

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division

_____)	
FEDERAL TRADE COMMISSION,)	
)	
Petitioner,)	
)	
v.)	Case No. 8:15-cv-02285-PWG
)	
THE MEDICI PORTFOLIO, LLC,)	
)	
Respondent.)	
)	
_____)	

**MOTION OF FEDERAL TRADE COMMISSION FOR ENTRY OF DEFAULT
JUDGMENT AND SUMMARY ENFORCEMENT OF FTC ORDER**

The Federal Trade Commission respectfully moves this Court to find Respondent, The Medici Portfolio, LLC (“Medici”), in default of the Court’s Order to Show Cause and to enforce the Commission’s order of September 15, 2014, directing Medici to produce documents and information in support of an FTC study. A memorandum in support thereof accompanies this motion.

On August 14, 2015, the FTC served Medici with a certified copy of the Court’s August 10, 2015, Order to Show Cause and copies of the FTC’s petition and supporting papers. Exhs. 2, 3. Medici, however, has not responded to the petition or contacted FTC counsel except to send an email stating that the documents had been “dropped in [the] mail.” Exh. 4. The FTC has not received the promised documents. Exh. 5. Moreover, Medici has utterly failed to respond to any of the repeated contacts from FTC counsel. *Id.*

For the foregoing reasons, the FTC respectfully requests that this Court (1) find Medici in default of its August 10, 2015, Order to Show Cause; (2) direct Medici to comply with the Commission's order of September 15, 2014 forthwith; and (3) direct Medici to deliver the materials to the FTC by courier or personal service. A proposed order accompanies this motion.

Respectfully submitted,

SUZANNE MUNCK
Deputy Director
Office of Policy Planning

NEAL HANNAN
Office of Policy Planning

Dated: September 28, 2015

JONATHAN E. NUECHTERLEIN
General Counsel

DAVID C. SHONKA
Principal Deputy General Counsel

JOEL MARCUS
Director of Litigation

LESLIE RICE MELMAN
Assistant General Counsel for Litigation

s/ Burke W. Kappler
BURKE W. KAPPLER
Assigned bar number 801057

BRADLEY GROSSMAN
Attorneys for Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
(202) 326-2043
(202) 326-2477 (fax)
bkappler@ftc.gov

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2015, I served the Federal Trade Commission's Motion for Entry of Default Judgment and Summary Enforcement of FTC Order upon Respondent The Medici Portfolio, LLC by e-mail and first-class mail to the following addresses:

E-mail:	Michael Connelly mike@mediciportfolio.com
First-class mail:	Michael Connelly Medici Portfolio, LLC 4601 Willard Avenue Chevy Chase, MD 20815
	Michael Connelly The Medici Portfolio, LLC c/o Robert Grant 8401 Connecticut Ave Chevy Chase, MD 20815-5803
	Michael Connelly The Medici Portfolio LLC c/o C T Corporation System 1999 Bryan St., Ste. 900 Dallas, TX 75201-3136
	Michael Connelly The Medici Portfolio, LLC 3301 W. Marshall Ave., Suite 303 Longview, TX 75604

s/ Burke W. Kappler
BURKE W. KAPPLER
Assigned bar number 801057

Attorney for Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
(202) 326-2043
(202) 326-2477 (fax)
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IN THE UNITED STATES DISTRICT COURT
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	v.)	Case No. 8:15-cv-02285-PWG
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**MEMORANDUM IN SUPPORT OF MOTION OF FEDERAL TRADE
COMMISSION FOR ENTRY OF DEFAULT JUDGMENT AND SUMMARY
ENFORCEMENT OF FTC ORDER**

I. Introduction

On August 5, 2015, the Federal Trade Commission filed a petition seeking enforcement of an FTC Order to File Special Report that directed respondent, The Medici Portfolio, LLC (“Medici”), to produce documents and information in response to an FTC study. The FTC sought court enforcement because Medici did not complete production of the required documents despite its repeated representations that they were ready to be transmitted to the FTC. In response to the Court’s Order to Show Cause, Medici represented again that the documents were “in [the] mail.” To date, however, the FTC has not received them. Further, Medici did not respond to the Court’s August 10, 2015 Order to Show Cause and Medici’s counsel has not even entered an appearance. For these reasons, the Court should find Medici in default of the Order to Show Cause and direct Medici to comply with the FTC’s

Order to File Special Report forthwith.

II. Background

As discussed in the FTC's enforcement petition and supporting memorandum, on September 15, 2015, the FTC issued an Order to File Special Report to Medici and others in connection with an industrywide study of patent assertion entities. Dkt. 1, ¶¶ 6-8. The Commission issued its Order to File Special Report under Section 6(b) of the FTC Act, 15 U.S.C. § 46(b), which authorizes the Commission to gather and compile information and to require businesses to submit special reports. Medici responded in part, but did not complete its production despite FTC staff's repeated offers (including an offer to send someone to pick up the materials) to facilitate compliance. *See generally* Dkts. 1, 1-1, 1-7.

On August 10, 2015, the Court issued an Order to Show Cause and calendared a hearing for October 19, 2015. Dkt. 3 at 1. The Court directed Medici to file a response or opposition by August 26, 2015. The Court also directed the FTC to serve a certified copy of the enforcement petition, the supporting papers, and the Order to Show Cause "by overnight express delivery service." *Id.* at 3. That same day, the FTC e-mailed Medici courtesy copies of the Court's Order to Show Cause, the enforcement petition, and the supporting memorandum and exhibits. Exh. 1. As required by the Order to Show Cause, the FTC used FedEx to serve Medici with a certified copy of the Court's Order and the enforcement papers. Medici received the service package at its Chevy Chase offices on Friday, August 14, 2015. Exhs. 2, 3.

On August 11, the FTC received an email from Michael Connelly, CEO of Medici Portfolio, with the caption: “Copied again and dropped in mail.” In his email, Mr. Connelly stated as follows:

Made two identical usb sticks. Keep them for national archives when this is all over.

Exh. 4. FTC counsel asked Mr. Connelly about the expected delivery date, but did not receive a response. *Id.* On August 24, 2015, FTC counsel received confirmation that no FTC offices had received the promised documents. FTC counsel then notified Mr. Connelly that his package had not arrived and asked – again – for details about the date and manner of delivery. *Id.* Medici did not respond to that inquiry either, and, to date, the promised mailing has not arrived. Exh. 5. Indeed, Medici has not responded to the Court’s Order to Show Cause and no attorney has entered an appearance on its behalf.

Given these facts, on September 4, 2015, the FTC filed an Application for Clerk’s Entry of Default pursuant to Fed. R. Civ. P. 55(a). Medici made no response to this Application. Exh. 5. Accordingly, on September 23, 2015, the Clerk of Court entered default against Medici.

III. Argument

A default judgment is the appropriate mechanism for this Court to address Medici’s utter failure to respond to the Commission’s repeated entreaties and the Court’s Order to Show Cause. Under Rule 55, the Clerk may enter a default when a party fails to plead or otherwise respond. Once default is entered, the Court may then enter default judgment as a matter of discretion in cases that do not involve a

sum certain, to be employed “when the ‘adversary process has been halted because of an essentially unresponsive party.’” *Disney Enters. v. Delane*, 446 F.Supp.2d 402, 405 (D.Md.2006); *SEC v. Lawbaugh*, 359 F.Supp.2d 418, 421 (D.Md.2005); *see also* Fed R. Civ. P. 55(b)(2); *Clancy v. Skyline Grill, LLC*, No. CIV. ELH-12-1598, 2012 WL 5409733, at *2 (D. Md. Nov. 5, 2012) *report and recommendation adopted*, No. CIV.A. ELH-12-1598, 2013 WL 625344 (D. Md. Feb. 19, 2013).

Here, the Court should enter default judgment in favor of the FTC and against Medici because the firm has been “essentially unresponsive.” For the same reason, the Court should also enforce the FTC’s Order and direct Medici to immediately comply and deliver the materials to the FTC, notwithstanding Medici’s claim that it has “[c]opied [the materials] again and dropped [them] in [the] mail.” Medici has ignored multiple follow-up inquiries about the status of the mailing and, weeks later, the FTC has yet to receive the promised information. Indeed, it was this exact pattern of unfulfilled promises to comply that led the FTC to file this enforcement proceeding in the first place.

IV. Conclusion

For all the forgoing reasons, the Commission respectfully requests that this Court (1) find Medici in default of its August 10, 2015, Order to Show Cause; (2) direct Medici to comply with the Commission’s order of September 15, 2014 forthwith; and (3) direct Medici to deliver the materials to the FTC by courier or personal service.

Respectfully submitted,

SUZANNE MUNCK
Deputy Director
Office of Policy Planning

NEAL HANNAN
Office of Policy Planning

Dated: September 28, 2015

JONATHAN E. NUECHTERLEIN
General Counsel

DAVID C. SHONKA
Principal Deputy General Counsel

JOEL MARCUS
Director of Litigation

LESLIE RICE MELMAN
Assistant General Counsel for Litigation

s/ Burke W. Kappler
BURKE W. KAPPLER
Assigned bar number 801057

BRADLEY GROSSMAN
Attorneys for Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
(202) 326-2043
(202) 326-2477 (fax)
bkappler@ftc.gov

EXHIBIT 1

From: [Kappler, Burke](#)
To: ["mike@mediciportfolio.com"](mailto:mike@mediciportfolio.com)
Cc: [Hannan, Neal C.](#); [Grossman, Bradley D.](#)
Subject: FTC v. The Medici Portfolio, LLC, 8:15-cv-02285-PWG
Date: Tuesday, August 11, 2015 4:13:00 PM
Attachments: [03_Order_to_Show_Cause.pdf](#)
[01_Petition_Exhs_Memo_of_Law.pdf](#)

Dear Mr. Connelly:

I'm writing to follow up on my message below. On Wednesday, August 5, the FTC filed a process enforcement action against The Medici Portfolio in the United States District Court for the District of Maryland (Greenbelt Division), and the case was assigned to Judge Paul Grimm. Today, Judge Grimm issued an order granting our request for a show cause hearing, establishing a hearing date, and setting a briefing schedule. In sum, any opposition from The Medici Portfolio is due on August 26, 2015, and the show cause hearing is set for October 19, 2015. For your convenience, I am attaching electronic copies of our filing and the signed show cause order. We will provide hard copies of these documents to you shortly, according to the terms of Judge Grimm's Order.

To be clear, we have commenced this litigation because we see no other option to obtain the information required by the Order to File Special Report issued to The Medici Portfolio, which you have represented has been collected and is ready for production. However, if you provide this information to us immediately, that may affect whether we need to proceed further. The information required should be produced according to the instructions in the Order to File Special Report and should be sent to Neal Hannan. Thank you very much.

Sincerely,

Burke W. Kappler

Attorney, Office of General Counsel | Federal Trade Commission | 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580
T: 202-326-2043 | F: 202-326-2477 | C: 703-819-3079 | bkappler@ftc.gov

From: Kappler, Burke
Sent: Tuesday, August 04, 2015 11:50 AM
To: 'mike@mediciportfolio.com'
Cc: Hannan, Neal C.; Grossman, Bradley D.
Subject: RE: Medici Portfolio

Dear Mr. Connelly:

I'm writing to follow up on a voice mail I just for you at your office. We have not received any information from you since our conversation on June 24, 2015. Accordingly, unless we receive the required information from you in the meantime, we will proceed to file process enforcement papers in the District of Maryland tomorrow morning. Please feel free to contact me if you have any questions. Thank you very much.

Sincerely,

Burke W. Kappler

Attorney, Office of General Counsel | Federal Trade Commission | 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580
T: 202-326-2043 | F: 202-326-2477 | C: 703-819-3079 | bkappler@ftc.gov

From: Kappler, Burke
Sent: Wednesday, June 24, 2015 5:14 PM
To: 'mike@mediciportfolio.com'
Cc: Hannan, Neal C.; Grossman, Bradley D.
Subject: Medici Portfolio

Dear Mr. Connelly:

This is to follow up on our call this afternoon regarding Medici Portfolio's failure to fully comply with the 6(b) Order and the resulting referral to the Office of General Counsel for enforcement. As we discussed, my contact information is below. If you do produce the required information in some form, please let me know so I can advise the Office of Policy Planning and my colleagues in OGC. Thank you very much.

Sincerely,

Burke W. Kappler

Attorney, Office of General Counsel | Federal Trade Commission | 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580
T: 202-326-2043 | F: 202-326-2477 | C: 703-819-3079 | bkappler@ftc.gov

EXHIBIT 2



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Burke W. Kappler
Attorney
Office of General Counsel

Direct Dial: 202-326-2043
Fax: 202-326-2477
E-mail: bkappler@ftc.gov

August 12, 2015

BY FEDEX

Michael Connelly
Medici Portfolio, LLC
4601 Willard Avenue
Chevy Chase, MD 20815
Tel: 1-800-961-5462

Re: Federal Trade Commission v. The Medici Portfolio, LLC, 8:15-cv-02285-PWG
(D. Md.)

Dear Mr. Connelly:

Per the Order issued by Judge Grimm on August 11, 2015, I am hereby serving upon you by overnight express delivery service a certified copy of the Order and copies of the petition and memorandum of law we filed in the above-captioned case.

Sincerely,

/s Burke W. Kappler
Attorney, Office of General Counsel

Enclosures


EXHIBIT 3

Kappler, Burke

From: trackingupdates@fedex.com
Sent: Friday, August 14, 2015 11:09 AM
To: Kappler, Burke
Subject: FedEx Shipment 774267965112 Delivered

Your package has been delivered

Tracking # 774267965112

Ship date: Wed, 8/12/15		Delivery date: Fri, 8/14/15 10:30 am
B. Kappler FTC WASHINGTON, DC 20580 US		Michael Connelly MEDICI PORTFOLIO LLC 4601 Willard Ave. CHEVY CHASE, MD 20815 US

Personalized Message

MEDICI PORT.

Shipment Facts


Our records indicate that the following package has been delivered.

Tracking number:	774267965112
Status:	Delivered: 08/14/2015 10:30 AM Signed for By: D.RAUU
Purchase order number:	0721
Reference:	P072104
Signed for by:	D.RAUU
Delivery location:	CHEVY CHASE, MD
Delivered to:	Mailroom
Service type:	FedEx Priority Overnight
Packaging type:	FedEx Pak
Number of pieces:	1
Weight:	0.00 lb.
Special handling/Services:	Deliver Weekday

This tracking update has been requested by:



Company name: FTC
Name: B. Kappler
Email: tlewis@ftc.gov

 Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 10:08 AM CDT on 08/14/2015.

To learn more about FedEx Express, please go to fedex.com.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above, or go to fedex.com.

This tracking update has been sent to you by FedEx on the behalf of the Requestor noted above. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and terms of use, go to fedex.com fedex.com.

Thank you for your business.

EXHIBIT 4

Kappler, Burke

From: Kappler, Burke
Sent: Monday, August 24, 2015 3:34 PM
To: 'Michael Connelly'
Cc: Grossman, Bradley D.; Hannan, Neal C.
Subject: RE: Copied again and dropped in mail

Dear Mr. Connelly:

I am writing to let you know that we have not received any mailing from you to date. We have been checking our mailroom periodically, including today, and have no record of a package from you. Can you confirm when and how you sent the materials?

At this point, without the documents, we see no reason not to continue with this proceeding.

Sincerely,

Burke W. Kappler
Attorney, Office of General Counsel | Federal Trade Commission | 600 Pennsylvania Avenue, N.W., Washington, D.C.
20580
T: 202-326-2043 | F: 202-326-2477 | C: 703-819-3079 | bkappler@ftc.gov

-----Original Message-----

From: Kappler, Burke
Sent: Wednesday, August 12, 2015 1:05 PM
To: 'Michael Connelly'
Cc: Grossman, Bradley D.; Hannan, Neal C.
Subject: RE: Copied again and dropped in mail

Thanks for letting me know. We'll review them when they arrive and be in touch afterwards. Is there an expected delivery date?

Burke W. Kappler
Attorney, Office of General Counsel | Federal Trade Commission | 600 Pennsylvania Avenue, N.W., Washington, D.C.
20580
T: 202-326-2043 | F: 202-326-2477 | C: 703-819-3079 | bkappler@ftc.gov

-----Original Message-----

From: Michael Connelly [<mailto:mike@mediciportfolio.com>]
Sent: Tuesday, August 11, 2015 4:49 PM
To: Kappler, Burke
Subject: Copied again and dropped in mail

Made two identical usb sticks. Keep them for national archives when this is all over.


the requested documents, they should be sent to Neal Hannan, the responsible FTC staff attorney. I sent this e-mail to "mike@mediciportfolio.com," an e-mail address previously used by Michael Connelly, CEO of Medici, in communications with FTC staff.

4. Mr. Connelly's responded that same day from the "mike@mediciportfolio.com" address with an e-mail captioned "Copied again and dropped in mail." In that message, Mr. Connelly stated he had copied the information to electronic media and mailed it. I responded and asked Mr. Connelly to tell me when the mailing would be delivered, but he did not respond.
5. On August 12, 2015, I sent a certified copy of the Order to Show Cause and the FTC's pleadings to Medici's office in Chevy Chase, Maryland, by FedEx delivery service. This package was received on August 14, 2015.
6. To date, the Commission has not received the materials referenced in Mr. Connelly's e-mail or any other communication from Mr. Connelly or Medici.
7. On September 4, 2015, the FTC filed its Application for Clerk's Entry of Default. I e-mailed a courtesy copy of these pleadings to the same "mike@mediciportfolio.com" e-mail address. I sent a hard copy of these pleadings to the Chevy Chase office address by FedEx, but FedEx was unable to deliver them. Accordingly, I sent a hard copy to the same address by first-class mail. Dkt. 6. I also sent hard copies of these pleadings by FedEx to three other addresses for Medici – an office in Texas, an agent in Maryland,

and an agent in Texas. Finally, I called and left messages for Mr. Connelly at his office telephone on September 11, 2015, and at a second number that appears to be a cell phone on September 17, 2015. I have received no response from Medici to any of these communications.

8. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 28, 2015



BURKE W. KAPPLER
Assigned bar number 801057

Attorney for Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
(202) 326-2043
(202) 326-2477 (fax)
bkappler@ftc.gov

IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF MARYLAND
Greenbelt Division

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FEDERAL TRADE COMMISSION,)	
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v.)	Case No. 8:15-cv-02285-PWG
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THE MEDICI PORTFOLIO, LLC,)	
	Respondent.)	
)	
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[PROPOSED] ORDER

Pursuant to the authority conferred by Sections 6(b) and 9 of the Federal Trade Commission Act, 15 U.S.C. §§ 46(b), 49, Petitioner, the Federal Trade Commission, has invoked the aid of this Court for an order requiring Respondent, The Medici Portfolio, LLC, to comply in full with an Order to File Special Report issued to the firm in the aid of an investigative study being conducted by the Commission.

On August 10, 2015, this Court entered an Order setting a hearing on the FTC’s petition and providing a deadline of August 26, 2015, by which Respondent could file papers in opposition. Respondent did not file any opposition to the FTC’s petition. Nor has any attorney entered an appearance on behalf of Respondent in this matter, despite the fact that Respondent was served with notice by the FTC according to the terms of the August 10, 2015, Order.

After considering these facts and the papers of record, the Court has determined that the inquiry is within the authority of the Federal Trade Commission, that the documents and information requested are reasonably relevant to the inquiry, and that Respondent has offered no valid objection for their failure to comply with the Commission's investigative order. Because the Court is of the opinion that the relief sought by the Commission should be granted, and because Respondent has not responded or objected to the Commission's petition in any form, it is by this Court hereby

ORDERED that Respondent has defaulted in this matter;

IT IS FURTHER ORDERED that default judgment be entered for Petitioner Federal Trade Commission pursuant to Fed. R. Civ. P. 55(b)(2); and

IT IS FURTHER ORDERED that Respondent is, and hereby is, commanded to deliver by personal service, courier, or messenger to the Federal Trade Commission within 24 hours of receipt of this Order all documents and information responsive to the Federal Trade Commission's September 15, 2014, Order to File Special Report, *provided, however*, that Respondent need not produce copies of documents and information already received by the FTC in response to the Order to File Special Report, as indicated by the FTC in its petition to enforce compulsory process, Dkt. Nos. 1, ¶¶ 10, 13; 1-1, ¶¶ 14, 18; and 1-7, at 6-7.

SO ORDERED:

United States District Judge

Dated: _____, Greenbelt, MD.