14-56582

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee,

v.

BUSINESS TEAM, LLC;
AMIR MONTAZERAN,
Defendants-Appellants,

On Appeal from the United States District Court
for the Central District of California
No. 8:13-cv-00919-DOC-RNB
Hon. David O. Carter, District Judge

ANSWERING BRIEF OF FEDERAL TRADE COMMISSION

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INTRODUCTION

The district court properly entered defaults and default judgments against appellants Amir Montazeran and Business Team because neither litigated the matter below. Montazeran never answered the Federal Trade Commission's (FTC) complaint and Business Team answered four months late. Neither defendant responded to any of the FTC's discovery requests or to the FTC's motion for a default judgment. Their principal contentions on appeal – that Montazeran was not served properly with the complaint and that the FTC agreed not to seek a default against Business Team – are baseless. The district court acted well within its discretion in refusing to set aside the defaults and granting default judgments and equitable relief.

STATEMENT OF JURISDICTION

The district court had jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, 15 U.S.C. §§ 45(a), 53(b), and 57b, and 12 U.S.C. § 5538. On September 30, 2014, appellants filed a premature notice of appeal of the district court's September 2, 2014, interlocutory Order Denying Motions to Set Aside Default. ER152-162 [D.318].[1] This Court "lack[s] jurisdiction over an

[1] "Br." refers to appellants' Brief. "ER" refers to appellants' Excerpts of Record. "SER" refers to the FTC's Supplemental Excerpts of Record, filed herewith. "D.xxx" refers to the district court docket's document number. "Tr." refers to page

appeal from an order denying a motion to set aside the entry of default alone." *Symantec Corp. v. Global Impact, Inc.*, 559 F.3d 922, 923 (9th Cir. 2009). Appellants timely filed on November 3, 2014, their amended notice of appeal of the September 2, 2014 order, the October 16, 2014 Entry of Default Judgment and Final Order for Permanent Injunction Against Defendant Amir Montazeran, ER10-33 [D.324], the October 16, 2014 Final Order for Monetary Judgment as to Relief Defendant Business Team, LLC, ER34-41 [D.325], and the October 17, 2014 Order Granting Application for Default Judgment against Montazeran and Business Team. ER1-41 [D.323]. This Court has appellate jurisdiction under 28 U.S.C. § 1291.

ISSUES PRESENTED FOR REVIEW

After both appellants failed to answer the Amended Complaint, the FTC applied for entries of default against them. After appellants failed to respond to the FTC's discovery requests, the FTC moved for default judgments against them. In the orders on review, the district court declined to set aside the entries of default against both appellants and entered default judgments against them. The questions presented are:

1) Whether the district court correctly determined that the FTC properly served appellant Montazeran with the FTC's Amended Complaint and thus acted

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numbers in deposition transcripts included in the SER. "ECF p." refers to page numbers specified by the ECF header.

within its discretion when it denied Montazeran's motion to set aside his default and entered default judgment against him; and

2) Whether the district court acted within its discretion when it denied appellant Business Team's motion to set aside its default and entered default judgment against it.

STATEMENT OF THE CASE

A. The Underlying Case. On June 18, 2013, the FTC filed a complaint charging seven corporate defendants and three individual defendants with operating an unlawful loan modification scheme in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Mortgage Assistance Relief Services ("MARS") Rule, 16 C.F.R. pt. 322, recodified as Regulation O, 12 C.F.R. pt. 1015. [D.1].[2] The FTC also requested a Temporary Restraining Order (TRO) that included an asset freeze and the appointment of a receiver over the corporate defendants. [D.4]. The next day the court issued the TRO, froze the defendants' assets, and appointed a receiver. [D.13].

[2] Section 5(a) of the FTC Act prohibits "unfair or deceptive acts or practices in or affecting commerce." The MARS Rule and Regulation O prohibit "any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service" from making certain misrepresentations, failing to make certain disclosures, and collecting payments in advance of rendering the promised services. 16 C.F.R. §§ 322.2, 322.3, 322.4, 322.5, recodified as 12 C.F.R. §§ 1015.2, 1015.3, 1015.4, 1015.5.

After taking control over the corporate defendants, the Receiver determined that Amir Montazeran, who was not initially named as a defendant, controlled an unlawful loan modification scheme through corporate defendant Backend, Inc. and other corporate entities. On June 28, 2013, the district court authorized the Receiver to freeze the accounts of the newly discovered corporate entities that were part of the allegedly unlawful scheme but were not yet named as defendants. SER143-145 [D.50]. Those accounts included ones owned or controlled by appellant Montazeran, and included accounts held by appellant Business Team, which was nominally owned by Amir Montazeran's father Mohammad Montazeran. SER143-145 [D.50]; SER083 [D.306-7 at Tr. 50, lines 10-18]; SER141 [D.125-1 at ECF p. 3]. Amir Montazeran testified at a July 3, 2013 deposition taken by the Receiver that funds in the Business Team account ultimately derived from other corporate defendants, receivership entities, and himself. SER087-92, 095 [D.251-1 at Tr. 46-51, 54]. He also referred to an apartment in which he lived in Irvine, California (referred to by the parties as "Marquee Park Place") as "my house." SER096 [D.251-1 at Tr. 180, lines 9-13]; SER098 [D.251-2 at 2 ¶3].[3] Montazeran has never disputed that he lived at that

[3] Personally identifying information (including home addresses) reflected in the Montazeran deposition transcript, SER083, 091, 096 (D.251-1 at Tr. 50, 180); the Balster declaration and attachments, SER-098, 102, 103 (D.251-2 at 2 ¶ 3, Att. B, C); the Jablonsky declaration and attachments, SER106-109 (D.251-3); the

residence. *See* ER172 [D.239 at 2 ¶3]. On July 12 and July 18, 2013, the court entered preliminary injunctions against the defendants and several related entities that were made subject to the expanded receivership. [D.74, 87].

On December 16, 2013, the FTC filed an Amended Complaint adding Amir Montazeran as a defendant and Business Team as a "relief defendant" – an entity that is not charged with direct wrongdoing but that holds the proceeds of wrongdoing. ER189-226 [D.176]. The Amended Complaint alleged that Amir Montazeran and others created law firms as "fronts" for their unlawful mortgage modification scheme. ER209 [D.176 at 21 ¶¶57-58]. They solicited financially distressed homeowners through websites and official-looking correspondence. ER210 [D.176 at 22 ¶¶60-61]. When consumers called the toll-free number on the solicitations, Montazeran representatives would purport to be "legal assistants" working in a "law office." ER211 [D.176 at 23 ¶63]. The representatives claimed that an attorney would negotiate a loan modification with the customer's lender that would reduce their mortgage payments substantially. ER211 [D.176 at 23 ¶¶63-65].

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affidavits of reasonable diligence and proofs of service, SER125-130 (D.223), and the declaration in support of default, SER123 (D.225-1 at 2 ¶3), were redacted for privacy purposes pursuant to C.D. Cal. R. 5.2-1. The parties agreed to refer to Montazeran's residence in Irvine, California as "Marquee Park Place." *See, e.g.*, ER171 [D.239 at 1 ¶2].

The Amended Complaint also alleged that consumers paid unlawful advance fees for the promised loan modification services. ER212 [D.176 at 24 ¶70]. Despite the fee payment, consumers received little or no actual service. ER212 [D.176 at 24 ¶72]. Instead, consumers typically failed to receive the promised loan modification or mortgage payment reduction and often went into foreclosure and lost their homes. ER213 [D.176 at 25 ¶¶73-74]. The Amended Complaint charged Amir Montazeran with being an officer of or controlling the scheme. ER199-201, 208-213 [D.176 at 11-13, 20-25 ¶¶26, 29-30, 56-74]. It charged Business Team with having received proceeds from the scheme. ER199-200, 219-20 [D.176 at 11-12, 31-32 ¶¶27, 93-95].

B. Appellants' Default. On January 15, 2014, the FTC served the Amended Complaint and summons on Business Team by personal service on its registered agent. SER138 [D.199]; SER136 [D.215-1 at 2 ¶3]. Business Team did not answer, seek an extension, or otherwise respond to the complaint by the February 5, 2014 due date. Fed. R. Civ. P. 12(a)(1).

The FTC unsuccessfully attempted personal service on Amir Montazeran *six times* at two different locations in January 2014. On January 21, 22, and 24, 2014, the FTC attempted to serve him at the Marquee Park Place residence that he identified as his residence at his July 2013 deposition. The agency made three

additional unsuccessful attempts at service at another residence owned by Montazeran. SER123 [D.225-1 at 2 ¶3]; SER125-128 [D.223 at ECF pp. 1-4].

Unable to effectuate personal service, the FTC executed substitute service on Montazeran pursuant to Cal. Civ. Proc. Code §§ 415.20 and 416.90, by serving the concierge at Montazeran's Marquee Park Place residence on February 26, 2014, and by first class mail. SER123 [D.225-1 at 2 ¶3]; SER129-130 [D.223 at ECF pp. 5-6]. Under California law, such service was deemed effective ten days after mailing, March 8, 2014. Cal. Civ. Proc. Code § 415.20(b). Montazeran never answered the Amended Complaint.

On March 24, 2014, attorney Sassan Mackay emailed FTC counsel Steven Balster challenging service on Montazeran. Mackay nevertheless informed Balster that that he did not represent either Montazeran or Business Team and that he was not authorized to accept service for either party. SER099-100 [D.251-2 at 3-4 ¶5]. On April 4, 2014, Mackay told Balster that he was informed that Business Team would file an answer "by this coming week." SER099-100, 104 [D.251-2 at 3-4 ¶¶ 4-5 & Att. D, p. 1]. That did not happen.

On May 5, 2014, three months after Business Team's answer was due, the FTC applied under Fed. R. Civ. P. 55(a) for a Clerk's entry of default, which was entered that same day. SER132-134 [D.215]; SER135-137 [D.215-1]; SER131

[D.220].[4] Business Team eventually filed an answer on June 4, 2014, one month after the entry of default, denying that it received ill-gotten gains from the Montazeran Enterprise. [D.230 at 12 ¶¶94-96].

Because Amir Montazeran had not filed an answer, on June 4, 2014, the FTC applied for a Clerk's entry of default against him, which was entered the same day. SER119-121 [D.225]; SER124 [D.225-1 at 3 ¶6]; SER118 [D.228]. On June 18, 2014, Montazeran moved to set aside the Clerk's entry of default, [D.236], and on June 27, 2014, Business Team did the same. [D.248].

On July 15, 2014, the FTC served requests for admissions and interrogatories on Montazeran, SER001-043 [D.306-2]; SER044-053 [D.306-3], and served interrogatories and a request for document production on Business Team. SER054-060 [D.306-4]; SER061-068 [D.306-5]. Neither appellant responded to the discovery requests.

C. The District Court's Denial Of The Motions To Set Aside Default. On September 2, 2014, the district court denied Montazeran's and Business Team's

[4] Under Fed. R. Civ. P. 55(a), the clerk must enter a default upon request and supporting affidavit where the party against whom a judgment is sought has failed to defend itself. That party is thus put on notice that they are in default and that judgment may be entered if the default is not set aside by the district court. However, a default by itself is not a final order that imposes damages. The plaintiff must move separately under Rule 55(b) to obtain a final judgment and relief.

motions to set aside the entries of default against them. ER42-49 [D.283]. The court applied an established test, under which a motion to set aside default will only be granted if the moving party shows three factors: (1) that the default is not the result of its own culpable conduct; (2) that setting aside the default would not prejudice the other party; and (3) that it has a meritorious defense. ER45-46 [D.283 at 4-5]. The court held that neither Business Team nor Amir Montazeran merited relief under that test.

Business Team failed the first prong, because its own culpable conduct led to the default. The court rejected Mohammad Montazeran's excuse that he reasonably did not respond to the complaint because he had been hospitalized when it was served on him. In fact, the court determined, the complaint had been served before any purported hospitalization. The court also rejected the claim that Mohammad Montazeran did not know of the lawsuit until April 2014. That claim was "incredible," the court found, given that it had frozen $300,000 in Business Team assets since June 28, 2013. Moreover, even if Mohammad Montazeran himself were somehow excusably ignorant, the court determined, substantial evidence showed that Business Team was not operated solely by Mohammad Montazeran. ER47 [D.283 at 6]. Indeed, the elder Montazeran is named as a dependent on his son's tax returns. *Id.* While the court recognized that its position might be different if default was entered against Mohammad Montazeran

individually, it noted that the default was entered against "a separate corporate entity" that was culpable. *Id.*

The court also held that Business Team's motion to set aside foundered on the second prong of the inquiry. The court found that "[i]t would be highly prejudicial [to the FTC] to ignore a half-year delay in answering the complaint, just a month before the case is set for trial" on September 30, 2014. *Id.*[5]

With respect to Amir Montazeran, the district court rejected his central argument that default should be vacated because the FTC had not served him properly. Under Fed. R. Civ. P. 4(e)(1), state law governs service of process, and the court held the FTC's service valid under California law. Under California law, "when a defendant cannot, after reasonable diligence be served by personal delivery," a plaintiff may resort to substitute service. ER47-48 [D.283 at 6-7] (citing Cal. Civ. Proc. Code § 415.20(b)). The FTC executed substitute service by serving the summons and Amended Complaint on the concierge at the Marquee Park Place residence, who was properly deemed the "person apparently in charge . . . [of Montazeran's] usual mailing address." ER48-49 [D.293 at 7-8] (citation

[5] The issues set for trial were not limited to those against Montazeran and Business Team, but included allegations against several additional individuals and companies involved in related schemes. Those defendants had not defaulted and had defended themselves.

omitted).[6] The court rejected Montazeran's claim that the substitute service was invalid because he no longer lived at the Marquee Park Plaza residence in January 2014. Even if that were true, the court found, "there is no indication that he no longer received mail there," so the Marquee Park Place should be considered his "'usual mailing address' for purposes of substitute service." *Id*.

Additionally, the court noted that, like his father, Amir Montazeran "has been on notice of this suit for over a year, with many of his assets frozen by court order." ER49 [D.283 at 8]. The court thus concluded that Montazeran's culpable conduct caused the default, that the FTC "would be prejudiced by the default being set aside just a month before trial," and that Montazeran "has no discernible meritorious defense." *Id.*

D. Entry Of Default Judgment. In the wake of both appellants' failure to respond to the FTC's discovery requests, on September 18, 2014, the FTC moved for a default judgment under Fed. R. Civ. P. 55(b) against them. [D.306]. They did not oppose the motion. On October 17, 2014, the district court granted the motion. ER1-9 [D.323].

[6] The district court mistakenly found that the FTC had attempted to serve Montazeran twelve times rather than six. ER48 [D.293 at 7]. The error is harmless, however, because (as described at pp. 19-20 below) under California law, the six unsuccessful attempts at personal service are more than sufficient to justify the use of alternate substitute service.

Applying the seven factors set forth in *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986), the court first held that, because neither Montazeran nor Business Team had filed timely answers or responded to multiple discovery requests, "the FTC would be prejudiced if the Court required it to continue litigating against defendants that refuse to participate in the litigation." ER5 [D.323 at 5]. The court next concluded that the FTC had adequately pleaded that Montazeran's mortgage loan modification scheme had deceived consumers in violation of Section 5 of the FTC Act, the MARS Rule, and Regulation O, and that Business Team unjustly received proceeds from the deceptive scheme. ER5-7 [D.323 at 5-7].

The court next considered the fourth *Eitel* factor that examines whether the amount of money sought by default judgment is proportionate to the seriousness of defendants' conduct. It held that "the sum of money at stake is commensurate with [both appellants'] conduct." ER7 [D.323 at 7]. The court further concluded that, as to Montazeran, there is little likelihood of any disputed material facts because the well-pleaded allegations as to liability against him were taken as true upon his default, he admitted facts supporting liability by failing to respond to the FTC's requests for admissions, and he had no meritorious defenses. Neither was there a likelihood of disputed material facts as to Business Team, because evidence showed both that it was not controlled solely by Mohammad Montazeran and that it

received funds from Amir Montazeran's unlawful mortgage scheme. ER7-8 [D.323 at 7-8].

The court next held that appellants' default was not justified by excusable neglect. Both failed to timely answer even when they were properly served and neither responded to the FTC's discovery requests. ER8 [D.323 at 8]. The court also held that a decision on the merits in favor of either Montazeran or Business Team "is nearly impossible." *Id.* Finally, the court held that damages caused by the defendants were fully supported by the sworn declarations of the FTC's forensic accountant. ER9 [D.323 at 9].

E. Final Orders. The district court filed final orders against the two defendants on October 16, 2014. It issued a permanent injunction and awarded $12,471,944.39 in monetary relief against Amir Montazeran. ER10-33 [D.324]. The court separately awarded $966,827.29 in monetary relief against Business Team. ER34-41 [D.325]. Amir Montazeran and Business Team now appeal the order denying the motions to set aside default, the order granting default judgments, and the two final orders. ER50-100 [D.326]; ER101-151 [D.327].

STANDARD OF REVIEW

The entries of default and default judgment are reviewed for abuse of discretion. *Emp. Painters' Trust v. Ethan Enter. Inc.*, 480 F.3d 993, 998 (9th Cir. 2007) (citations omitted); *Speiser, Krause & Madole P.C. v. Ortiz*, 271 F.3d 884,

886 (9th Cir. 2001) (citation omitted). Well-pleaded allegations regarding liability are deemed true upon default and findings as to damages are reviewed for clear error. *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002).

This Court reviews *de novo* the legal question "whether a default judgment is void because of lack of personal jurisdiction due to insufficient service of process," although "the district court's factual findings regarding jurisdiction are reviewed for clear error." *SEC v. Internet Solutions for Bus., Inc.*, 509 F.3d 1161, 1165 (9th Cir. 2007) (citations omitted). This appeal involves solely factual issues (most pointedly whether Montazeran was served at his "usual mailing address") and thus implicates only the clear error standard. The clear error standard is "significantly deferential," and the trial court's findings should be accepted unless there is a "definite and firm conviction that a mistake has been committed." *FTC v. Garvey*, 383 F.3d 891, 900 (9th Cir. 2004) (citing *N. Queen Inc. v. Kinnear*, 298 F.3d 1090, 1095 (9th Cir. 2002)). This Court may affirm on any ground supported by the record. *Eitel*, 782 F.2d at 1471 (citation omitted).

SUMMARY OF ARGUMENT

1. The district court properly declined to set aside the default and entered default judgment against Amir Montazeran. First, it correctly rejected Montazeran's argument that he was improperly served. California service law permits alternate "substituted service" – including leaving the summons and

complaint at a person's "usual mailing address" – if personal service is impossible after "reasonable diligence." The district court properly found that the FTC's repeated attempts at personal service constituted "reasonable diligence," and that a residence at which Montazeran admitted he had lived constituted his "usual mailing address." Montazeran presented no evidence that he no longer received his mail at that address. (Part I.A.)

Montazeran's other arguments fail. He cannot have been "wrongfully surprised" by the default, since he knew about the original complaint, his assets had been frozen, and companies he ran were subject to a receivership for months. He also knew by March 2014, when Mackay contacted the FTC about service, that the FTC had sued him and had served the concierge the previous month. Despite that knowledge, he subsequently failed to answer the Amended Complaint. The FTC violated no "ethical obligation" by failing to notify Mackay before seeking default in June 2014 because Mackay had told the FTC that he was *not* representing Montazeran at the time. (Part I.B.) The district court thus properly concluded that the default was due to Montazeran's culpable conduct, that the FTC would have been prejudiced if the default were set aside only a month before trial, and that Montazeran failed to present any meritorious defenses. (Part I.C.).

The district court also correctly entered a default judgment against Montazeran. In addition to the reasons for not setting aside the default, the court properly applied the remaining prongs of the governing *Eitel* test. (Part I.D.).

2. The district court also properly declined to set aside the default against Business Team and properly entered a default judgment against it. Business Team was culpable for the default because, even though it was properly served (and has never contended otherwise), it answered the complaint four months late and never responded to the FTC's discovery requests.

Business Team does not justify these failures. The illness of its nominal owner Mohammad Montazeran (Amir's father) is no excuse for several independent reasons: because the company was served weeks before Montazeran got sick; because Business Team, a corporate entity, has legal responsibilities distinct from its owner; and because substantial evidence showed that the elder Montazeran (a claimed dependent of the younger Montazeran) did not control Business Team in any event. Business Team is also flatly wrong that it and the FTC had an "implied understanding" that the FTC would not seek a default. FTC counsel made no such representation, had no indication when it sought the default that an attorney had entered an appearance on behalf of Business Team or that the company intended to defend itself, and had no confirmation that Business Team was represented by

counsel at the time. Indeed, the parties' counsel first spoke three weeks after the default was entered. (Part II.A.).

The district court also properly held that setting aside the default would prejudice the FTC and that Business Team had no meritorious defenses. (Parts II.B, II.C.). Finally, the district court properly entered a default judgment against Business Team. In addition to the reasons supporting not setting aside the default, the court correctly applied the remaining *Eitel* factors. (Part II.D.).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DECLINED TO SET ASIDE THE DEFAULT AND ENTERED DEFAULT JUDGMENT AGAINST AMIR MONTAZERAN

Appellant Montazeran challenges the district court's decision not to set aside the default entered against him[7] and its entry of a default judgment against him.[8] Montazeran shows no error in those decisions.

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[7] Fed. R. Civ. P. 55(c) allows a district court to set aside an entry of default for "good cause." In determining good cause, a district court should consider: (1) whether the defendant's culpable conduct led to the default; (2) whether the defaulting defendant lacks a meritorious defense; or (3) whether the plaintiff would be prejudiced if the default were set aside. *Franchise Holding II, LLC v. Huntington Rest. Grp., Inc.*, 375 F.3d 922, 926 (9th Cir. 2004) (citation omitted). The district court may deny the motion "if any of one of the three factors" is satisfied. *Id.* (citation omitted).

[8] A district court considers seven factors in determining whether to enter a default judgment: (1) the possibility of prejudice to plaintiff; (2) the merits of plaintiff's substantive claims; (3) the sufficiency of the complaint; (4) the sum of money at stake; (5) the possibility of a dispute concerning material facts; (6) whether the

A. Montazeran Was Served Properly

Montazeran's central argument is that he was not properly served with the summons and Amended Complaint in February 2014, and that the ensuing June 2014 default was "void," even though he indisputably knew about the summons and Amended Complaint in March 2014 and then took no steps to file an answer. Montazeran challenges the adequacy of service on the ground that in February 2014 he no longer lived at the apartment building where the FTC delivered the summons and Amended Complaint after trying and failing to track him down on several previous occasions. Br. at 4, 7-9 (citing ER171-72 [D.239]. That argument lacks merit.

Under Fed. R. Civ. P. 4(e)(1), a defendant may be served "by . . . following state law for serving a summons . . ." Under California law:

> If a copy of the summons and complaint cannot *with reasonable diligence* be personally delivered to the person to be served . . . a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, *or usual mailing address* other than a United States Postal Service post office box, in the presence of a competent member of the household or *a person apparently in charge of his or her . . . usual mailing address* other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the

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default was due to excusable neglect; and (7) the policy favoring a decision on the merits. *Eitel*, 782 F.2d at 1471-72 (citation omitted).

> summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

Cal. Civ. Proc. Code § 415.20(b) (emphasis added). California thus requires personal service on a defendant, *id*., § 416.90, but, if that proves fruitless, provides for substitute service upon a person in charge of the defendant's "usual mailing address."

Montazeran testified at his July 2013 deposition that he resided at the Marquee Park Place residence in Irvine, California, SER096 [D.251-1 at Tr. 180, lines 9-13]; SER098 [D.251-2 at 2 ¶3], and he stated in a June 2014 declaration that he resided there "[p]rior to December 2013." ER172 [D.239 at 2 ¶3]. The agency attempted service on Montazeran at the Marquee Park Place address three times and at a different address owned by Montazeran another three times in January 2014. SER125-128 [D.223 at ECF pp. 1-4]; SER123 [D.225-1 at 2 ¶3]. The district court correctly found (and Montazeran does not challenge) that the FTC was entitled to use substituted service because it attempted service with "reasonable diligence" under the California service statute. *See* ER48 [D.283 at 7]. "Two or three attempts to personally serve a defendant at a proper place ordinarily qualifies as 'reasonable diligence.'" *Bd. of Trs. of the Leland Stanford Junior Univ. v. Ham*, 216 Cal. App. 4th 330, 337, 156 Cal. Rptr. 893, 898 (2013) (citation omitted);

Bein v. Brechtel-Jochim Grp., Inc., 6 Cal. App. 4th 1387, 1391-92, 8 Cal. Rptr. 2d 351, 353 (1992) (citation omitted).

Thus, the central question presented is whether the Marquee Park Place address was Montazeran's "usual mailing address." Montazeran says it was not, claiming that he sublet his apartment and moved from his Marquee Park Place residence in December 2013, the month before the FTC attempted personal service. Br. at 7; ER172 [D.239 at 2 ¶3]. He does not, however, challenge the district court's factual finding that, even if he no longer *resided* at that location as of January 2014, "there is no indication that he no longer *received mail* there." ER48-49 [D.283 at 7-8] (emphasis added). The California service statute expressly distinguishes between a service recipient's "dwelling house," "usual place of abode," and "usual mailing address," allowing proper service on any of them. The statute thus recognizes that a service recipient's mailing address may not be where he lives. For example, service is properly made at a private post office box that is not affiliated with a residence. *See Hearn v. Howard*, 177 Cal. App. 4th 1193, 1201-03, 99 Cal. Rptr. 3d 642, 650-51 (2009); *Ellard v. Conway*, 94 Cal. App. 4th 540, 545-47, 114 Cal. Rptr. 2d 399, 402-03 (2001).

The district court correctly found no reason to believe that even if Montazeran no longer resided at the Marquee Park Place apartment it was not his mailing address. On Montazeran's motion to set aside the default, he bore the

burden to show that default should be vacated. *Franchise Holding*, 375 F.3d at 926; *see also Internet Solutions*, 509 F.3d at 1165-66 (defendant moving to vacate default judgment bears burden to show that service did not occur). At most, however, he showed that he sublet the apartment; he did not show that he no longer received mail there. As the court determined, "the subleasing agreement does not even exclude his presence from the premises." ER48-49 [D.283 at 7-8]. Indeed, the mailed copies of the summons and Amended Complaint were not returned by the Postal Service, which indicates they were delivered. SER123 [D.225-1 at 2 ¶3]; SER130 [D.223 at ECF p. 6]; SER106-107 [D.251-3 at ECF pp. 1-2 ¶¶3-4]. And Montazeran admits he learned less than a month later, in March 2014, that the concierge had been served. ER172 [D.239 at 2 ¶5-6].

Although the district court did not need to reach the matter, the record gives reason to doubt that Montazeran actually sublet his apartment to someone else at all. The purported "sublease agreement," ER174-75 [D.239 at ECF pp. 4-5],[9] identifies *Montazeran* as the "subtenant" who "agrees to take the premises." The agreement also incomprehensibly states that it takes effect "beginning December, 2014," but ends on March 1, 2014. On its own terms, the agreement is not binding without the

[9] Montazeran testified that he rented the Marquee Park Place apartment. SER096 [D.251-1 at Tr. 180, lines 9-15]. Thus, if he had in fact sublet the apartment, he would be the "sublessor" and the new tenant would be the "subtenant."

landlord's approval which is not provided in the document. *See id.*, ¶¶ 4, 5, 17. In any event, as the court noted, even if Montazeran was a "sublessor" nothing in the purported agreement prevented Montazeran from using the premises or receiving mail there. ER48-49 [D.283 at 7-8].[10]

B. Montazeran's Other Claims Lack Merit

Montazeran's claim that he was "wrongfully surprised" by the default, Br. at 8, is unfounded. He knew at his July 2013 deposition – nearly a year before the default – about the original complaint, that his assets had been frozen, and that other entities he controlled had been placed in receivership. Indeed, Montazeran knew by March 2014 that "he was being sued by the Federal Trade Commission" and that the FTC had served the concierge at the Marquee Park Place residence around February 26, 2014. He contacted Mackay "for assistance in this matter." ER171-172 [D.239 at 1-2 ¶¶2, 5, 6]; ER176 [D.240 at 1 ¶2]; *see also* Br. at 3-4. Thus, he could not have been surprised that default was entered when he failed to answer the Amended Complaint months after the deadline.

[10] Given Montazeran's actual knowledge of the ongoing litigation, if his mailing address had in fact changed, he should have provided a forwarding address. *Cf. Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 815 (9th Cir. 1985) (affirming service of complaint and finding defendant culpable where it failed to provide its current address to plaintiff and state licensing authority based on its regulatory obligation to do so).

Likewise without merit is Montazeran's argument that the FTC violated an "ethical obligation" by failing to notify Mackay before seeking the default. Br. at 7-8. The FTC had no such obligation because Mackay insisted that he was *not* Montazeran's lawyer at the time the FTC sought the default. Specifically, during the entire period prior to entry of default, Mackay steadfastly denied to FTC counsel that he represented Montazeran, that he could accept service on Montazeran's behalf, or that he was permitted to provide Montazeran's contact information to the FTC. SER099-100 [D.251-2 at 3-4 ¶5]; SER124 [D.225-1 at 3 ¶6]; ER177 [D.240 at 2 ¶6].

Montazeran similarly provides no evidence to support his charge, Br. at 8, that the FTC acted "wrongfully" in seeking the default. *Cf. Emp. Painters' Trust*, 480 F.3d at 1001 (requiring "clear and convincing" evidence of misconduct by opposing party to relieve party from judgment under Fed. R. Civ. P. 60(b)(3)) (citation omitted). To the contrary, Montazeran's own culpable conduct led to his default. Although he knew about the complaint and the underlying action, he seemingly refused to allow Mackay to represent him, accept service, or provide his whereabouts to the FTC. Such actions strongly suggest that he was intentionally avoiding service. *See Bein*, 6 Cal. App. 4th at 1393 ("a 'defendant will not be permitted to defeat service by rendering physical service impossible.'") (citation omitted).

C. The District Court Properly Declined To Set Aside Entry Of Default Against Montazeran

As noted above, Montazeran does not seriously challenge the district court's application of the three-part test applied to determine whether "good cause" exists under Fed. R. Civ. P. 55(c), *see* n.7, *supra,* for setting aside a default. The court's decision was proper. The first inquiry is whether Montazeran is "culpable" for his default. Because he failed to answer the Amended Complaint, he was. *See Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987) ("A defendant's conduct is culpable if he has received actual or constructive notice of the filing of the action and failed to answer") (citations omitted).

Second, the district court properly concluded that the FTC would have been prejudiced by setting aside the default "just a month before trial" was to begin against not only Montazeran but a large number of other defendants as well. ER49 [D.283 at 8]. The prejudice was particularly harmful because Montazeran also failed to respond to any of the FTC's discovery requests. His claim that setting aside the default would not prejudice the FTC by making discovery more difficult or "thwart[ing] the FTC's ability to obtain relief," Br. at 9, is thus meritless.

Finally, the district court properly concluded that Montazeran "has no discernible meritorious defense." ER49 [D.283 at 8]. His claim that he "never had the opportunity to find out what the case was all about," Br. at 8, is false – he knew

about the original complaint, receivership, and asset freeze by July 2013 and knew about service of the Amended Complaint by March 2014. By failing to respond to the FTC's requests for admissions, Montazeran admitted to facts necessary to support all the complaint allegations against him. SER001-043 [D.306-2]; Fed. R. Civ. P. 36(a)(3).

D. The District Court Properly Entered A Default Judgment Against Montazeran

Montazeran appeals from the district court's entry of a default judgment against him, but he offers no significant reason other than the alleged improper service why default judgment was improper. The district court correctly applied the *Eitel* test for entry of the default judgment. *See* n.8, *supra*.

Prejudice. The court found that the FTC would have been prejudiced (the first *Eitel* factor) in the absence of a default judgment because Montazeran had not answered the Amended Complaint or responded to any of the FTC's discovery requests, nor did he seek an extension of the trial date or a new discovery schedule. Without a default judgment, the district court found, the FTC would have had to commit time, resources, and personnel to prosecute a lawsuit in which Montazeran refused to participate. ER5 [D.323 at 5].

Merits of Claim. The district court also correctly determined that the FTC had "state[d] a claim" on which it may recover (the second and third *Eitel* factors).

ER5-6 [D.323 at 5-6] (citing *Pepsico, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002) (citing *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978))). Montazeran does not challenge that finding.

Balance of Award and Conduct. The fourth *Eitel* factor considers whether the size of the default judgment is proportionate "to the seriousness of [the] Defendant's conduct." *Pepsico*, 238 F. Supp. 2d at 1176. The district court awarded $12,471,944 in monetary relief against Montazeran, who controlled and knew about the unlawful mortgage modification scheme and is thus individually liable for the total consumer injury. *See* ER199-201 [D.176 at 11-13 ¶¶26, 29]; *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1103 (9th Cir. 1994). The dollar figure was supported by a sworn declaration from the FTC's forensic accountant who estimated the amount of consumer injury caused by Montazeran's scheme. SER110, 112, 114-117 [D.249 at 12 ¶4, 14 ¶¶8, 9 & Att. A, B, C]. The district court properly held that the amount of money at stake is commensurate with Montazeran's deceptive conduct. ER7 [D.323 at 7].

Dispute of Material Fact. The fifth *Eitel* factor asks whether there is a possibility of a dispute over material facts. This Court has established that upon entry of default, well-pleaded facts must be taken as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). The district court followed that

rule here, taking as true the facts set forth in the Amended Complaint. Because those facts were sufficient to support judgment, there was no possibility of a dispute of material fact. *See* ER7 [D.323 at 7] (citing *TeleVideo Sys.*, 826 F.2d at 917-18; *Pepsico*, 238 F. Supp. 2d at 1177). Further, by failing to respond to the FTC's requests for admissions, under Fed. R. Civ. P. 36(a)(3), Montazeran admitted all material facts necessary to find in favor of the FTC on Counts I–V of the Amended Complaint. SER001-043 [D.306-2]. Moreover, as shown above, Montazeran has no meritorious defenses.

Excusable Neglect. The district court properly found that the sixth *Eitel* factor – whether the default was due to excusable neglect – favored entry of a default judgment. Excusable neglect "largely overlaps with the issue of culpability," *Franchise Holding*, 375 F.3d at 927 (citation omitted), and as shown above, Montazeran is culpable for his default.

Policy Considerations. The final *Eitel* factor favors deciding cases on the merits, 782 F.2d at 1472, but here it is decidedly outweighed by the other factors. A decision on the merits is nearly impossible when a defendant fails to participate in a legal proceeding. *See Warner Bros. Enter. Inc. v. Caridi*, 346 F. Supp. 2d 1068, 1073 (C.D. Cal. 2004); *Pepsico*, 238 F. Supp. 2d at 1177. While Montazeran claims now that he was unable to present a defense, Br. at 8, he had ample opportunity to do so, but simply refused. That refusal not only prejudiced the FTC,

but (absent entry of the default judgment) would have delayed redress to his victims.

II. THE DISTRICT COURT CORRECTLY DECLINED TO SET ASIDE THE DEFAULT AND ENTERED DEFAULT JUDGMENT AGAINST BUSINESS TEAM

Business Team also challenges the district court's denial of its motion to set aside the default and its entry of a default judgment against it. Like Montazeran's, its arguments also fail.

A. Default Was Justified By Business Team's Culpable Conduct

The court acted well within its discretion in concluding that Business Team's own culpable conduct justified default. ER47 [D.283 at 6]. The FTC served its summons and Amended Complaint on Business Team through personal service on its registered agent. SER138 [D.199]; SER136 [D.215-1 at 2 ¶3]. *See* Fed. R. Civ. P. 4(h)(1)(B) (permitting service on registered agent of corporation). Business Team has never contested service. It nevertheless did not timely file an answer or request an extension of time to respond. SER136 [D.215-1 at 2 ¶¶4, 5]. With discovery, motion, and trial deadlines approaching rapidly, the FTC asked the court to enter a default three months after the answer was due. Business Team finally answered the complaint a month later, [D.230], and then waited another three weeks to ask the court to set aside the default. [D.248].

Business Team seeks to excuse its conduct on the ground that its alleged owner, Mohammad Montazeran, suffered a heart attack in February 2014 while in Iran that, Business Team says, required rehabilitation there and left him unable to hire counsel to represent Business Team until late April 2014. Br. at 4-5. That excuse is unavailing for several reasons. First, Business Team – not Mohammad Montazeran – failed to timely answer or litigate this matter, and it is a corporate entity separate from the elder Montazeran. The company's legal responsibilities are thus independent of Montazeran's. *See Smith v. Simmons*, 409 Fed. App'x 88, 90 (9th Cir. 2010).

Second, as the district court noted, it is questionable whether Mohammad Montazeran actually operated Business Team. The company does not dispute that Montazeran was listed as a dependent on his son Amir's tax returns. SER089-090, 093-094 [D.251-1 at Tr. 48-49, 52-53]. It is not credible that the real owner of a business with $300,000 in assets would have that status. Moreover, the elder Montazeran's presence did not seem necessary to Business Team's eventual defense of the lawsuit because, even while he was abroad, someone contacted attorney Mackay on Business Team's behalf by early April 2014. SER099-100, 104 [D.251-2 at 3-4 ¶5 & Att. D, p. 1].[11]

[11] Mackay told FTC counsel on April 4, 2014 that he had been told that Business Team would file an answer "by this coming week." *Id*. Thus, by early April,

Third, as the district court found, even if Mohammad Montazeran's health condition could have otherwise excused Business Team from responding to the Amended Complaint, Business Team was served several weeks before Montazeran's incapacitation and thus had ample time to answer and arrange for defense of the suit before he fell ill. *See* ER47 [D.283 at 6]. The elder Montazeran claimed that he was abroad at that time and then suffered the heart attack in February 2014 while he was in Iran. ER167 [D.248-2 at 2 ¶¶6-7]. Montazeran should not be excused for leaving the country before ensuring that someone was actively overseeing the legal affairs of the business – particularly once Business Team's assets were frozen and placed under the receivership months before it was served.

Business Team next asserts that it is not responsible for its default because it had an "implied understanding" with the FTC that the agency would not seek default. Br. at 5, 11 (citing ER163-165 [D.248-3]. That contention is baseless, not least because Business Team never raised it below and may not do so on appeal. *See Rotec Indus. Inc. v. Mitsubishi Corp.*, 348 F.3d 1116, 1119 (9th Cir. 2003).

The claim also fails on its merits. The only substantive communication between counsel for the FTC and anyone in contact with Business Team prior to

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Business Team knew it was a defendant in this case and had communicated with Mackay. It failed to explain why it waited another two months to file its answer.

entry of default came when Mackay told the FTC on April 4, 2014, that Business Team expected to file an answer "by this coming week." SER099-100, 104 [D.251-2 at 3-4 ¶5 & Att. D. p. 1]. It did not file until two months later. Contrary to Business Team's unsupported contention, there was simply no promise or "implied understanding" of any sort between attorneys Balster and Mackay based on any May 1, 2014 conversation (not the least because Mackay did not even represent Business Team at the time).

Nor did FTC counsel reach an "implied understanding" with Business Team's eventual attorney, Robert Walters. Walters left a message for Balster on May 2, 2014, which Balster returned the following business day (May 5, 2014). The two attorneys did not speak directly until May 27, 2014. SER100 [D.251-2 at 4 ¶6]. Indeed, when the FTC applied for an entry of default on May 5, 2014 (three months after Business Team's answer was due), it had no indication that an attorney had entered an appearance on behalf of Business Team or that Business Team intended to defend itself, and had no confirmation that Business Team was even represented by counsel until later that month. SER136-137 [D.215-1 at 2-3 ¶6]; SER100 [D.251-2 at 4 ¶6]. Further, Business Team did not file its answer until June 4, 2014, and then waited three more weeks to move to set the default aside. Nor did it seek a new scheduling order or trial date in the three months before entry

of the default judgment. There plainly was no "implied understanding" between the parties' counsel.

On that record, the district court properly held that Business Team's default was due to its own culpable conduct.[12]

B. Default Was Justified By Prejudice To The FTC

Business Team argues that the district court "made no finding" of prejudice, Br. at 12, but that is flatly wrong. The district court properly found that, given that the action had been pending for a year, setting aside the default "just a month before the case is set for trial" would be "highly prejudicial" to the FTC. ER47 [D.283 at 6]. That finding was well supported by Business Team's four-months-late answer, which was filed well after the deadline for written discovery to have been served. SER100 [D.251-2 at 4 ¶7]. Even after discovery deadlines were extended, Business Team failed to respond to any of the FTC's discovery requests. By the time the court denied its motion to set aside the default, ER42-49 [D.283], discovery had closed and trial – which was set to proceed not only against Business Team, but numerous other individuals and companies – was less than one month away.

[12] Business Team wrongly relies on an 85-year old state court case for the claim that failure to file an answer based on a reasonable mistake of law regarding validity of service is excusable. Br. at 10 (citing *Roehl v. The Texas Co.*, 107 Cal. App. 708, 714, 291 P. 262, 264-65 (1930)). Even if *Roehl* is still good law, it has no bearing here because Business Team does not claim that its failure to answer was due to a "reasonable mistake of law."

Business Team's refusal to litigate made discovery futile and, in the absence of default, would have rendered the FTC unable to obtain relief.

C. Business Team Had No Meritorious Defense

Finally, deposition testimony, Amir Montazeran's admissions, and Business Team's failure to produce any evidence in support of its defenses all showed that Business Team had no meritorious defense even if it had not defaulted. Business Team's defense was that its nominal owner, Mohammed Montazeran, had loaned money to his son Amir and that Amir allegedly repaid the ostensible loan by making payments on property owned by Business Team. Br. 5, 11-12 (citing ER166-168 [D.248-2]). In other words, the contention is that Business Team's assets were not the proceeds from Amir Montazeran's deceptive scheme, but the repayment of a personal loan. This argument is simply not credible. The purported loan amount – $150,000 – was only half of the $300,000 found in the Business Team account. *See* SER081 [D.306-7 at Tr. 47, lines 17-18]. And, as the district court concluded, "there is substantial evidence to suggest that Business Team is not solely operated by M. Montazeran," ER47 [D.283 at 6], but by Amir Montazeran.

Indeed, Amir Montazeran admitted at his deposition that funds in Business Team's accounts came from his unlawful mortgage modification scheme or from the sale of a house that was bought with funds from that scheme. SER080-086 [D.306-7 at Tr. 46-47, 49-50, 54-56]. Further, by failing to respond to the FTC's

requests for admissions, Amir conceded that Business Team received proceeds from the unlawful mortgage scheme, that he provided funds to Business Team without consideration, and that Business Team has no legitimate claim to those funds. SER009 [D.306-2 at 8 nos. 47, 48].

D. The District Court Properly Entered A Default Judgment Against Business Team

Business Team raises a smattering of passing arguments suggesting that the district court improperly entered a default judgment against it. In fact, the court applied the *Eitel* factors correctly. *See* n.8 *supra*.

Prejudice. The district court properly found that the FTC would have been prejudiced if no default judgment had been entered against Business Team for the same reasons that justified entry of default. ER5 [D.323 at 5]. It filed its answer four months late (even though it never contested service) and it never responded to the FTC's discovery requests. Its refusal to participate left no way for the FTC to litigate its claims or obtain relief other than through a default judgment. *See Pepsico*, 238 F. Supp. 2d at 1177.

Merits of Claim. The second and third *Eitel* factors, which involve the merits of the plaintiff's case, also justify a default judgment. The district court correctly held that Business Team was a proper relief defendant because it held proceeds from Amir Montazeran's unlawful scheme "in constructive trust for the benefit of

injured consumers, and will be unjustly enriched if it is not required to disgorge these funds." ER7 [D.323 at 7]. Business Team does not challenge that conclusion. A district court, sitting in equity, has the authority to "reach the property either in the hands of the original wrong-doer, or in the hands of any subsequent holder and to convey that property to the one who is truly and equitably entitled to the same." *FTC v. Network Servs. Depot, Inc*., 617 F.3d 1127, 1142 (9th Cir. 2010) (citation and internal quotes omitted).

Balance of Award and Conduct. The FTC sought a monetary judgment of $996,827.29 against relief defendant Business Team, reflecting the FTC's calculation of the amount of proceeds Business Team received from Amir Montazeran's deceptive scheme. *See* SER069-075 [D.306-6 & Att. A]. As the district court held, this sum of money at stake is commensurate with the gravity of Business Team's conduct. ER7 [D.323 at 7]. Business Team did not challenge the FTC's showing on this issue below and it does not do so now.

Dispute of Material Fact. The district court concluded correctly that the fifth *Eitel* factor – likelihood of disputed material facts – strongly favored the entry of judgment. ER7-8 [D.323 at 7-8]. As a result of Business Team's default, all well-pleaded facts in the Amended Complaint were taken as true. *TeleVideo*, 826 F.2d at 917-18. Further, Amir Montazeran testified at his deposition, and admitted facts under Fed. R. Civ. P. 36(a)(3), that supported a finding that Business Team

unlawfully received proceeds from Amir Montazeran's scheme. *See* SER009 [D.306-2 at 8 nos. 47, 48]; SER087-088, 090-093, 095 [D.251-1 at Tr. 46-47, 49-52, 54].

Business Team contends that there is a dispute of fact because Mohammed Montazeran and Business Team "had nothing to do with the matters involved in the complaint," but had "merely loaned money" to Amir Montazeran. Therefore, it says, monetary transfers from Amir to Business Team were legitimate loan repayments. Br. at 5, 11-12 (citing ER163-168 [D.248-2, D.248-3]).

That argument presents no likely dispute of material fact. As the district court concluded, uncontroverted evidence showed that Amir Montazeran played a substantial role in operating Business Team. ER8 [D.323 at 8]; ER47 [D.283 at 6]. Indeed, he testified at his deposition that the money in Business Team's accounts came from his own operations or from the sale of a house purchased with proceeds of those operations. SER087-088, 090-093, 095 [D.251-1 at Tr. 46-47, 49-52, 54]; SER085-086 [D.306-7 at Tr. 55-56].

Excusable Neglect. As shown above, Business Team's own culpability led to its default. The district court properly held that the default was not due to Business Team's excusable neglect. ER8 [D.323 at 8]; *see Franchise Holding*, 375 F.3d at 927. Business Team answered the complaint four months late even though it did not challenge service. SER138 [D.199]; SER136 [D.215-1 at 2 ¶¶3-5]. It failed to

respond to the FTC's discovery requests, SER054-060 [D.306-4]; SER061-068 [D.306-5], and even today provides no justification for that failure. *Cf. United States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (default judgment "appropriate" where corporation fails to retain counsel).

Policy Considerations. While the policy in favor of decisions on the merits weighs against entering a default judgment, a default judgment is appropriate where a defendant refuses to litigate. *Pepsico*, 238 F. Supp. 2d at 1177. As described above, Business Team filed its answer four months late, never responded to the FTC's discovery requests, and never sought a new trial date or scheduling order. While Business Team now claims it has a "complete defense," Br. at 12, it failed to litigate on the merits when it had the chance, and the district court considered and rejected its "nominal defenses." ER7-8 [D.323 at 7-8].[13]

This Court has emphasized that "there is a compelling interest in the finality of judgments which should not lightly be disregarded." *Pena*, 770 F.2d at 814 (quoting *Rodgers v. Watt*, 722 F.2d 456, 459 (9th Cir. 1983) (en banc)). Here, the court acted well within its discretion in entering default judgments against Montazeran and Business Team.

[13] Although both Montazeran and Business Team appeal from the district court's orders of equitable relief, neither makes an actual challenge to those orders.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's orders entering defaults, default judgments, and equitable relief against Montazeran and Business Team.

Respectfully submitted,

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STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, no other known cases in this Court are deemed related to this appeal.

Date: May 8, 2015

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), because it contains 8,936 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). I further certify that the brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced 14-point Times New Roman typeface using Microsoft Word 2010.

s/ *Michael D. Bergman*
MICHAEL D. BERGMAN

CERTIFICATE OF SERVICE

I certify that on May 8, 2015, I electronically filed the foregoing Answering Brief of appellee Federal Trade Commission and Supplemental Excerpts of Record with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the Appellate Electronic Case Files ("ECF") system. I certify further that all participants in this appeal are registered Appellate ECF system users and were served by the Appellate ECF system on May 8, 2015.

s/ *Michael D. Bergman*
MICHAEL D. BERGMAN