JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CASE NO.: **CV 16-07101 SJO (GJSx)** **DATE:** **July 24, 2017**

TITLE: **Federal Trade Commission v. Terry A. Somenzi, et al.**

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PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz Courtroom Clerk	Not Present Court Reporter
COUNSEL PRESENT FOR PLAINTIFF:	**COUNSEL PRESENT FOR DEFENDANTS:**
Not Present	Not Present

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PROCEEDINGS (in chambers): ORDER GRANTING PLAINTIFF'S APPLICATION FOR DEFAULT JUDGMENT [Docket No. 79]

This matter is before the Court on Plaintiff Federal Trade Commission's (the "FTC") Application for Entry of Default Judgment against Defendants David Raff ("Raff") and Millenium Direct Incorporated ("MDI"), filed on May 25, 2017 ("Application"). Raff, proceeding *pro se*, opposed the Motion on July 3, 2017, to which the FTC replied on July 7, 2017. MDI did not oppose the Application. The Court found this matter suitable for disposition without oral argument and vacated the hearing set for June 26, 2017. *See* Fed. R. Civ. P. 78(b). For the following reasons, the Court **GRANTS** the FTC's Application.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

The FTC alleges the following in the Complaint. ysev(edenstd[(endainint.)Tj-0.0009 Tc 6691626 Tw 21.8

default judgment if the plaintiff's claim is for a sum that is not certain or a sum that cannot be made certain by computation. Fed. R. Civ. P. 55(b).

Pursuant to the Local Rules of the Central District of California, applications for default judgment must be accompanied by a declaration that includes the following information:

(a) When and against what party the default was entered;
(b) The identification of the pleading to which default was entered;
(c) Whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented by a general guardian, committee, conservator, or other representative;
(d) That the Servn0 Tw 14.029a generalT1-Pagestri is 001 .825i35 0 Td(eRelief At (50 App

proportional to the harm caused by the defendant's conduct, default judgment is warranted. *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 921 (C.D. Cal. 2010).

In the Complaint, the FTC requests both injunctive and equitable monetary relief. With regard to the monetary request, the FTC seeks a total of $501,895.00 against Raff and MDI, which it argues represents the estimated total amount consumers paid in response to the deceptive prize practices. (Appl. 11.) Based on records the FTC obtained from the companies that printed and mailed the deceptive mail pieces, the FTC argues

The Court agrees that there is a cognizable danger of a recurrent violation. In 2008, Raff entered into a plea agreement with the State of Florida to resolve a criminal action for grand theft for mailing thousands of fake sweepstake checks to consumers throughout the United States and Canada requesting customers to pay a $25 processing fee. (Appl. 12.) In the Nevada Action, the court entered summary judgment against Raff in March 2016 for his participation in a scheme involving false representations made in direct mail to consumers who purchased a weight-loss product called W8-B-Gone. (Appl. 12.) Raff's history of involvement in fraud schemes creates a cognizable danger of a recurrent violation that is more than a mere possibility. The FTC's requested injunctive relief against Defendants is warranted.

2. Equitable Monetary Relief

The FTC requests that the Court order Defendants Raff and MDI, jointly and severally, to pay Plaintiff the full amount of the injury that consumers suffered as a result of the misrepresentations. (Appl. 17.) Additionally, it asks the Court to hold Raff individually liable for MDI's wrongful conduct. (Appl. 19.)

Section 13(b) "by implication gives the Court authority to afford all necessary ancillary relief, including rescission of contracts and restitution." *H.N. Singer,* 668 F.2d at 1112. "Equity may require a defendant to restore his victims to the status quo where the loss suffered is greater than the defendant's unjust enrichment." *resuluo where*

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