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United States District Court, C.D. California.

John K. SHAW et al
v.
ULTIMATE FRANCHISES, INC. et al

Case No. 8:18-cv-02273-JLS-ADS
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Signed March 18, 2022

Attorneys and Law Firms

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ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANTS W. SCOTT GRIFFITHS AND LORETTA HWONG GRIFFITHS (DOC. 203) AND DENYING REQUEST FOR ATTORNEY FEES (DOC. 209)

JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE

***1** Before the Court is a Motion for Default Judgment filed by Plaintiffs John K. Shaw, Midori G. Shaw, and Shipshape Collective of Fitchburg, LLC (collectively "Plaintiffs"). (Mot., Doc. 203.) Also before the Court is Plaintiffs' Request for Attorney Fees. (Fee Mot., Doc. 209.) The Court finds these matters appropriate for decision without oral argument, and the hearing set for March 18, 2022, at 10:30 a.m. is VACATED. Having considered the parties' briefs, the Court GRANTS IN PART Plaintiffs' Motion for Default Judgment and DENIES Plaintiffs' Request for Attorney Fees for the reasons stated below. [1]

I. BACKGROUND

The present action arises from a franchising agreement that various defendants fraudulently induced Plaintiffs to enter based on material misrepresentations. (First Amended Complaint ("FAC"), Doc. 101, ¶¶ 1-41.) Plaintiffs John K. Shaw and Midori G. Shaw are both citizens and residents of Wisconsin. (*Id.* ¶ 4.) They are members of Plaintiff Shipshape Collective of Fitchburg, LLC, a Wisconsin limited liability company. (*Id.* ¶ 5.) The Shaws, through Shipshape, agreed to purchase three 18|8 Fine Men's Salons franchises based on, what they allege, were unfounded, fraudulent, and unlawful representations made by the defendants in this action. (*Id.* ¶ 1.) The present motion addresses two individual defendants: W. Scott Griffiths and Loretta Hwong Griffiths (collectively "the Griffiths"). Defendant Scott Griffiths is the Chief Executive Officer, Chief Marketing Officer, and Director of Ultimate Franchises, Inc. ("UF"), the franchisor of 18|8, and he is also the Chief Executive Officer and Chief Marketing Officer of Ultimate Brands. (*Id.* ¶ 9.) His wife, Defendant Loretta Griffiths, is vice president of UF. (*Id.* ¶ 10.)

As explained in the Court's previous Order, Plaintiffs allege that they purchased the right to three franchises for $100,000 on or around August 28, 2014 based on Defendants' misrepresentations. (Order Granting Default Judgment, Doc. 221, at 2-3.) These misrepresentations included: (1) that the estimated operating costs set forth in the Franchise Disclosure Documents ("FDD") were much lower than actually projected because they were based on franchisor-owned salons classifying stylists as independent contractors, but the Franchise Agreement required franchisees to classify their stylists as employees; and (2) that the FDD failed

to disclose that UF had a predecessor and affiliate, Mana Concepts, Inc. ("Mana"), and that a shareholder of Mana had filed a lawsuit against Mana and its owners claiming fraud and conversion, and Mana was liable for over $200,000. (*Id.*) As a result, Plaintiffs allege that they invested and lost $749,467.99 in opening 18|8 franchises.

***2** The Complaint alleges, specifically, that "[Scott] Griffiths personally swore to the accuracy of the contents of the UF FDD, despite knowing such document included fraudulent misrepresentations of financial performance[.]" (FAC ¶ 79.) Plaintiffs also claim, "Griffiths was aware that the FDD omitted material information regarding the true cost to UF franchisees of employing stylists, as well as information related to UF's predecessor and affiliate, Mana, and the relevant lawsuit that a shareholder of Mana filed against Mana, Griffiths, and Love." (*Id.* ¶ 80.)

The present Motion also claims that Scott Griffiths was "the 18|8 decisionmaker," he "developed the marketing and sales pitches," and he "decided what information was told to potential franchisees." (Mot. at 9 (citing Love Decl., Doc. 205, ¶¶ 6-10).) It claims that "Scott Griffiths 'certified' and 'swore' 'under penalty of law' to the State of California that the FDDs and 'all material facts stated in those documents are accurate and those documents did not contain any material omissions.' " (*Id.* at 10 (citing Ex. 9 to Request for Judicial Notice, Doc. 208-1).) It also claims that Griffiths "intentionally concealed and misrepresented important facts," "revenues and costs," and "who was management." (Mot. at 14.) It notes that he concealed the previous fraud lawsuit. (*Id.*) And it alleges that "[b]eing recently sued and held liable for fraud is not something anyone soon forgets or overlooks," and "[i]dentification of the company's own President is not mistake [sic] someone makes innocently in an investment prospectus," and "[g]ross exaggeration of profits in an investment prospectus, by Defendants who refuse to appear and defend themselves, cannot be deemed inadvertent, but was knowing and willful." (*Id.* at 14.)

II. LEGAL STANDARD

Under Rule 55 of the Federal Rules of Civil Procedure, default judgment is a two-step process: an entry of default judgment must be preceded by an entry of default. *See* Fed. R. Civ. P. 55; *see also Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Upon entry of default, the factual allegations of the complaint, save for those concerning damages, are deemed to have been admitted by the defaulting party. *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977); Fed. R. Civ. P. 8(b)(6). "On the other hand, a defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law." *United States v. Cathcart*, 2010 WL 1048829, at *4 (N.D. Cal. Feb. 12, 2010) (internal citation omitted). "[I]t follows from this that facts which are not established by the pleadings of the prevailing party, or claims which are not well-pleaded, are not binding and cannot support the judgment." *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978).

A court has discretion to grant or deny a motion for default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). The Ninth Circuit has set forth seven factors to be considered by courts in reviewing a motion for default judgment: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decision on the merits. *Eitel*, 782 F.2d at 1471-72.

III. DISCUSSION

A. Local Rule 55-1

Plaintiffs' Motion complies with Local Rule 55-1. Plaintiffs accompanied the Motion with a sworn declaration stating that, on September 25, 2020, default was entered on Plaintiffs' FAC against the Griffiths, that the Griffiths are not infants or incompetent persons, and that the Servicemembers Civil Relief Act does not apply. (Johnsen Decl., Doc. 206, ¶¶ 14, 17-19.)

***3** The Court therefore analyzes the *Eitel* factors to determine whether entry of default judgment is appropriate.

B. *Eitel* Factors

As an initial matter, although Plaintiffs have filed the present Motion for Default Judgment against both Scott and Loretta Griffiths, the Motion essentially abandons any argument with respect to whether default judgment is appropriate as to Loretta Griffiths; therefore, the Court concludes it would be inappropriate to enter default judgment against her at this time, and it addresses the *Eitel* factors as to Scott Griffiths (referred to herein as "Griffiths").

1. Prejudice to Plaintiffs

Plaintiffs will not be able to seek compensation from Griffiths absent default judgment because, although Plaintiffs have been trying to recover on their claims for over four years, Griffiths has delayed the resolution of this case by stonewalling, then proceeding in pro per, and then refusing to participate before default was entered. Plaintiffs have no recourse to obtain damages if default judgment is denied. *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal. 2010) (prejudice is shown if denying default judgment would leave plaintiff without a remedy). Therefore, this factor weighs in favor of default judgment.

2. Merits of Claim and Sufficiency of Complaint

The second and third *Eitel* factors look at (1) the merits of a plaintiff's substantive claims and (2) the sufficiency of the complaint. *Eitel*, 782 F.2d at 1471. These two factors require that the plaintiff "state a claim on which [it] may recover." *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002). "In considering the sufficiency of the complaint and the merits of the plaintiff's substantive claims, facts alleged in the complaint not relating to damages are deemed to be true upon default." *Bd. of Trustees of Sheet Metal Workers v. Moak*, 2012 WL 5379565, at *2 (N.D. Cal. Oct. 31, 2012) (citing *Geddes*, 559 F.2d at 560; Fed. R Civ. P. 8(d)).

Plaintiffs contend that they are entitled to default judgment on their claims against Griffiths for: (1) fraud; and (2) violations of California's Franchise Investment Law ("CFIL"). (Mot. at 22-27.) Taken together, the allegations of the FAC combined with evidence Plaintiffs have submitted in support of this application illustrate that Plaintiffs' claims have merit and they state a claim upon which they may recover.

a. Fraud

First, Plaintiffs have demonstrated that their fraud claim has merit. The elements of fraud are: (1) misrepresentation (false representation, concealment, or nondisclosure); (2) made with knowledge of the falsity; (3) intent to induce reliance; (4) justifiable reliance; and (5) resulting damage. *Lazar v. Superior Court*, 12 Cal.4th 631, 638 (1996).

Plaintiffs allege and support that Griffiths personally swore to the accuracy of the contends of the UF FDD, despite knowing that it included fraudulent representations regarding financial performance. (FAC ¶ 79.) They allege and support that Griffiths was aware that the FDD omitted material information regarding the true cost to franchisees of employing stylists and regarding the previous lawsuit against Mana. (*Id.* ¶ 80.) The fact these statements were made in the context of materials intended to induce investment in 18|8 franchises supports that Griffiths intended to induce reliance on the misrepresentations.[2] Plaintiffs relied on Griffiths's representation that the FDD that was accurate and complete, as evidenced by the fact they purchased the right to open three 18|8 salons and proceeded to open one salon; this reliance was reasonable because the FDD was prepared in a formal

manner giving the documents an impression of completeness and reliability. (*Id.* ¶ 82.) And Plaintiffs suffered damage, as they invested a significant amount of money in the unsuccessful franchise model.

b. Violation of CFIL

***4** Plaintiffs allege a claim for violations of the CFIL against Griffiths. Under the CFIL, it "is unlawful for any person to offer or sell a franchise in this state by means of any written or oral communication not enumerated in Section 31200 which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." Cal. Corps. Code § 31201. Additionally, liability for such violations extends to "[e]very person who directly or indirectly controls a person liable," for violations under the statute. *Id.* § 31302.

The FAC adequately states a CFIL claim. Plaintiffs have alleged that defendants materially misrepresented the estimated operating expenses for a franchisee at Discovery Day and in the FDD. The financial projections were materially misleading in light of the franchise model that Plaintiffs were required to follow; the FDD omitted any clarification regarding the difference in operating costs between franchisor-owned salons and franchisee-owned salons based on stylist employment classification. Additionally, the FDD omitted any mention of the previous fraud lawsuit against Mana; this was materially misleading given that, by law, such information must be disclosed. *See* 16 C.F.R. § 436.5(a)&(c). As the CEO, CMO, and director of UF and CEO and CMO of Ultimate Brands, Griffiths directly or indirectly was in control of UF and is liable for the misrepresentations made in UF's FDD.

Accordingly, the FAC is sufficient and the record shows that Plaintiffs are likely to succeed on the merits of their claims. These two factors weigh in favor of granting default judgment.

3. Amount of Money at Stake

Under the fourth *Eitel* factor, "the court must consider the amount of money at stake in relation to the seriousness of Defendant's conduct." *PepsiCo*, 238 F. Supp. 2d at 1176.

Plaintiffs allege damages in the amount equal to the price paid in initial franchising fees, the cost of the buildout and opening of the franchise, the operating losses, and the outstanding liabilities—in total, $749,467.99. (Mot. at 30.) These damages flow directly from the misrepresentations made, and this factor favors granting default judgment.

4. Possibility of Dispute Concerning Material Facts

The fifth *Eitel* factor examines the likelihood of disputes between the parties regarding the material facts surrounding the case. *Craigslist, Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1060 (N.D. Cal. 2010). "Where a plaintiff has filed a well-pleaded complaint, the possibility of dispute concerning material facts is remote." *Wecosign, Inc.v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1082 (C.D. Cal. 2012) (internal citations omitted); *see also Landstar Ranger*, 725 F. Supp. 2d at 922 ("Since [plaintiff] has supported its claims with ample evidence, and defendant has made no attempt to challenge the accuracy of the allegations in the complaint, no factual disputes exist that preclude the entry of default judgment.").

The Court finds that the allegations of the FAC combined with the evidence Plaintiffs have submitted with the present Motion support that the possibility of dispute concerning material facts is remote. The supporting declarations of John Shaw and nine other franchisees support that the same material misrepresentations and omissions were made across various forms of the FDD as well as at different informational conferences referred to as "Discovery Days"; these declarations also confirm that

the salon franchises were never profitable. (*See* Shaw Decl., Doc. 204; Former 18|8 Franchisee Decls., Docs. 207—207-9.) Moreover, Griffiths received notice that this action was filed, and answered the complaint against him; however, that answer was subsequently stricken, and default was entered when he repeatedly failed to engage in discovery and ceased communication with Plaintiffs. (*See* Order, Doc. 150; Report and Recommendation, Doc. 148.) Since Plaintiffs have offered evidence in support of their claims, and Plaintiffs' well-pleaded allegations are deemed admitted upon default, no factual disputes exist that preclude entry of default judgment.

5. Possibility of Excusable Neglect

***5** As to the sixth *Eitel* factor, no excusable neglect justifies Griffiths's failure to defend himself in this action. This factor favors default judgment when the defendant has been properly served and is aware of the lawsuit. *See PepsiCo*, 238 F. Supp. 2d at 1177 ("Given Defendant's early participation in the matter, the possibility of excusable neglect is remote."). Here, Griffiths was served and appeared in the present action, but later failed to engage in discovery and ceased communicating with Plaintiffs. (*See* Order, Doc. 150.) Accordingly, there is no possibility of excusable neglect here.

6. Policy Favoring Decisions on the Merits

"The final *Eitel* factor examines whether the strong policy favoring deciding cases on the merits prevents a court from entering a default judgment." *Craiglist*, 694 F. Supp. 2d at 1061. Although "[c]ases should be decided upon their merits whenever reasonably possible[,]" *Eitel*, 782 F.2d. at 1472, "[u]nder Fed. R. Civ. P. 55(a), termination of a case before hearing the merits is allowed whenever a defendant fails to defend an action." *PepsiCo*, 238 F. Supp. 2d at 1177. In the instant matter, Griffiths has forfeited his opportunity to defend himself on the merits; therefore, the seventh *Eitel* factor does not preclude default judgment.

7. Conclusion Regarding Eitel Factors

In sum, the *Eitel* factors weigh in favor of entering default judgment on Plaintiffs' claims against Scott Griffiths.

C. Remedies

Rule 54(c) "allows only the amount prayed for in the complaint to be awarded to the plaintiff in a default." *Landstar Ranger, Inc.*, 725 F. Supp. 2d at 923 (citing *Elektra Entertainment Grp. Inc. v. Bryant*, 2004 WL 783123, *5 (C.D. Cal. Feb. 13, 2004)); *see Fong v. United States*, 300 F.2d 400, 414 (9th Cir. 1962) (stating that a default judgment may not be different in kind from or exceed in amount that prayed for in the complaint).

Plaintiffs seek $749,467.99 in damages, $196,346.57 in prejudgment interest, and $7,664.18 in litigation costs. (Mot. at 30.) The Court addresses each in turn.

1. Damages

Plaintiffs seek $749,467.99 in damages incurred as this amount "flow[s] from Defendants' misrepresentations and omissions." (*Id.*) The FAC states that as a result of Defendants' conduct, Plaintiffs have "suffered damages ... in an amount *not less than* $652,108.90, plus attorneys' fees." (FAC ¶ 91 (emphasis added).) Accordingly, the Court concludes that the amount sought at default judgment does not exceed the amount prayed for in the complaint.

"A plaintiff seeking default judgment 'must ... prove all damages sought in the complaint.' " *HICA Educ. Loan Corp. v. Warne*, 2012 WL 1156402, at *4 (N.D. Cal. Apr. 6, 2012) (quoting *Dr. JKL Ltd. v. HPC IT Educ. Ctr.*, 749 F. Supp. 2d 1038, 1046 (N.D. Cal. 2010)). Here, as proof of damages, Plaintiffs provide the Shaw Declaration, which avers that Plaintiffs incurred $749,467.99 in damages, broken down as follow: (1) $100,000 in initial franchise fees; (2) $354,729.49 on buildout and opening the franchise; (3) $12,220.50 in ongoing customer liability; (4) $111,490.15 in lease personal guaranty liability; and (5) $8,015.35 in additional ongoing commitments and outstanding payments due. (Shaw Decl., Doc 204, ¶ 21.) Plaintiffs have supported this evidence with Exhibit 7 to the Shaw Declaration, (*see* Doc. 204-7), and Plaintiffs' previous filing confirms these damages. (*See* Filing of Attachments A-G, Doc. 219.) Thus, the Court finds that the evidence substantially supports Plaintiffs' claim for $749,467.99.

2. Prejudgment Interest

A plaintiff is entitled to prejudgment interest on default judgment when it alleges entitlement to such interest in its complaint, thus giving defendant adequate notice that such damages might be awarded in the action. *Gray Ins. Co. v. Lectrfy, Inc.*, 2014 WL 12689270, at *7 (C.D. Cal. Mar. 3, 2014) (awarding prejudgment interest when the complaint prayed for such relief) *contra Landstar Ranger, Inc.*, 725 F. Supp. 2d at 923 (denying prejudgment interest on default judgment because plaintiff did not allege entitlement to prejudgment interest in its operative complaint).

***6** Here, Plaintiffs' FAC requests as a remedy "interest if and as allowed by law[.]" (FAC at 16.) Additionally, the present Motion seeks prejudgment interest at a rate of 10% on the $100,000 liquidated damages, beginning from the date Plaintiffs purchased the right to three 18|8 franchises. Cal. Civ. Code § 3287(a) ("A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day[.]"); Cal Civ. Code § 3289 (if prejudgment interest rate not specified in contract, rate is ten percent per annum from the date of the breach). As of the date of filing, Plaintiffs represent they are entitled to a total $70,794.626. (Mot. at 30.) Plaintiffs assert they are entitled to a 7% prejudgment interest rate on the remaining $649,467.99 in damages from the date of the filing of this action, December 21, 2018. Cal. Civ. Code § 3287(b) ("Every person who is entitled under any judgment to receive damages based upon a cause of action in contract where the claim was unliquidated, may also recover interest thereon from a date prior to the entry of judgment as the court may, in its discretion, fix, but in no event earlier than the date the action was filed."). As of the date of filing, Plaintiffs represent they are entitled to a total of $125,551.94. (Mot. at 31.)

Having considered Plaintiffs' methodology and evidence, the Court finds that Plaintiff has adequately proved the prejudgment interest it requests. Accordingly, the Court awards Plaintiffs $196,346.57 in prejudgment interest.

3. Costs

The Court also concludes that an award of litigation costs is appropriate. In accordance with Local Rules 54-2 and 54-3, Plaintiffs must submit a "Bill of Costs" and an "Application to the Clerk to Tax Costs" to recover any eligible litigation costs in this action. *See* C.D. Cal. L.R. 54-2, 54-2.1.

4. Attorney Fees

Plaintiffs have separately requested an award of attorney fees in the amount of $276,529.00. [3] (*See* Fee Mot., Doc. 209, at 2.) The Motion is DENIED.

Plaintiffs contend that as the prevailing party, they are entitled to attorney fees because California law authorizes an award of reasonable attorney fees in any action on a contract that specifically provides for an attorney fee award. (Fee Mot. at 5.) Plaintiffs write that they "seek rescission of the Franchise Agreement for violations by all Defendants, including the Griffiths, of the [CFIL]," and that "[r]escission of the Franchise Agreement is 'on the contract.' " (*Id.* at 6.) Griffiths, however, is not a party to the Franchise Agreement; he is a signatory only in his capacity as CEO of UF; therefore, UF, not Griffiths, is party to the Agreement. (*See* Franchise Agreement, Doc. 209-2, at ECF 35, 37, 44-45, 47, 52.) Therefore, Plaintiffs have not shown that their claims against Griffiths are "on the contract" such that there is a basis for the Court to award attorney fees here. Plaintiffs have cited no case law to support that proposition, and the Court has found none. Accordingly, Plaintiffs' request is denied.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS IN PART Plaintiffs' Motion for Default Judgment. The Court GRANTS an award of $749,467.99; $196,346.57 in prejudgment interest; and eligible costs under Local Rule 54-3. Plaintiffs' Request for Attorney Fees is DENIED.

Plaintiffs are further ORDERED to submit to the Court, no later than five (5) days from the date of this Order, a proposed judgment pursuant to the Court's Procedures.

IT IS SO ORDERED,

All Citations

Not Reported in Fed. Supp., 2022 WL 2132692

Footnotes

1 Before the Court is also Plaintiffs' Request for Judicial Notice ("RJN"). (RJN, Doc. 208.) The Court DENIES that request as Plaintiffs have failed to provide a sufficient justification for judicial notice of the documents. In any case, the Court finds that the documents sought to be judicially noticed are not necessary to its analysis.

2 Plaintiffs request that this judgment include that "Griffiths fraud was 'willful and malicious' so Griffiths cannot shield themselves from judgment in bankruptcy." (Mot. at 24.) While Plaintiffs have sufficiently — although somewhat generally — alleged facts from which the Court can infer Griffiths intended to induce reliance on the misrepresentations, they have failed to allege facts to show that Griffiths acted with malice. Even the Motion uses only conclusory language to allege willfulness and malice. (*See id.* at 23-24.) Accordingly, the Court declines to make Plaintiffs' requested holding.

3 The Court GRANTS Plaintiffs' Request for Leave to file a Supplemental Brief to Request Attorney's Fees (Doc. 225) and the Supplemental Brief filed at Doc. 225-1 is deemed filed. The Supplemental Brief relates to the Court's previous Order regarding apportionment of fees. (*See* Doc. 225-1, at 2-3.) Apportionment is not relevant to the Court's analysis here, however, as Plaintiffs have not shown that they are entitled to any attorney fees against Griffiths.