UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ASTLEY DAVY, et al.,

Plaintiffs,

v.

PARAGON COIN, INC., et al.,

Defendants.

Case No. 18-cv-00671-JSW

ORDER DENYING MOTION TO SET ASIDE DEFAULT AND GRANTING, IN PART, AND DENYING, IN PART, PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT AND REQUIRING SUPPLEMENTAL BRIEF AND PROPOSED JUDGMENT

Re: Dkt. Nos. 172, 175

This matter comes before the Court upon consideration of Plaintiffs' motion for default judgment against Defendants: Paragon Inc. ("Paragon"), Jessica VerSteeg ("VerSteeg"), Egor Lavrov ("Lavrov"), Eugene "Chuck" Bogorad ("Bogorad"), Alex Emelichev ("Emelichev") Gareth Rhodes ("Rhodes"), Black Rabbit Holdings ("Black Rabbit"), Vadym Kurylovich ("Kurylovich"), and Jayceon Tarrell Taylor AKA "The Game" ("Taylor"), each of whom are in default. The Court shall refer to these individuals and entities collectively as "Defendants."

On December 4, 2020, the date on which any opposition briefs to Plaintiffs' motion would have been due, Plaintiffs filed a certificate of service documenting the efforts they made to serve Defendants with the motion. (*See* Dkt. No. 173.) The Court did not receive any opposition briefs, and it concluded the motion could be resolved without oral argument. Accordingly, on January 4, 2021, the Court vacated the hearing on the motion for default judgment.

On January 8, 2021, Emelichev filed a motion to set aside the default entered against him.[1]

[1] Emelichev also moved to set aside a default judgment, in the event the Court entered judgment before it considered his motion. The Court will address Emelichev's request to vacate the default before it moves to Plaintiffs' motion for default judgment.

BACKGROUND

In addition to the facts set forth in the Second Amended Complaint ("SAC"), relevant facts giving rise to Plaintiffs' claims are set forth in the Court's Order granting, in part, and denying, in part, Plaintiffs' motion for class certification. (*See* Dkt. Nos. 102, 164.) The Court shall not repeat those facts here except as necessary to the analysis. Plaintiffs assert claims for: (1) violations of Sections 12(a)(1) of the Securities Act of 1933, 15 U.S.C. section 77*l*(a)(1); (2) violations of Section 12(a)(2) of the Securities Act, 15 U.S.C. section 77*l*(a)(2), against Paragon, Lavrov, VerSteeg, Black Rabbit Holdings, Bogorad, Emelichev, and Kalustov;[2] (3) violations of Section 15 of the Securities Act, 15 U.S.C. section 77o, against Lavrov, VerSteeg, and Black Rabbit.[3]

In support of the motion to set aside the entry of default, Emelichev attests that he "reside[s] in Spain and ha[s] done so for over 11 years except for a period of a couple months when I was in San Francisco working for Paragon." According to Emelichev his job duties consisted of talking to customers in on-line chats using scripted materials. He also attests he returned to Spain after Paragon ended its business activities. (Dkt. No. 175-1, Declaration of Alex Emelichev ("Emelichev Decl."), ¶¶ 2-4.) Emelichev attests that he was advised that Paragon's counsel would represent him in this matter. He claims that one of Paragon's lawyers later told him that Paragon had stopped paying the bills. According to Emelichev, he was told he would be required to pay a retainer for continued representation, which he could not afford. Emelichev does not state when this conversation occurred. (*Id.* ¶¶ 5-6.) Emelichev also attests he did not receive any further information about this case until Bogorad contacted him and said there was an important event happening in January. That prompted Emelichev to contact and retain counsel.

---

[2] It is not clear whether Plaintiffs intended to assert this claim against Kurylovich. Plaintiffs allege that Count II is asserted against the "Paragon Defendants." Although Kurylovich is not included in the Plaintiffs' definition of those Defendants, he is listed as one of Paragon's "Executive" Defendants. (*See* SAC ¶¶ 3, 40, and at 74:5-6.)

[3] Plaintiffs also asserted claims for violations of Sections 9(a)(1) and (a)(2) of the Securities Exchange Act of 1934 ("Exchange Act") against Paragon, Lavrov, VerSteeg, and Kurylovich and for violations of Section 20(a) of the Exchange Act against Lavrov and VerSteeg. However, in their motion for default judgment, they address only the first three claims, and the Court has limited its analysis accordingly.

(*Id.* ¶¶ 7-8.)

The Court will address additional facts as necessary in the analysis.

ANALYSIS

A. The Court Denies Emelichev's Motion to Set Aside Default.

Federal Rule of Civil Procedure 55(c) permits a court to set aside a default "for good cause." Emelichev bears the burden to show good cause, and the Court considers "(1) whether [he] engaged in culpable conduct that led to the default; (2) whether [he] had a meritorious defense; or (3) whether reopening the default judgment would prejudice" Plaintiffs. *Franchise Holding II, LLC v. Huntington Restaurant Groups, Inc.*, 375 F.3d 922, 926 (9th Cir. 2004) (internal citations and quotations omitted). The Court also takes into consideration that "[j]udgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits." *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

1. Culpability.

The first factor the Court considers is whether Emelichev's culpable conduct led to his default. A defendant's conduct may be considered "culpable" when they have notice of a lawsuit and intentionally fail to answer. *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 697 (9th Cir. 2001). By way of his declaration, Emelichev demonstrates that he was aware of this lawsuit. (Emelichev Decl., ¶ 5.) The record also shows that at the time default was entered he was not represented by counsel. Plaintiffs do not put forth any evidence that would cause the Court to discredit Emelichev's assertions that he is not a lawyer and lacks legal education, training, and experience.

In such circumstances, the Ninth Circuit has explained that "the term 'intentionally' means that a movant cannot be treated as culpable simply for having made a conscious choice not to answer; rather, to treat a failure to answer as culpable, the movant must have acted with bad faith, such as an 'intention to take advantage of the opposing party, interfere with judicial decisionmaking, or otherwise manipulate the legal process.'" *United States v. Signed Personal Check No. 1730 of Yubran S. Mesle*, 615 F.3d 1085, 1092 (9th Cir. 2010) ("*Mesle*") (quoting *TCI Grp.*, 244 F.3d at 697), & 1093 (noting that different standard could apply with a legally

sophisticated party because "an understanding of the consequences of [their] actions may be assumed, and with it, intentionality").

Emelichev attests that after he was advised by counsel that Paragon stopped paying its legal bills and was told that he would be required to pay a retainer he could not afford, he did not receive any further notices about this matter from counsel. He also attests he would not have received notices through his Paragon email because he stopped using that email when the business ended. Emelichev does not suggest that he made an effort to provide an alternate method to reach him. (*Id.* ¶¶ 6-7.) However, a review of the record suggests that the email address former counsel used to forward materials to him may have belonged to Lavrov. (*See, e.g.,* Dkt. Nos. 126, 160, 173 (showing email address for "e@paragoncoin.com" associated with Egor Lavrov).) Apart from his financial situation, Emelichev does not suggest there were personal circumstances that prevented him from seeking legal assistance after he was advised that Paragon's counsel would be withdrawing from the case. *Compare Livingston v. Art.com*, No. 13-cv-03748-JSC, 2015 WL 4319851, at *3-4 (N.D. Cal. Apr. 27, 2015) (concluding defendant's personal circumstances supported conclusion that failure to respond was not culpable), *report and recommendation adopted in relevant part*, 13-cv-03748-CRB, 2015 WL 4307808 (N.D. Cal. July 15, 2015).

Taking all of these facts into consideration, under the standards set forth in *Mesle,* the Court concludes that Emelichev has just met his burden to show that he was not culpable. Although the Court concludes this factor weighs slightly in his favor, the Court concludes the remaining factors weigh firmly against setting aside the entry of default.

2. Meritorious Defense.

The second factor to consider is whether Emelichev has shown he has a meritorious defense to Plaintiffs' claims, which is not a heavy burden. *Mesle*, 615 F.3d at 1094. "All that is necessary to satisfy the 'meritorious defense' requirement is to allege sufficient facts that, if true, would constitute a defense: 'the question whether the factual allegation [i]s true' is not to be determined by the court when it decides the motion to set aside the default." *Id.* (quoting *TCI Grp.*, 244 F.3d at 700.)

Emelichev argues that it "appears" he could raise lack of personal jurisdiction as a

defense.[4] Although he states he lives in Spain, he also attests that while he worked for Paragon, he was living in San Francisco. (Emelichev Decl., ¶¶ 2-4.) Emelichev's actions while working for Paragon form the basis of Plaintiffs' claims against him. The Court concludes he has not met his burden to show facts that, if true, would constitute a defense for lack of personal jurisdiction. *See also Securities Investor Protection Corp. v. Vigman*, 764 F.2d 1309, 1315-16 (9th Cir. 1985) ("*Vigman*").

Emelichev also appears to suggest that he cannot be deemed to have offered or sold PRG Tokens to Plaintiffs. The named Plaintiffs do not allege that they interacted directly with Emelichev. If the Court had not certified a class, that fact might prove material to the Court's analysis. *Compare In re Tezos Securities Litig.*, No. 17-cv-06779-RS, 2018 WL 4293341, at *9 (N.D. Cal. Aug. 7, 2018) (granting motion to dismiss in putative class action and finding that "[w]ithout averments that [plaintiff] was cognizant of, or influenced by [a defendant's] involvement in the Tezos project, [plaintiff's] statutory seller claim" against that defendant was not plausible) *with In re Charles Schwab Corp. Sec. Litig.*, No. 08-cv-01510-WHA, 2010 WL 1445445, at *5-*6 (N.D. Cal. Apr. 8, 2010) (class certified on Section 12(a)(2) claim; denying motion for summary judgment even though there was no evidence the defendants communicated with individual investors, where evidence showed the defendants reviewed and approved samples of marketing materials and advertisements used in connection with sale of securities).

The Court has certified a class, and Emelichev states that his "duties consisted of talking to customers in on-line chats." (Emelichev Decl., ¶ 3.) The Court concludes it is reasonable to infer

---

[4] Before counsel withdrew, Emelichev and other defendants filed a motion to dismiss and did not argue the Court lacked jurisdiction over them. (Dkt. No. 86.) He did, however, argue the allegations were not sufficient to show he was a "statutory seller." In support of his argument that he has a meritorious defense, Emelichev also refers to a motion filed by former defendant David Kalustov, who also argued he was not a statutory seller. Emelichev asks the Court to take judicial notice of Kalustov's motion and reply brief. The Court takes judicial notice of the existence of those filings and arguments raised, but it does not take judicial notice of disputed facts contained in those filings.

Kalustov also joined in arguments raised in a motion that was filed by Lavrov, Versteeg, and Paragon. However, the facts Emelichev proffers to support his alleged defenses to Plaintiffs' claims do not refer to the issues raised in that motion, which sought to compel arbitration or to dismiss based on a failure to show PRG Tokens were not securities.

that he interacted with some class members during the course of the ICO. The Court still must consider whether the conduct alleged amounts to solicitation, and it addresses that question in Section B.2, *infra*. For the reasons set forth in that section, the Court concludes Emelichev has not met his burden to show the allegations are insufficient to show he is a statutory seller. The Court concludes this factor also weighs against setting aside the entry of default.

3. Prejudice.

Finally, the Court considers the potential prejudice to the Plaintiffs. In this context, prejudice requires more than the need to litigate a case on its merits. "[T]he standard is whether plaintiff's ability to pursue his claim will be hindered." *TCI Grp.*, 244 F.3d at 701 (internal brackets omitted). Emelichev contends there is no prejudice because Plaintiffs "can have their defaults against the other defendants and dismiss" the claims against him. (Mot. at 4:25-26.) Emelichev also asserts he is "judgment proof and does not seem to be their principle [*sic*] target anyway." (*Id.* at 4:26-27.)

This case has been pending for over three years. During that time, Plaintiffs were able to obtain some limited discovery. However, even if Emelichev participates in the litigation, the fact that the other Defendants have not appeared supports the inference that Plaintiffs' ability to obtain relevant discovery could be hindered. *See, e.g., Beckwith v. Pool*, No. 13-cv-125 JCM (NJK), 2015 WL 1988788, at *11 (D. Nev. May 1, 2015) (finding prejudice where case had been litigated for three years without discovery from defaulting defendant). In addition, Emelichev offered no response to Plaintiffs' argument that the Court has certified a class and that the class has been provided notice of the litigation; nor does he address how that ruling and the provision of notice to the class would be impacted if the Court were to set aside the entry of default. *Cf. Livingston*, 2015 WL 4319851, at *5 (denying motion to set aside default prejudice could result by virtue of inconsistent judgments and finding such prejudice outweighed the remaining factors). The Court concludes that this factor also weighs against setting aside the entry of default.

Accordingly, for the foregoing reasons, the Court DENIES Emelichev's motion, and it turns to Plaintiffs' motion for default judgment.

//

B. The Court Grants, in Part, and Denies, in Part, Plaintiffs' Motion for Default Judgment.

Under Federal Rule of Civil Procedure 55(b)(2), once a defendant is in default, a court, in its discretion, may grant a motion for default judgment. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). "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." *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) (citations omitted). "However, a defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law." *DirecTV, Inc. v. Hyunh*, 503 F.3d 847, 854 (9th Cir. 2007) (internal quotations and citations omitted). When it determines whether to grant default judgment, the Court considers:

> (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; [and] (5) the possibility of a dispute concerning material facts[.]

Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

The *Eitel* factors overlap, in part, with the factors the Court considered in evaluating Emelichev's motion to set aside the entry of default. For example, *Eitel* requires the Court to consider the sufficiency of the complaint and the possibility of a dispute concerning material facts, factors that could impact the analysis of whether a defendant has a meritorious defense. In addition, the sixth *Eitel* factor requires the Court to consider "whether the default was due to excusable neglect," which is largely co-extensive with whether a defendant's culpable conduct caused the default. *Id.* at 1472; *see also TCI Grp.*, 244 F.3d at 697. Finally, *Eitel* requires the Court to consider "the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits." *Eitel*, 782 F.2d at 1472.

Because Plaintiffs' claims arise under federal law, the Court has subject matter jurisdiction. The Court also concludes the records show Defendants were served. (*See* Dkt. Nos. 17, 54, 76, 142, 145.) Based on its findings regarding Plaintiffs' claims for relief, the Court concludes the record is sufficient to show it would have personal jurisdiction over Paragon, Lavrov, VerSteeg,

Bogorad, Rhodes, and Emelichev. *See, e.g., Vigman*, 764 F.2d at 1315-16. The record suggests Taylor has a residence in California, and the Court concludes it could exercise jurisdiction over him. However, the record is less clear as to Black Rabbit and Kurylovich, and the Court DENIES, IN PART, Plaintiffs' motion on that basis and for additional reasons set forth below.

1. The possibility of prejudice to Plaintiffs.

Although Paragon and the Securities and Exchange Commission ("SEC") entered into an order relating to the Paragon ICO that provided for a claims process (the "SEC Paragon Order"), as the Court noted when it resolved Plaintiffs' motion for class certification, Plaintiffs have no reason to believe that any class members received refunds pursuant to the claims process. The Court also incorporates its reasoning set forth in Section A.3 and concludes this factor weighs in favor of granting Plaintiffs' motion.

2. Excusable Neglect.

With the exception of Emelichev, Defendants have not appeared to challenge the entry of default or default judgment. There is nothing in the record to suggest that their failure to respond to the SAC or any of the subsequent motions was the result of excusable neglect, and this *Eitel* factor weighs in favor of granting the motion. With respect to Emelichev, even if this factor weighed in his favor, the Court concludes the remaining factors weigh in favor of granting Plaintiffs' motion for default judgment.

3. The merits of the claims, the sufficiency of the complaint, and the possibility of a dispute of material facts.

Section 12(a)(1) "prohibits the offer or sale of any unregistered security in interstate commerce." *In re Tezos*, 2018 WL 4293341, at *8. Section 12(a)(2) creates liability against anyone who "offers or sells securities by means of a prospectus or oral communication containing material misrepresentations or omissions." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 535 (9th Cir. 1989); *see also* 15 U.S.C. § 77*l*(a)(2). "The term 'offer to sell', 'offer for sale', or 'offer' shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value." 15 U.S.C. § 77b(3). Finally,

> [e]very person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under sections 77k or 77*l* of this title, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

15 U.S.C. § 77*o*.

a. The Section 12 Claims.

Accepting Plaintiffs' well-pleaded allegations as true, and taking into consideration the SEC Paragon Order, the Court concludes the record is sufficient for Plaintiffs to show that the PRG Tokens are a "security" and that the PRG Tokens were offered or sold "by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omit[s] … a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77*l*(a)(2). Because the Defendants, with the exception of Emelichev have not appeared, it is unlikely that there would be a dispute of material facts on these claims. However, in light of Emelichev's argument that he could not be considered a statutory seller, the Court will provide a more detailed analysis of that element of Plaintiffs' claims under Section 12(a) for each Defendant in default.

An owner who passes title to an unregistered security for value may be held liable under Sections 12(a)(1) and (a)(2). *See Pinter v. Dahl*, 486 U.S. 622, 642 (1988). There is nothing in the record to suggest Paragon cannot be held liable as the entity who passed title to the PRG Tokens. Plaintiffs allege that even though Emelichev and other individual defendants may not have passed title to the PRG Tokens they are sellers. The section of the SAC that addresses this issue does not include Kurylovich, and the one paragraph that describes his involvement does not appear to relate to the Section 12 claims. (*See* SAC ¶¶ 40, 111, 226-268.) For this reason, the Court DENIES, IN PART, Plaintiffs' motion for default judgment, and it shall not enter a default judgment against Kurylovich.

In *Pinter,* the Supreme Court determined that an individual who does not transfer title to a security can be held liable for a violation of Section 12(a). The Court rejected the use of a "substantial factor" test to determine liability; instead, it held liability may be imposed on a "person who successfully solicits the purchase" of a security and who is "motivated at least in part by a desire to serve his own financial interests or those of the security owner[.]" *Id.* at 643-647.[5]

The Court reasoned

> the solicitation of a buyer is perhaps the most critical stage of the selling transaction. It is the first stage of a traditional securities sale to involve the buyer, and it is directed at producing the sale. In addition, brokers and other solicitors are well positioned to control the flow of information to a potential purchaser, and, in fact, such persons are the participants in the selling transaction who most often disseminate material information to investors[.] …
>
> The person who gratuitously urges another to make a particular investment decision is not, in any meaningful sense, requesting value in exchange for his suggestion or seeking the value the titleholder will obtain in exchange for the ultimate sale. The language and purpose of § 12(1) suggests that liability extends only to person who successfully solicits the purchase, *motivated at least in part by a desire to serve his own financial interests or those of the securities owner*. If had had such a motivation, it is fair to say that the buyer 'purchased' from him….

Pinter, 486 U.S. at 646-47 (emphasis added).

Thus, Plaintiffs "must allege that the [D]efendants did more than simply urge another to purchase a security; rather, [they] must show that the [D]efendants solicited purchase of the securities for their own financial gain" or for Paragon's gain. *In re Daou Systems*, 411 F.3d 1006, 1029 (9th Cir. 2005). An individual who is merely a "collateral participant[] in the ... transaction" cannot be held liable as a statutory seller. *Pinter*, 486 U.S. at 650 n.26; *see also In re Daou*, 411 F.3d at 1029 (requiring direct involvement "in the actual solicitation of a securities purchase") (internal quotation marks omitted). In addition, Section "12(1) imposes liability only on the buyer's immediate seller; remote purchasers are precluded from bringing actions against remote sellers. Thus, a buyer cannot recover against his seller's seller." *Pinter*, 486 U.S. at 644 n.21; *see also Lone Star Ladies Inv. Club v. Schlotzky's, Inc.*, 238 F.3d 363, 369-371 (5th Cir. 2001).

---

[5] In *Moore*, the Ninth Circuit applied that standard to the plaintiff's Section 12(a)(2) claim. 885 F.2d at 536.

The *Lone Star Ladies* case involved a firm commitment underwriting, *i.e.* where "all stocks are sold to underwriters under a firm commitment and the underwriters sell to the public[.]" *Lone Star Ladies*, 283 F.3d at 367. In general, with a firm commitment underwriting "the public cannot ordinarily hold the issuers liable under section 12, because the public does not purchase from the issuers. Rather, the public purchases from the underwriters, and suing the issuers is an attempt to 'recover against [the] seller's seller." *Id.* at 370 (quoting *Pinter*, 486 U.S. at 544 n.21). The court noted, however, that *Pinter* allowed for the possibility that in an "unusual case[] .. the issuer is sufficiently active in promoting the securities as to essentially become the vendor's agent." *Id.*; *see also Pinter*, 486 U.S. at 646 ("It has long been 'quite clear,' that when a broker acting as an agent of one of the principals to the transaction successfully solicits a purchase, he is a person from whom the buyer purchases within the meaning of § 12 and is therefore liable as a statutory seller."). The court then stated that because "[v]irtually all issuers routinely promote a new issue, if only in the form of preparing a prospectus and conducting a road show", something more would be required to show an issuer "went farther and became a vendor's agent." *Id.*[6]

"The Ninth Circuit has not yet elaborated on what facts constitute more than 'mere participation,' and district courts have adopted different approaches." *Pirani v. Slack Techs., Inc.*, 445 F. Supp. 3d 367, 383-84 (N.D. Cal. 2020) (citing Northern District split on issue).[7] However, "[s]oliciting" requires more than "urg[ing] another to make a securities purchase ... merely to assist the buyer" or "the giving of gratuitous advice, even strongly or enthusiastically." *Pinter*, 486 U.S. at 627. In *Pirani*, the court concluded the plaintiff, who purchased securities in a direct offering, sufficiently alleged that individual defendants were sellers where the plaintiffs alleged those defendants signed offering statements, solicited sales at an "Investor Day", and were

---

[6] Because the court determined that "this claim cannot be decided in this case and on these facts upon a Rule 12(b)(6) motion," it remanded to the district court, stating "the parties may bring the question again upon a properly developed record on a" motion for summary judgment. 283 F.3d at 370.

[7] Although the Ninth Circuit has not addressed the issue, other circuits have suggested that participation in road shows or signing a registration statement would not be sufficient. *See, e.g., Lone Star Ladies*, 238 F.3d at 370; *see also Craftmatic Sec. Litig. v. Kraftsow*, 890 F.2d 628, 636 (3rd Cir. 1989).

"financially motivated to solicit sales." *Id.* at 384; *see also In re Charles Schwab Corp. Sec. Litig.*, 257 F.R.D. 534, 549-50 (N.D. Cal. 2010) (similar); *In re Charles Schwab Corp. Sec. Litig.*, 2010 WL 1445445, at *5-*6 (similar).

In contrast, in *Vanguard Specialized Funds v. VEREIT Inc.*, the court concluded that the plaintiffs' allegations that a defendant who issued press releases and participated in conference calls with investors were not sufficient to allege liability as a "seller." No. CV-15-02157-PXH-ROS, 2016 WL 5858735, at *17 (D. Ariz. Oct. 3, 2016);. *see also In re CytRx Corp. Sec. Litig.*, No. CV141956GHKPJWX, 2015 WL 5031232, at *15 (C.D. Cal. July 13, 2015) (finding allegations of participation in road show insufficient); *In re Harmonic, Inc. Sec. Litig.*, No. 00-cv-02287-PJH, 2006 WL 3591148, at *13-*14 (finding allegations that individual defendants participated in drafting and signed or "ordered to be signed" prospectus without more to be insufficient to allege seller liability in case involving firm commitment underwriting).

Plaintiffs allege that VerSteeg was Paragon's "public face" and "was involved in every aspect of editing and revising" the White Paper that was used as part of the solicitation process. They also allege she as involved in every aspect of the design and content of Paragon's website and promotional materials and strategies and actively solicited investments in PRG Tokens from her twitter account. Plaintiffs allege that in addition to drafting and editing Paragon's promotional materials, Lavrov communicated directly with actual Paragon ICO investors. (*See* SAC ¶¶ 110, 232-242.) The Court concludes that Plaintiffs have sufficiently alleged that Lavrov and VerSteeg were sellers for purposes of the Section 12 claims.

Bogorad is alleged to be Paragon's Chief Strategy Officer, and Plaintiffs allege he directly solicited investments from actual PRG Token purchasers and allege that, among other actions, he marketed the Paragon ICO by negotiating and purchasing ad placements with companies that operate virtual currency related websites. (SAC ¶¶ 244-250.) Plaintiffs allege Emelichev was one of Paragon's Chief Business Officers for Europe, the Middle East, and the Africa markets and that he "directly or indirectly, and successfully, solicited investments from potential and actual PRG Token purchasers during the Paragon ICO," and they make similar allegations about Rhodes, who also allegedly communicated with PRG Token purchasers via Paragon's chat function. (SAC ¶¶

42, 252-254, 257-259.)

Plaintiffs also allege that Emelichev participated in editing and commenting on the White Paper, sent VerSteeg a draft investor presentation in August 2017 and sent Lavrov a draft of the White Paper, although they do not specify the exact nature of his contributions to the White Paper. (*See, e.g.,* SAC ¶¶ 42, 97-98, 110, 216-225, 253.) Plaintiffs also allege that Kalustov occasionally forwarded Emelichev questions from Paragon's chat function that Kalustov could not answer, but they do not provide details about those conversations. (*Id.* ¶¶ 42, 82, 84.)[8] In support of his motion, Emelichev attests his job duties at Paragon consisted of talking to customers in on-line chats and attests those discussions were general conversations using scripted materials. Like Plaintiffs, he does not provide details about the nature of those discussions. (Emelichev Decl., ¶ 3.) Notably, Emelichev does not suggest that any interactions he may have had regarding the Paragon IPO were "gratuitous" or unmotivated by a desire to serve Paragon's financial interests.

Plaintiffs allege that Taylor "used his celebrity status to promote Paragon and the Paragon ICO … by encouraging the public to visit the Paragon website, join a 'revolution' with Paragon, and purchase PRG Tokens in social media posts on Twitter and Instagram." (SAC ¶¶ 265-266 (quoting tweet stating "Let me welcome you to #Crypto with ParagonCoin.com @ParagonCoin").

Bogorad, Emelichev, and Rhodes are alleged to be officers of Paragon, rather than outside accountants or lawyers who merely provided professional services. *See, e.g., Pinter*, 486 U.S. at 651; *Moore*, 885 F.2d at 536- (dismissing claims against accountants and lawyers, reasoning they did no more than "perform[] professional services" in those capacities and did not play a role "in soliciting the purchases"). Taylor is allegedly a member of Paragon's advisory board. The Court is cognizant of the lack of guidance from the Ninth Circuit on what type of activity is necessary to show more than "mere participation" in a solicitation and of the split among district courts on this issue. However, the Court finds the facts regarding Bogorad, Emelichev, and Rhodes are

[8] Plaintiffs also allege that in September 2017, Emelichev exchanged emails with an investor who wanted a refund and that Emelichev offered that investor additional tokens. They do not allege that offer resulted in a sale. Instead, they allege that Lavrov directed Emelichev to "pay the investor back." (Id. ¶¶ 254-256.)

sufficient to show they had more than a "collateral" role in the solicitation of PRG Tokens and that the allegations of their conduct are sufficiently analogous to the defendants' conduct in *Pirani* to conclude that they can be held liable as sellers.

However, the Court is not persuaded the same is true for Taylor and concludes the allegations regarding his involvement are closer to a situation where an individual "urg[es] another to make a securities purchase ... merely to assist the buyer" or gives "gratuitous advice, even strongly or enthusiastically." *Pinter*, 486 U.S. at 627. Therefore, the Court concludes Plaintiffs have not met their burden to show Taylor could be considered a seller. The Court also concludes that the allegations are not sufficient to show Black Rabbit, which is alleged to be a silent investor, is a seller for purposes of the Section 12 claims. For that reason, the Court DENIES, IN PART, Plaintiffs' motion for default judgment, and it will not enter default judgment against Taylor and Black Rabbit on the Section 12 claims.

b. The Section 15 Claim.

In order "[t]o establish a prima facie case that the defendant was a controlling person, a plaintiff must show not only that the defendant had actual power or influence, but also that he was a culpable participant in the alleged illegal activity." *Durham v. Kelly*, 810 F.2d 1500, 1504 (9th Cir. 1987) (internal quotations and citations omitted). The Court concludes the allegations are sufficient to establish Lavrov and VerSteeg are liable as controlling persons. However, the Court concludes the allegations are not sufficient to show Black Rabbit had "actual power" or influence over any of the other named defendants. *Id.* Accordingly, for that reason, the Court DENIES, IN PART, Plaintiffs' motion for default judgment.

For the reasons set forth in this section, the Court concludes that the second, third, and fifth *Eitel* factors weigh in favor of granting Plaintiffs' motion for default judgment as to Lavrov, VerSteeg, Bogorad, Emelichev, and Rhodes.

4. The sum of money at stake.

This factor requires the Court to consider "the court must consider the amount of money at stake in relation to the seriousness of Defendant's conduct." *PepsiCo, Inc. v. California Sec. Cans,* 238 F. Supp. 2d 1172, 1176 (C.D. Cal. 2002). Plaintiffs, who allege they lost $10,000

(Holland) and $2,500 (Davy), seek damages for the class in the amount of $12,066,000. This amount is based on findings in the SEC Paragon Order, which also determined over 8,000 investors purchased PRG Tokens. The Court concludes that although the sum Plaintiffs seek is not trivial, it would not weigh against granting their motion. *Cf. United States v. Roof Guard Roofing Co.*, No. 17-cv-02592-NC, 2017 WL 6994215, at *3 (N.D. Cal. Dec. 14, 2017) (finding this factor weighed in favor of granting default judgment where "default judgment would ratify non-trivial financial liabilities, [but] the liabilities are determinable and well documented").

5. The preference for resolving cases on their merits.

There is a strong preference for resolving cases on their merits. For the reasons articulated regarding the potential prejudice to Plaintiffs if the Court set aside Emelichev's default, Emelichev's failure to meet his burden to show a meritorious defense to the claims, and the other Defendants' failure to act in the face of this motion, the Court finds this last *Eitel* factor weighs in favor of granting the motion.[9]

CONCLUSION

For the foregoing reasons, the Court DENIES Emelichev's motion to set aside the entry of default. The Court GRANTS, IN PART, AND DENIES, IN PART, Plaintiffs' motion for default judgment. Pursuant to Federal Rule of Civil Procedure 55(b)(2), Defendants Paragon Inc., Jessica VerSteeg, Egor Lavrov, Eugene "Chuck" Bogorad, Alex Emelichev, and Gareth Rhodes (hereinafter the "Defaulting Defendants"), are found jointly and severally liable for their violations of Sections 12(a)(1-2), and Versteeg and Lavrov are found jointly and severally liable for their violations 15(a) of the Securities Act of 1933 (15 U.S.C. § 77l(a) & 77o(a)).

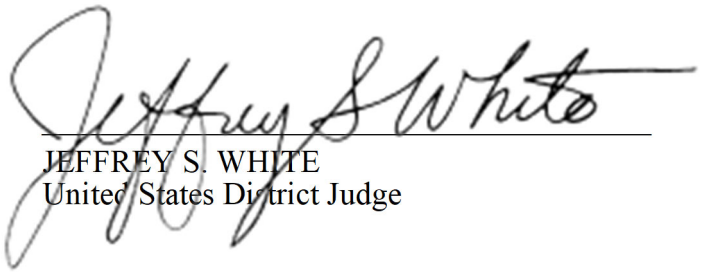
The Court finds the Defaulting Defendants are jointly and severally liable to Plaintiffs and the Class in the amount of $12,066,000 (the "Damages Figure"), plus post-judgment interest at the statutory rate. *See* 28 U.S.C. § 1961. Plaintiffs also requested pre-judgment interest. The Court ORDERS Plaintiffs to submit a supplemental brief supporting that request and the rate they claim would be appropriate by no later than April 30, 2021.

[9] As set forth in Emelichev's declaration, even if Bogorad was not aware of the nature of this motion, he apparently was aware that something significant was occurring and took no action.

In addition, by April 30, 2021, Plaintiffs shall notify the Court whether they intend to proceed with a renewed motion regarding the Defendants as to whom their motion was denied or whether they ask that the Court enter a final judgment, along with a proposed form of judgment. The Court will set a deadline for Plaintiffs to file a motion for attorney's fees and expenses and any future request to distribute recovered funds up to the amount of the Damages Figure once it receives that notice.

IT IS SO ORDERED.

Dated: March 26, 2021



JEFFREY S. WHITE
United States District Judge