise,Ž making each liable for the deceptive acts and practices of the others;[46] and the individual defendants controlled the corporate defendants, making each individually liable for the violations.[47] I decline to reconsider the individual defendants• liability at this stage in the litigation, and they have given me no legitimate reason to do so. Because no individual defendant has satis his or her burden to demonstrate that the FTC•s damages calculations are genuinely disputed, th FTC is entitled to summary judgment on damages.

D. Standard for granting permanent injunctive relief under the FTC Act.

The FTC may seek a permanent injunction to prevent future violations of the FTC Act.[48] The scope of the injunction depends on the facts of the particular case; and its goal is to prevent futur similar violations.[49] Though the FTC •is not limited to prohibiting the illegal practice in the precise formŽ it existed in the past,[50] the injunction must bear a reasonable relation to the defendants•

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[43] ECF 234 at 8.

[44] ECF 236 at 2.

[45] ECF 223.

[46] *Id.* at 20 (citing *F.T.C. v. Grant Connect, LLC*, 763 F.3d 1094, 1105 (9th Cir. 2014)).

[47] *Id.* at 21–23 (citing *Cyberspace.Com LLC*, 453 F.3d at 1202 (internal citation omitted).

[48] 15 U.S.C. § 53(b).

[49] *See F.T.C. v. John Beck Amazing Profits, LLC*, 888 F. Supp. 2d 1006, 1012 (C.D. Cal. 2012).

[50] *F.T.C. v. Mandel Bros.*, 359 U.S. 385, 392 (1959) (quoting *F.T.C. v. Ruberoid Co.*, 343 U.S. 470, 473 (1952)).

unlawful practices.[51] When fashioning injunctive relief, courts consider several factors, including th permanently enjoin the scheme•s masterminds Jared Mosher, Christopher Sunyich, and Steven Sunyich from marketing credit-related products or services.[57] Finally, the FTC requests that I impose 20-year recordkeeping and compliance-reporting requirements to ensure defendants• compliance with these directives.[58]

Defendants offer no objection to the scope of the FTC•s proposed injunction, but Melissa Sunyich Gardner and Christopher Sunyich filed responses in which they generally argue that injunctive relief is not appropriate. I nonetheless consider the reasonableness of the FTC•s propo order granting injunctive relief.

1. *a a a (a a)*

Section I of the FTC•s proposed order enjoins defendants from •collecting, selling, renting, brokering, purchasing, transferring, or disclosing a consumer•s account number or similar identifie in any form . . . to, from, for, or with any unaffiliated third party,Ž except if the customer directly gives the defendant the information and the disclosure is •for the sole purpose of permitting [d]efendant to authorize and complete a specific transaction expressly authorized by the consume and •[d]efendant destroys consumer account information within 30 days of processing a transacti for that consumer.Ž[59]

I find that section I of the FTC•s proposed order is reasonable under the circumstances. T collection of consumer-account information was central to the defendants• unlawful scheme: Idea purchased consumer account numbers and data, which it then imported into its consumer databa for the purpose of making unauthorized charges.[60] Permanently enjoining defendants from collecting and disclosing consumer-account information without the consumer•s authorization is reasonably related to defendants• violations and appropriately drawn to prevent future, similar violations.

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[57] *Id.* at 8 9.

[58] *Id.* at 18 20.

[59] ECF 224-2 at 8.

[60] ECF 223.

2.

Section II of the FTC•s proposed order enjoins defendants from •creating or causing to be createdŽ a •[r]emotely [c]reated [c]heck or a [r]emotely [c]reated [p]ayment [o]rder as payment for any product or serviceŽ and •[a]ccepting from a consumer, directly or indirectly, or assisting other

I find that section V, like section IV, is overly broad, not reasonably related to defendants• misconduct, and not necessary to prevent future, similar violations of the FTC Act by defendants. There are laws in place that guard against misleading sales and marketing campaigns that the FT does not need an injunction to enforce. This provision would also unduly interfere with defendant ability to find suitable employment to pay restitution. For these reasons, I also decline to enter the relief requested in section V of the FTC•s proposed order.

6. [illegible]

Sections XI through XIV of the FTC•s proposed order contain various recordkeeping and compliance-reporting requirements. These provisions require the defendants to respond to writte requests, submit compliance reports, create and maintain certain records, and distribute this cour final order to future employees.[69] Courts routinely order this kind of recordkeeping and compliance-reporting in FTC cases,[70] and I find that these provisions are reasonable under the circumstances. However, I reduce the reporting term from 20 to 10 years. Because defendants do not have a his of prior violations, I find that a ten-year reporting period is reasonable under the circumstances.[71]

In sum, I decline to enter the relief requested in sections II, IV, and V of the FTC•s propose order, but I grant the rest of the requested relief to the extent that it is consistent with this order.

Motion for Default Judgment Against the Corporate Defendants

A. FRCP 55 standards

Federal Rule of Civil Procedure 55 provides a mechanism for obtaining a default judgment against parties who have failed to plead or otherwise respond to claims brought against them. Af a clerk•s entry of default, the movant must request a default judgment from the court under Rule

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[69] ECF 224-1 at 24.

[70] *See e.g. F.T.C. . We e S o Ne o , I c.*, 2014 WL 644749, at *21 22 (N.D. Cal. Feb. 19 2014) (entering 20-year reporting requirement); *F.T.C. . G* , 71 F. Supp. 2d 1030, 1051 52 (C.D. Cal. 1999) (imposing three-year reporting requirement).

[71] *J h Bec* , 888 F. Supp. 2d at 1013 1016 (upholding a 20-year reporting period for defendants who had extensive personal involvement in illegal scheme and had •long history of blatantly disregarding the lawŽ but reducing the reporting period to ten years for other defendants who •d not have the same history.Ž).

55(b)(2).[72] A district court has discretion to enter a judgment by default, which typically turns on the consideration of the seven *E e . McCoo* factors: (1) potential prejudice to the plaintiff, (2) the merits of the plaintiff•s substantive claim, (3) sufficiency of the complaint, (4) the amount of money at stake in the action, (5) the potential disputes of material facts, (6) whether the default was due to excusable neglect, and (7) the strong federal policy favoring adjudications on the merits.[73] All but the final factor, which is neutral, weigh in favor of entering default judgment against defendants Ascot Crossing, LLC; Avanix, LLC; Bracknell Shore, Ltd.; Chandon Group, Inc.; Fiscal Fitness, LLC; and Ideal Financial Solutions, Inc.

B. The ***E*** factors favor default judgments against the corporate defendants.

The first, second, and third *E e* factors all weigh in favor of default judgment on each of the FTC•s claims. The FTC may suffer prejudice if default judgment is not entered because the defaulted corporate defendants have failed despite numerous opportunities to retain counsel and file a proper answer to the FTC•s complaint.[74] As to the second and third factors, the FTC•s claims are both sufficient and have merit. The allegations in the FTC•s amended complaint, except for damages allegations, were all deemed admitted by virtue of the clerk•s entry of default. And I previously found that the FTC had met its burden to demonstrate that the corporate defendants engaged in the alleged misconduct.[75] Thus, the first three *E e* factors favor default judgment.

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[72] *E e . McCoo*, 782 F.2d 1470, 1471 (9th Cir. 1986); *T ee f he B c a e & A ed*

The fourth *E e* factor considers the amount of money at stake and the seriousness of the defendants• conduct, which involves an assessment of whether the recovery sought is proportion the harm caused by defendants.[76] The amount of money at stake attributable to the conduct alleged in the complaint and proven on summary judgment $43,083,720   is plainly significant. But the recovery sought is also directly proportional to the harm caused by defendants• conduct. As discussed *a*, the FTC has offered detailed evidence to show how it arrived at the $43 million figure, which represents the net consumer-loss amount attributable to defendants. The *E e* fourth factor thus also supports default judgment.

The fifth and sixth *E e* factors likewise support entry of default judgment. The fifth factor supports default judgment because a number of material facts are deemed admitted as a matter by virtue of the corporate defendants• default.[77] And I found other material facts establishing their guilt to be undisputed when I granted the FTC•s motion for summary judgment on liability against the individual defendants.[78] The sixth factor also weighs in favor of default judgment because there is no evidence to suggest excusable neglect: Each corporate defendant was served with the FTC amended complaint and the FTC•s motion for entry of default,[79] but, despite numerous opportunities to properly respond, they never did.[80]

Finally, the seventh *E e* factor   favorability of decision on the merits   is neutral. Federal

2. •DefendantsŽ means Jared Mosher; Christopher Sunyich; Melissa Sunyich Gardne

(Nevada); Debt to Wealth LLC (St. Kitts); Dollars West, LLC; Fluidity, LLC; Financial Fitness, LLC; Funding Guarantee, LLC; Ideal Merchant Services; Ideal Goodness, LLC; IWB Services (St. Kitts); Money Mastery, LLC; Money Online Saver; New Day Solutions; Newline Cash, LLC; Newport Sails, LLC; Pathfinder Enterprises; PK Travel, LLC; Shaw Shank, LLC; Trademark Media, LLC; US Debt Assistance Corp.; US Debt Relief, LLC; Wealth Fitness, LLC; and Zeal Funding Services, LLC.

B. Permanent injunctive relief

1.

Defendants are permanently enjoined from collecting, selling, purchasing, transferring, or otherwise disclosing a consumer•s account number or similar identifier to, from, for, or with any unaffiliated third party and from assisting others in doing so.

A defendant may disclose a consumer•s account number or other identifier that a consume gives directly to that defendant if disclosure is necessary to process or complete a specific transa expressly authorized by the consumer. The defendant must then destroy the consumer account information within 30 days of processing that transaction, except as necessary to comply with sec 7 below (recordkeeping).

2.

Defendants Jared Mosher, Christopher Sunyich, and Steven Sunyich are permanently enjoined from marketing, providing, or assisting others in marketing or providing any credit-relatec product or services or attempting to collect, sell, or assign a right to collect money from a consum who purportedly agreed to purchase a credit-related product or service.

3.

Defendants and persons acting in concert with any of them who receive actual notice of thi order are permanently enjoined from:

a. Failing to provide sufficient consumer information to enable the FTC to efficiently administer consumer redress. If a representative of the FTC requests in writing any information related to redress, defendants must provide it in the requested form within 14 days of receipt of the request.

b. Disclosing, using, or benefitting from consumer information, including identifying information and any data that enables access to a customer•s defendant is the majority owner of, or directly or indirectly controls) must deliver a copy of this order to:

(i) all principals, officers, directors, and LLC managers and members;

(ii) all employees, agents, and representatives who participate in online commerce;

(iii) any business entity resulting from any change in structure as set forth in section 6 below (compliance reporting); and

(iv) any third-party facilitator for charges, including payment processors and list brokers.

Defendants must deliver a copy of this order to their current personnel within 7 days of its entry; for all others, delivery must be made before they assume their responsibilities. Defendants must then obtain and submit a signed, dated acknowledgment of receipt of this order from each recipient within 30 days.

6. [illegible]

Defendants must make these submissions to the FTC:

a. Within one year of this order, each defendant must submit a compliance report, sworn under penalty of perjury, in which each defendant must:

i. (a) identify that defendant•s primary physical, postal, and email address and telephone number as a point of contact for the FTC;

(b) identify all of that defendant•s businesses by all of their names and telephone numbers and physical, postal, email, and internet addresses;

(c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other defendant;

(d) describe in detail how that defendant is in compliance with each section of this order, and

(e) submit any outstanding order acknowledgments as required under section 5 of this order.

ii. Each Individual Defendant must also:

(a) submit all telephone numbers and all physical, postal, email and internet addresses, including all residences;

(b) identify all business activities, including any business for which that defendant performs services and any entity in which the defendant has any ownership interest; and

(c) describe in detail that defendant•s involvement in the business, including title, role, responsibilities, participation, authority, control, and ownership.

b. For 10 years after entry of this order, each defendant must submit a sworn compliance notice within 14 days of any change in the following:

i. (a) any designated point of contact; or (b) the structure of any entity in which that defendant has any ownership interest, or that he or she controls directly or indirectly, that may affect compliance obligations arising under this order.

ii. Each Individual Defendant must also report any change in:

(a) name or residence address; or (b) title or role in any business activity, including any business for which that defendant performs services or has any ownership interest, and any change in that business•s name, physical address, or internet address.

penalty of perjury and comply with 28 U.S.C. § 1746 by concluding declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on:_____Ž and supplying the date, signatory’s full name, title (if applicable), and signature.

e. Unless otherwise directed by the FTC representative in writing, all submissions to the FTC under this order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW Washington, D.C. 20580. The subject line must begin: FTC v. Ideal Financial Solutions, et al., X130044.

Defendants must create certain records for 10 years after entry of this order, and must reta them for 5 years after creation. For any business that a defendant controls or is, individually or collectively with any other defendant, a majority owner, the defendant must create and retain:

a. Proof of consumer’s consent and confirmation to a charge, including the consumer’s name, phone number, and address; the manner, time, place, an method of the consent; and supporting electronic data;

b. Accounting records showing the revenues from all goods or services sold;

c. Personnel records showing, for each person providing services, whether as a employee or otherwise, that person’s name, addresses, telephone numbers, title or position, dates of service, and (if applicable) reason for termination;

d. Records of all consumer complaints and refund requests, whether received directly or indirectly, and any response;

e. All records necessary to demonstrate full compliance with each provision of this order, including all submissions to the FTC;

f. A copy of each unique advertisement or other marketing material, including affiliate network materials; and

g. Any documentation of commercial transactions or contracts with payment processors or list brokers.

For purposes of monitoring defendants• compliance with this order:

a. Within 14 days of receipt of a written request from a representative of the FTC, each defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The FTC is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by the Federal Rules of Civil Procedure 29, 30

[illegible] wrap up and termination.

The Receiver must complete all duties within 1[illegible]0 days of this order, but any [illegible]

[illegible]