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 CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,
 Plaintiff,

v.

JORDAN MAXWELL, also known as
 RUSSELL PINE, individually and
 doing business as BBCOA aka BBC
 OF AMERICA aka BETTER BOOKS
 AND CASSETTES OF AMERICA;
 and VIC VARJABEDIAN aka
 VICTOR VARJABEDIAN aka
 VAROUJ VARJABEDIAN,
 individually,
 Defendants.

CASE NO. CV 03-0128 NM (CWx)
 MEMORANDUM DECISION IN
 SUPPORT OF ORDER GRANTING
 PLAINTIFF FEDERAL TRADE
 COMMISSION'S MOTION FOR
 DEFAULT JUDGMENT

I. INTRODUCTION

The Federal Trade Commission ("Plaintiff" or "FTC") initiated this action on January 7, 2003 against Jordan Maxwell ("Maxwell"), Vic Varjabedian ("Varjabedian") (collectively, "Defendants"), and Russell Pine for violations of the Federal Trade Commission Act ("FTC Act") and Credit Repair Organizations

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1 Act ("CROA"). Compl. ¶ 1.¹ Plaintiff brought the following claims: (1) sale of
2 fake international driver's permits ("IDPs"), (2) sale of bogus credit repair
3 services, and (3) sale of sham debt termination programs. Mot. at 1. Plaintiff
4 sought damages as well as injunctive relief. Compl. at 17.

5 On January 8, 2003, the court granted Plaintiff's ex parte application for a
6 temporary restraining order ("TRO") with an asset freeze, the appointment of a
7 temporary receiver, and other equitable relief. On January 23, 2003, the court
8 granted Plaintiff's request for a preliminary injunction, finding that there was good
9 cause to believe that Varjabedian and Maxwell engaged in and are likely to engage
10 in the deceptive acts and practices set forth in the Complaint. Mot. at 3.

11 Varjabedian was personally served with the Summons and Complaint at his home
12 on January 13, 2003. Maxwell has successfully eluded personal service of
13 process, but pursuant to the court's 11/4/03 Order, Maxwell was served by
14 publication in the Los Angeles Times over a four-week period. Neither of the
15 Defendants has filed an answer or other responsive pleading.

16 On November 4, 2003, Plaintiff applied for a default judgment against
17 Varjabedian for failure to respond to the Complaint or otherwise defend himself.
18 On January 16, 2004, Plaintiff applied for a default judgment against Maxwell for
19 the same reasons. Plaintiff now requests the court to: (1) permanently enjoin
20 Defendants from future violations of the FTC Act and CROA, and (2) order
21 equitable monetary relief from Defendants jointly and severally in the form of
22 consumer redress. The court clerk entered default against Varjabedian on
23 November 5, 2003 and against Maxwell on January 28, 2004.

24 On April 12, 2004, Varjabedian filed an "Opposition" with the court.
25 Although this filing did not oppose entry of the default judgment, it did seek to

26
27 ¹ On January 23, 2003, the court terminated Russell Pine as a party because it was
28 an alias of Jordan Maxwell.

1 modify the proposed order. The court has considered this filing and made changes
2 to the judgment where appropriate.

3 4 II. FACTS²

5 From about December 1999 to January 2003, Defendants conducted a
6 nationwide scheme to defraud customers using an Internet website and in-bound
7 telemarketing calls. Compl. ¶ 17. Defendants maintained this website,
8 www.bbcoa.com (“BBCOA”), where they sold fake international driver’s permits,
9 bogus credit repair services, and sham debt termination programs. Id. ¶¶ 17, 22,
10 26. Maxwell and Varjabedian have directed, controlled, and participated in the
11 acts and practices of BBCOA. Id. ¶¶ 5, 6.

12 Defendants represented that the Road Traffic Convention authorizes them to
13 issue their IDPs. Id. ¶ 17. Defendants further claimed that IDPs “cannot be
14 assessed points, revoked or suspended.” Id. ¶ 18. They also claim that they can be
15 used for identification purposes. Id. Defendants charge customers \$85 plus
16 shipping and handling for an IDP. Id. ¶ 20. The IDPs sold by Defendants are
17 identical to valid IDPs, except Defendants’ IDPs have a seal of the “International
18 Travel Association” on the last page. Id. ¶ 21. The International Travel
19 Association is not authorized to issue IDPs in the U.S. Id.

20 In fact, the U.S. Department of State has designated the American
21 Automobile Association (“AAA”) and the American Automobile Touring Alliance
22 (“AATA”) as the only organizations authorized to issue IDPs on behalf of the U.S.
23 Id. ¶ 14. These organizations issue IDPs for \$10. Id. A valid IDP does not confer
24 driving privileges to anybody. Id. ¶ 16. It also does not insulate U.S. citizens or
25 residents from the legal consequences of: (1) driving in the U.S. without a valid
26

27 ² The following facts, taken from the Complaint, are assumed true for purposes of
28 this Order.

1 driver's license issued by a U.S. state or territory, (2) driving when their license
2 has been suspended or revoked, or (3) having points assessed against their driver's
3 licenses for violations of traffic laws. Id.

4 Defendants also claim that they can remove all negative entries from a
5 customer's credit report, including bankruptcies. Id. ¶ 22. Defendants assert that
6 by using attorneys, rather than individuals, they can force a credit reporting agency
7 to delete any negative items from a customer's credit report. Id. ¶ 23. Attorneys,
8 however, are not exempt from the CROA. Id. ¶ 24. Moreover, there is no legal
9 way to delete accurate, non-obsolete negative items from a credit report. Id.
10 Defendants charged customers \$800 for this credit repair service and required
11 payment prior to service. Id. ¶ 25.

12 Defendants offer credit card debt termination and loan cancellation
13 programs on their website. Id. ¶ 26. They state that thousands of people have
14 legally terminated their debt associated with credit cards, bank loans, and credit
15 lines. Id. Defendants claim this is possible because financial institutions breach
16 their agreements by not lending their own assets. Id. ¶ 27. There is, however, no
17 valid basis for Defendants' theory of credit card or loan debt termination. Id. ¶ 28.
18 Defendants charge \$1,195 for their credit card debt termination program, and
19 \$1,295 for their starter loan cancellation program. Id. ¶ 26.

21 III. LEGAL STANDARD FOR DEFAULT JUDGMENT

22 Pursuant to Fed. R. Civ. P. 55(b)(2), a court may order default judgment
23 following the entry of default by the court clerk. See PepsiCo, Inc. v. Cal. Sec.
24 Cans, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002) (citation omitted). In the
25 Central District of California, motions for default judgment must set forth the
26 following information: (1) when and against which party the default was entered;
27 (2) the identification of the pleading to which default was entered; (3) whether the
28 defaulting party is an infant or incompetent person, and if so, whether that person

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1 is adequately represented; (4) that the Soldiers' and Sailors' Civil Relief Act of
2 1940 does not apply; and (5) that notice of the application has been served on the
3 defaulting party, if required by Fed. R. of Civ. P. 55(b)(2). Local Rule 55-1. Rule
4 55(b)(2) requires a party against whom judgment by default is sought to be served
5 with written notice if the party has appeared in the action. Fed. R. Civ. P.
6 55(b)(2).

7 A defendant's default does not automatically entitle the plaintiff to a court-
8 ordered judgment. See Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986).
9 Rather, granting or denying relief is entirely within the court's discretion. See id.
10 The Ninth Circuit has enumerated the following factors (collectively, the Eitel
11 factors) that a court may consider in determining whether to grant default
12 judgment: (1) the merits of the plaintiff's substantive claim; (2) the sufficiency of
13 the complaint; (3) the sum of money at stake in the action; (4) the possibility of
14 prejudice to the plaintiff; (5) the possibility of a dispute concerning material facts;
15 (6) whether the default was due to excusable neglect; and (7) the strong policy
16 underlying the Federal Rules of Civil Procedure favoring decision on the merits.
17 See Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

18 Upon entry of default, the well-pleaded allegations of the complaint relating
19 to a defendant's liability are taken as true, with the exception of the allegations as
20 to the amount of damages. See TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915,
21 917-18 (9th Cir. 1987) (citation omitted). Thus, the plaintiff is required to provide
22 proof of all damages sought in the complaint. However, a "judgment by default
23 shall not be different in kind from or exceed in amount that prayed for in the
24 demand for judgment." Fed. R. Civ. P. 54(c).

25 Once injury is established, the plaintiff need only prove that the
26 "compensation sought relates to the damages that naturally flow from the injuries
27 pled." Philip Morris USA, Inc. v. Castworld Prods., Inc., 219 F.R.D. 494, 498
28 (C.D. Cal. 2003) (citation omitted). Damages may be fixed by declarations or

1 affidavits. Schwarzer et al., Federal Civil Procedure Before Trial, § 6:98 (2003)
2 (citing Transportes Aereos De Angola v. Jet Traders Inv. Corp., 624 F. Supp. 264,
3 266 (D. Del. 1985)).

4
5 **IV. DISCUSSION**

6 *A. Procedural Requirements*

7 In the instant case, Plaintiff has satisfied the procedural requirements for
8 default judgment pursuant to Fed. R. Civ. P. 55(a), Local Rule 55-1, and Fed. R.
9 Civ. P. 54(c). Pursuant to Fed. R. Civ. P. 55(a), the court clerk properly entered
10 Varjabedian’s default on November 5, 2003 and Maxwell’s default on January 28,
11 2004. As required by Local Rule 55-1, Plaintiff set forth the following
12 information: (1) Defendants are neither infants nor incompetent persons;
13 (2) Defendants are not otherwise exempt under the Soldiers’ and Sailors’ Civil
14 Relief Act of 1940; and (3) Fed. R. Civ. P. 55(b)(2) does not require written notice
15 because Defendants have failed to appear or otherwise respond to the Complaint.
16 Finally, the motion complies with Fed. R. Civ. P. 54(c) in that it requests damages
17 that are not different in kind from those prayed for in the Complaint. Thus, the
18 court, in its discretion, may order a default judgment against Defendants based on
19 the Eitel factors, as outlined below.

20 *B. Eitel Factors*

21 **1. Substantive Merits and Sufficiency of the Complaint**

22 The first two Eitel factors are: (1) the merits of Plaintiff’s substantive claim,
23 and (2) the sufficiency of the complaint. Eitel, 782 F.2d at 1471-72. The Ninth
24 Circuit has suggested that these two factors require that a plaintiff “state a claim
25 on which the [plaintiff] may recover.” PepsiCo, 238 F. Supp. 2d at 1175 (citation
26 omitted).

1 **a) Injunctive Relief**

2 The FTC Act prohibits “deceptive acts or practices in or affecting
3 commerce.” 15 U.S.C. § 45(a)(1). An act or practice is deceptive if a
4 representation, omission, or practice that is material is likely to mislead consumers
5 acting reasonably under the circumstances. FTC v. Gill, 265 F.3d 944, 950 (9th
6 Cir. 2001) (citing FTC v. Pantron I Corp., 33 F.3d 1088, 1095 (9th Cir. 1994)). A
7 violation of a requirement or prohibition of the CROA constitutes an unfair or
8 deceptive act or practice in violation of the FTC Act. See 15 U.S.C.
9 § 1679h(b)(1). In order to show that credit repair practices violate both the FTC
10 Act and CROA, the FTC need only show that the defendants made an untrue or
11 misleading statement about their credit repair services. Gill, 265 F.3d at 955.

12 To obtain an injunction against an individual, the FTC must prove only that
13 violations of the FTC Act occurred, and that the individual either directly
14 participated in or had authority to control the acts or practices at issue. FTC v.
15 Publ’g Clearing House, Inc., 104 F.3d 1168, 1170 (9th Cir. 1997) (citing FTC v.
16 Am. Standard Credit Sys., Inc., 874 F. Supp. 1080, 1087 (C.D. Cal. 1994)).
17 Authority to control the acts or practices can be evidenced by active involvement
18 in business affairs. Am. Standard Credit Sys., 874 F. Supp. at 1089 (citation
19 omitted).

20 Here, the Complaint details a premeditated scheme to sell fraudulent
21 services and items, carried out over a period of time, resulting in multiple
22 violations. Defendants were part of this fraudulent scheme from December 1999
23 to January 2003. Defendants, through their website, made numerous
24 misrepresentations to potential customers claiming that their IDPs: (1) would
25 permit customers who lacked a valid driver’s license to drive legally in the U.S.,
26 (2) would allow customers to avoid points or sanctions for driving with a revoked
27 or suspended license, and (3) could serve as a valid identification document. Only
28 two organizations, the AAA and the AATA are allowed to sell IDPs. Moreover,

1 these IDPs do not allow avoidance of points or sanctions, and cannot serve as
 2 valid identification. Defendants’ practices related to the sale of their fake IDPs
 3 were deceptive and thus violated the FTC Act.

4 Defendants also violated the FTC Act and CROA by selling bogus credit
 5 repair services. They falsely claimed that they were able to remove all negative
 6 information from a customer’s credit report, even if the information was accurate
 7 and not obsolete. Defendants also violated CROA by collecting their fee for
 8 services before fully performing them. See 15 U.S.C. 1679b(b). Moreover,
 9 Defendants violated the FTC Act by falsely claiming they can legally eliminate all
 10 of a customer’s credit card and other debt. Their theory, that a financial institution
 11 nullifies their contract by failing to lend their own assets, is patently false.

12 Varjabedian is aware of the FTC suit, but declines to seek counsel and
 13 instead acknowledges his liability. See Mot. at 129.³ Maxwell, however, has
 14 failed to appear, recognize the wrongfulness of his conduct, or offer assurances
 15 against future violations. Under such circumstances, injunctive relief is
 16 appropriate against both Varjabedian and Maxwell.

17 **b) Equitable Monetary Relief**

18 In addition to injunctive relief, a defendant may be held liable for equitable
 19 monetary relief under the FTC Act if the FTC proves that the defendant “had
 20 knowledge that the corporation or one of its agents engaged in dishonest or
 21 fraudulent conduct, that the misrepresentations were the type upon which a
 22 reasonable and prudent person would rely, and that consumer injury resulted.”
 23 Publ’g Clearing House, 104 F.3d at 1171 (citation omitted). To satisfy the
 24 knowledge requirement, the FTC need not show that a defendant had the intent to

25
 26 ³ At the January 22, 2003 preliminary injunction hearing, Varjabedian said: “I am
 27 not disputing any allegations. I am not disputing – I am not even objecting to anything
 28 the FTC is requesting today, so basically, I don’t see why I need counsel. Counsel you
 need if you have a defense. I don’t have any defense.” Mot. at 129.

1 defraud, but only that the defendant “had actual knowledge of material
2 misrepresentations, [was] recklessly indifferent to the truth or falsity of a
3 misrepresentation, or had an awareness of a high probability of fraud along with
4 an intentional avoidance of the truth.” Id. A defendant’s participation in
5 corporate affairs is probative of knowledge. Am. Standard Credit, 874 F. Supp. at
6 1089 (citation omitted).

7 As noted above, Varjabedian admitted to all of the allegations in the
8 Complaint during the preliminary injunction hearing. The FTC has presented
9 undisputed facts that the representations alleged in the Complaint were made to
10 customers all over the country, that the representations were false, and that
11 customer injury resulted. Mot. at 10. Defendants were responsible for every
12 major function of BBCOA. They established “the essential accounts of the
13 business, such as the web site, mail drop, telephone, and Federal Express
14 accounts.” Id. In order to deter Defendants from future violations of FTC laws
15 and to make their victims whole to the fullest extent possible, Plaintiff is entitled
16 to the equitable monetary relief it seeks.

17 **2. Amount at Stake**

18 Under the third Eitel factor, the court must consider the amount of money at
19 stake in relation to the seriousness of Defendants’ conduct. Plaintiff seeks to
20 recover \$444,554.66 for equitable monetary relief which is equal to the amount
21 paid by victims of Defendants’ illegal scheme, less any amounts previously
22 returned to the victims by Defendants. The amount requested seeking consumer
23 redress appears to be proportional to the seriousness of Defendants’ conduct,
24 thereby supporting a default judgment.

25 **3. Possibility of Prejudice**

26 The fourth Eitel factor considers whether the plaintiff will suffer prejudice if
27 a default judgment is not entered. Without default judgment, Defendants’
28 fraudulent conduct would remain unchecked, and they would be free to pursue

1 similar activities in the future, directly endangering the general public. Plaintiff
2 would be without other recourse to ensure Defendants' future compliance with
3 FTC Regulations. Thus, potential prejudice to Plaintiff favors granting a default
4 judgment against Defendants.

5 **4. Possibility of Dispute**

6 The fifth Eitel factor considers the possibility of dispute as to any material
7 facts in the case. Upon entry of default, all well-pleaded facts in the complaint are
8 taken as true, except those relating to damages. See TeleVideo, 826 F.2d at 917-
9 18. Accordingly, no genuine dispute of material facts would preclude granting
10 Plaintiff's motion.

11 **5. Possibility of Excusable Neglect**

12 The sixth Eitel factor considers the possibility that the default resulted from
13 excusable neglect. Varjabedian was served with the Complaint on January 13,
14 2003. Varjabedian has since admitted to all the allegations in the Complaint.
15 Maxwell, while successfully eluding personal service, was served through
16 publication, and his time to file an answer expired on January 2, 2004. Maxwell
17 has not appeared or otherwise responded to the Complaint. Hence, the possibility
18 of excusable neglect is remote.

19 **6. Policy for Deciding on the Merits**

20 "Cases should be decided upon their merits whenever reasonably possible."
21 Eitel, 728 F.2d at 1472 (citation omitted). However, the mere existence of Fed. R.
22 Civ. P. 55(b) indicates that "this preference, standing alone, is not dispositive."
23 PepsiCo, 238 F. Supp. 2d at 1177 (citation omitted). Under Fed. R. Civ. P. 55(a),
24 termination of a case before hearing the merits is allowed whenever a defendant
25 fails to defend an action. Thus, "the preference to decide cases on the merits does
26 not preclude a court from granting default judgment." Id. Hence, the court is not
27 precluded from entering a default judgment against Defendants.

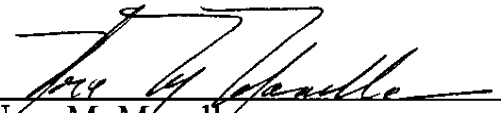
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1 **IV. CONCLUSION**

2 Accordingly, Plaintiff's motion for default judgment is **GRANTED**. This
3 memorandum is filed concurrently with the Default Judgment and Order for
4 Permanent Injunction.

5
6 **IT IS SO ORDERED.**

7
8 **DATED: April 27, 2004**

9 
10 **Nora M. Manella**
11 **United States District Judge**