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United States District Court, C.D. California.

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

Case No. 8:18-cv-02273-JLS-ADS
|
Signed February 02, 2022

Attorneys and Law Firms

Jessica Wynette Rosen, David C. Gurnick, Lewitt Hackman Shapiro Marshall and Harlan, Encino, CA, Erin C. Johnsen, Pro Hac Vice, Garner and Ginsburg PA, William Michael Garner, Minneapolis, MN, for Plaintiff.

Warren B. Campbell, John A. Delis, Long and Delis APC, Santa Ana, CA, for Defendant.

ORDER GRANTING PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT (DOC. 194)

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 ("Plaintiffs") against Defendants Ultimate Brands, Inc. and 2UlitimateBrands [sic] [1] ("Defendants"). (Mot., Doc. 194, at 5.) Plaintiffs' Motion for Attorney Fees is also before the Court. (Fee Mot., Doc. 197.) The Court finds these matters appropriate for decision without oral argument, the hearing set for January 28, at 10:30 a.m. is VACATED. For the following reasons, the Court GRANTS the Motion for Default Judgment and DENIES the Motion for Attorney Fees.

I. BACKGROUND

The present action arises from a franchising agreement that Plaintiffs were fraudulently induced 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 Defendants. (*Id.* ¶ 1.) Defendants are Ultimate Brands, Inc. and 2Ulitimate Brands, Inc., both of which are California corporations and are the parent companies of Ultimate Franchises, Inc. ("UF"). (*Id.* ¶¶ 6-8.)

The first material misrepresentation Plaintiffs allege relates to the information Defendants provided regarding the expected operating costs for future franchises. Plaintiffs claim that UF represented through the Franchise Disclosure Documents ("FDD") and at UF's Discovery Day—which allowed investors like Plaintiffs to learn more about the franchise system—that the projected operating costs for franchisees would be appreciably lower than they actually were. At Discovery Day, for instance, Defendant Ron Love, who Plaintiffs allege was the President and Founder of UF "spent a considerable amount of time" discussing the commission-based pay structure for stylists. (*Id.* ¶¶ 11, 20-21.) Love, however, "failed to disclose to [Plaintiffs] that Franchisor-owned salons treated higher level stylists as independent contractors, not employees. But franchisees would be required to treat their stylists as employees." (*Id.* ¶ 23.) Plaintiffs allege that Love also failed to disclose the additional costs of employing

stylists classified as employees, such as payroll taxes, worker's compensation insurance premiums, and increased hazard liability insurance rates, just as a few examples. (*Id.* ¶ 24.)

Moreover, in the FDD's financial performance representation, UF represented that operating expenses would account for 24% of a franchise's total revenue. (*Id.* ¶ 27; *see also* Ex. 1, FDD, Doc. 195-1, at 29.) But the FDD "failed to disclose to [Plaintiffs] that Ultimate Franchises Franchisor-owned salons were treating higher level stylists as independent contractors, rather than employees (despite the requirement that franchisees hire stylists as employees), again failing to disclose the true cost to [Plaintiffs] of employing stylists." (FAC ¶ 29.) Plaintiffs allege that although the FDD disclosed that franchisees may experience different labor costs, among other expenses, this did not appropriately disclose the difference in classification of stylists and associated differences in costs. (*Id.* ¶ 30.)

***2** Second, Plaintiffs allege 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. (*Id.* ¶ 31.) That lawsuit claimed fraud and conversion, and Mana was ultimately held liable following trial for $209,002.84, and after the verdict, Mana transferred the franchise system and franchise agreements to Ultimate Brands, Inc. (*Id.* ¶¶ 32-33.)

Plaintiffs allege that based on these representations, Plaintiffs purchased the right to three franchises for $100,000 on or around August 28, 2014. (*Id.* ¶ 34.) Plaintiffs opened their first location on or around March 24, 2016. (*Id.* ¶ 35.) Despite following Defendants' instructions and proceeding according to the elements of Defendants' system, the salon did not perform anywhere near the representations and projections from Defendants. (*Id.* ¶ 35). For example, in December 2016, Plaintiffs' operating expenses were 64.59% of their total revenue, and Plaintiffs lost money every month. (*Id.* ¶ 36).

Plaintiffs initially attempted to address these issues with Defendants, but none of Defendants' suggestions "were effective in lowering [Plaintiffs'] expenses or increasing its profits to be in line with those represented to [Plaintiffs] prior to purchase." (*Id.* ¶ 38.)

When Plaintiffs attempted to comply with the dispute resolution provisions of the Franchise Agreement, Defendants refused "to meaningfully participate in either mediation or arbitration." (*Id.* ¶ 42.) Defendants failed to meaningfully engage in mediation negotiations, respond to Plaintiffs' demand for arbitration, or pay for their portion of arbitration fees. (*Id.* ¶¶ 43-44.)

On December 21, 2018, Plaintiffs filed the present action. (Compl., Doc. 1.) Defendants failed to respond to the complaint, and the clerk entered default against them on February 11, 2019. (Doc. 24.) When Plaintiffs moved for default judgment, Defendants then appeared to contest the motion, and the Court granted relief from default. (Docs. 28, 33.) Defendants filed an Answer on May 2, 2019. (Doc. 34.) Since March 2, 2020, however, Plaintiffs assert that "Defendants [have] failed to provide their counsel with authority to defend this action." (Mot. at 10.) Since then, Defendants have failed to participate in discovery and failed to participate in pre-hearing conferences or authorize counsel to join on joint status reports. (*Id.* at 11.) And Defendants' counsel has repeatedly informed Plaintiffs that he has no authority to participate in this litigation or advance resolution of these disputes. (*Id.* (citing Johnsen Decl., Doc. 196, ¶¶ 16, 17).)

The Court, again, granted default on June 7, 2021. (Doc. 181.) Accordingly, the factual allegations of the FAC, save for those concerning damages, are deemed to have been admitted. Fed. R. Civ. P. 8(b)(6); *see Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) ("The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true."). Plaintiffs filed the instant Motion for Default Judgment seeking the following damages:

- $100,000 paid to Defendants in initial franchise fees;
- $354,729.49 spent on buildout and opening of the 8|18 franchise;
- $163,012.50 in operating losses;

- $12,220.50 in ongoing customer liability;
- $111,490.15 in ongoing lease liability; and
- $8,015.35 in additional ongoing commitments and outstanding payments due.

***3** (Mot. at 18-19.) Plaintiffs also request prejudgment interest, calculated at the time of the entry of judgment, (*id.* at 20) and, by separate request, attorney fees in the amount of $237,404. (*Id.*; *see also* Fee Mot., Doc. 197.)

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*, 559 F.2d at 560; 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

Plaintiff's Motion complies with Local Rule 55-1. Plaintiffs accompanied the Motion with a sworn declaration stating that, on June 7, 2021, default was entered on Plaintiffs' FAC against Defendants, that Defendants are not infants or incompetent persons, and that the Servicemembers Civil Relief Act does not apply. [2] (Johnsen Decl. ¶¶ 22-23.)

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

B. *Eitel* Factors

1. Prejudice to Plaintiffs

As to the first *Eitel* factor, plaintiffs are prejudiced if default judgment is denied in a case where the defendant refuses to defend itself. Defendants have failed to meaningfully defend this action, or respond to any of Plaintiffs' other attempts to resolve this dispute, and Plaintiffs have no recourse to obtain the damages they claim if default judgement 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

***4** 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)).

Here, Plaintiffs allege a claim for violations of the California Franchise Investment Law ("CFIL") against the Defendants. 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 § 31200. 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.

Plaintiffs' Complaint in this matter adequately alleges all elements of a CFIL claim. Plaintiffs have adequately alleged that UF materially misrepresented the estimated operating expenses for a franchisee at Discovery Day and in the FDD. The 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 the cost of stylist employment between franchisor-owned salons and franchisee-owned salons. Additionally, UF omitted any mention of the previous fraud lawsuit against UF's predecessor Mana Concepts; this was materially misleading given that Defendants had a duty to disclose such lawsuits in the FDD. 16 C.F.R. § 436.5(a); 436.5(c).

The CFIL extends liability to persons who directly or indirectly control those liable under the statute. Cal. Corp. Code § 31302. As the Defendants were parent companies of the franchisor, UF, they are jointly and severally liable under the Act.

Accordingly, Plaintiffs' Complaint is sufficient and the record shows that Plaintiffs are likely to succeed on the merits of their complaint against Defendants. 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 the amount of damages as follows:

- $100,000 paid to Defendants in initial franchise fees;
- $354,729.49 spent on buildout and opening of the 8|18 franchise;
- $163,012.50 in operating losses;
- $12,220.50 in ongoing customer liability;
- $111,490.15 in ongoing lease liability; and
- $8,015.35 in additional ongoing commitments and outstanding payments due.

(Mot. at 18-19.) Except for litigation costs, then, Plaintiffs seek damages flowing from Defendants' inducement to open a franchise. Plaintiffs assert that their damages total $749,467.99 stemming directly from their investment in 8|18 salons.

Additionally, Plaintiffs contend they are entitled to prejudgment interest, attorney fees, and costs for this litigation. (Mot. at 18.) They assert that they are entitled to $188,748.93 in prejudgment interest and $7,664.18 in costs. (*Id.* at 18-19.)

***5** In support of this damages request, Plaintiffs proffer evidence to show that these damages were actually incurred. Plaintiffs have provided the following documents to support their damages: (1) UF wire instructions for $100,000 payment and documentation from Schwab account to show that the payment was in fact made; (2) SBA loan commitment letter, use of funds spreadsheet, and email confirming equity injection requirement was complete; (3) Schwab confirmations and checking deposit confirmations of loans from John and Midori Shaw to the LLC and applicable promissory notes documenting the loans covering the franchise's operating losses; (4) point of sale system reports detailing ongoing customer liability in the form of membership pre-paid haircuts, series transactions, and gift certificate transactions; (5) the lease and personal guaranty of the ongoing lease liability; (6) insurance policy information and protective life insurance policy information that was required for the SBA loan; (7) copy of CPA's invoice for 2018 and 2019 services. (*See* Ex. 2 to Shaw Decl., Doc. 195-2; Exs. A-G, Docs. 219—219-7.)

Having carefully considered Plaintiffs' evidence, the Court concludes that the damages Plaintiffs seek are consistent with the injury suffered and are otherwise appropriate. This factor weighs in favor of 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.").

As discussed, Plaintiffs have adequately pleaded a claim for violation of the CFIL. Defendants received notice that this action was filed, sought relief from default, and filed an Answer, but have demonstrated they are unwilling or unable to meaningfully participate in or defend this lawsuit. Defendants have received notice of the instant Motion and have failed to appear. Since Plaintiffs have offered evidence in support of its claims, and Plaintiff's well-pleaded allegations are deemed admitted upon default, no factual disputes exist that preclude the entry of default judgment.

5. Possibility of Excusable Neglect

As to the sixth *Eitel* factor, no excusable neglect justifies Defendants' failure to defend itself in this action. This factor favors default judgment when the defendant has been properly served and is aware of the lawsuit. *PepsiCo*, 238 F. Supp. 2d at 1177 ("Given Defendant's early participation in the matter, the possibility of excusable neglect is remote."). Here, Defendants were properly served with the Complaint, failed to respond, and default was entered against them. (*See* Doc. 24.) After seeking relief from default (Doc. 28), which the Court granted (Doc. 33), Defendants answered the complaint (Doc.34). They have since failed to defend this action, and default was entered against them once again. (Doc. 180.) Moreover, Plaintiffs have submitted that "counsel for Defendants Mr. Campbell stated he is not in a position to do work on the case and could not engage in further meet and confer" on this motion. (Not. of Mot. at 2.) Plaintiffs have also attached email correspondence indicating that Defendants are aware of the present action, but are no longer defending it. (*See* Ex. 7, Doc. 196-2.) 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, Defendants have forfeited their opportunity to defend themselves on the merits; therefore, the seventh *Eitel* factor does not preclude default judgment.

7. Conclusion Regarding *Eitel* Factors

***6** In sum, the *Eitel* factors weigh in favor of entering default judgment on Plaintiffs' CFIL claim against Defendants. Accordingly, the Court GRANTS Plaintiff's Motion for Default Judgment.

VI. 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, 413 (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, $188,748.93 in prejudgment interest, and $7,664.18 in litigation costs. (Mot. at 18.) The Court addresses each in turn.

A. Damages

Plaintiffs seek $749,467.99 in damages incurred as this amount "flow[s] directly from Defendants' fraud in inducing Plaintiffs to invest in the franchises." (*Id.* at 16.) Plaintiffs' Complaint 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 offer: (1) UF's wire instructions for $100,000 payment and documentation from Schwab account to show that the payment was in fact made; (2) SBA loan commitment letter, use of funds spreadsheet, and email confirming equity injection requirement was complete; (3) Schwab confirmations and checking deposit confirmations of loans from John and Midori Shaw to the LLC and applicable promissory notes documenting the loans covering the franchise's operating losses; (4) point of sale system reports detailing ongoing customer liability in the form of membership pre-paid haircuts, series transactions, and gift certificate transactions; (5) the lease and personal guaranty of the ongoing lease liability; (6) insurance policy information and protective life insurance policy information that was required for the SBA loan; (7) copy of CPA's invoice for 2018 and 2019 services. (*See* Ex. 2 to Shaw Decl., Doc. 195-2; *see* Exs. A-G, Docs. 219-1—219-7.) The evidence substantially supports Plaintiffs' claim for $749,467.99.

B. 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 Section 3289 damages 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).

***7** 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 $69,424.76. (Mot. at 19.) Plaintiffs assert they are entitled to a 7% prejudgment interest rate on the remaining $649,467.99 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 $119,324.17. (Mot. at 19.)

Having considered Plaintiffs' methodology and evidence, the Court finds that Plaintiff has adequately proved the prejudgment interest it requests. Accordingly, the Court awards Plaintiffs $188,748.93 in prejudgment interest.

C. 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.

D. Attorney Fees

Plaintiffs have moved separately for an award of attorney fees in the amount of $237,404. (Fee Mot., Doc. 197, at 10.) The Motion is DENIED.

This Motion for Attorney Fees is brought in conjunction with the Motion for Default Judgment against Defendants Ultimate Brands, Inc. and 2UlitimateBrands as described above. Plaintiffs have also filed Motion for Default Judgment (Doc. 203) and an essentially identical Motion for Attorney's Fees against Defendants W. Scott Griffiths and Loretta Hwong Griffiths supported by identical declarations and exhibits. (*See* Fee Mot., Doc. 209.) For purposes of the present fee motion, Plaintiffs have not even attempted to isolate and identify billing entries specific to the work done in furtherance of their claims against Ultimate Brands, Inc. and 2UlitimateBrands as opposed to the other defendants in the case. Instead, Plaintiffs seek reimbursement for *all* of the work done in this lawsuit going back to 2017; the second Fee Motion appears to do the same. This is not appropriate. Although there may be common work for which Plaintiffs may recover fees from either grouping of defendants, those fees may not be recovered from both groupings of defendants. Moreover, some of the billing entries include work done related to claims against a third defendant, Ron Love; it is not appropriate to bill either Defendants Ultimate Brands, Inc. and 2UlitimateBrands Defendants W. Scott Griffiths and Loretta Hwong Griffiths for that time. (*See, e.g.*, Ex. 4 to Johnsen Decl., Doc. 197-5, at ECF 60 (billing 7 hours for "[d]raft joint stipulation regarding Ron Love; draft motion to compel of Scott Griffiths").) As Plaintiffs' Motion fails to identify with any specificity the reasonable number of hours expended pursuing claims against Defendants, the Motion is denied.

V. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Default Judgment is GRANTED. The Court GRANTS an award of $749,467.99; $188,748.93 in prejudgment interest; and eligible litigation costs under Local Rule 54-3. Plaintiff's Motion for Attorney Fees is DENIED.

Plaintiff is 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 2132688

Footnotes

1 While "2UlitimateBrands" appears to be a typographical error, it is the actual corporate name. (*See* Compl., Doc. 1, ¶ 8; Cal. Sec. of State, Business Search, Entity Detail for Entity No. C3462216 2Ulitimatebrands, at https://businesssearch.sos.ca.gov/CBS/Detail.)

2 The Court is also satisfied that notice of this Motion has been electronically served on Defendants via the electronic docket. "Unless service is governed by F.R.Civ.P. 4 or L.R. 79-5.3, service with this electronic [Notice of Electronic Filing generated by the CM/ECF System] will constitute service pursuant to the Federal Rules of Civil and Criminal Procedure, and the NEF itself will constitute proof of service for individuals so served." L.R. 5-3.2.1