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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Federal Trade Commission,
10 Plaintiff,

11 v.

12 James D Noland, Jr., et al.,
13 Defendants.

14 Federal Trade Commission,
15 Plaintiff,

16 v.

17 Netforce Seminars, *et al.*,
18 Defendants.

No. CV-20-00047-PHX-DWL

ORDER

No. CV-00-2260-PHX-DWL

19 Plaintiff Federal Trade Commission (“FTC”) moves the Court to modify the
20 briefing schedule in in the above-captioned actions. For the reasons stated below, the
21 motion is granted.

22 **BACKGROUND**

23 I. The 2000 And 2020 Actions

24 In 2000, the FTC filed a complaint that charged Jay Noland with operating a multi-
25 level marketing business called “Netforce Seminars” as an illegal pyramid scheme. *FTC*
26 *v. Netforce Seminars*, 2:00-cv-002260 (D. Ariz. Nov. 29, 2000), Doc. 1 [hereinafter,
27 “*Netforce Seminars*”]. In 2002, *Netforce Seminars* resolved with the issuance of a
28 permanent injunction. *Id.*, Doc. 66. Among other things, the injunction “permanently

1 restrained and enjoined” Noland from (1) “engaging, participating or assisting in any
2 manner or capacity whatsoever . . . in any prohibited marketing scheme,” which included
3 “a pyramid sales scheme,” and (2) “making . . . any false or misleading statement or
4 misrepresentation of material fact” “in connection with . . . any multi-level marketing
5 program.” *Id.*, Doc. 66 at 2-4. Although Noland was the only individual specified by name
6 in the permanent injunction, it also applied to Noland’s “agents, servants, employees, and
7 those persons in active concert or participation with [Noland] who receive actual notice of
8 this Order by personal service or otherwise.” *Id.*, Doc. 66 at 3-4.

9 Nearly two decades later, in 2020, the FTC filed a new complaint against Noland.
10 *FTC v. Noland*, 2:20-cv-00047 (D. Ariz. Jan. 8, 2020) (Doc. 3) [hereinafter, “*Noland*”].
11 This complaint charges Noland and several of his business associates, including Scott
12 Harris and Thomas Sacca, with operating a multi-level marketing business called Success
13 By Health (“SBH”) as an illegal pyramid scheme. (*Id.*; see also Doc. 205 [Second
14 Amended Complaint].) In February 2020, following an evidentiary hearing (Docs. 86,
15 105), the Court granted the FTC’s motion for a preliminary injunction (Doc. 106). Among
16 other things, the Court concluded that the FTC had demonstrated a likelihood of success
17 on its claim that Noland, Harris, and Sacca were operating SBH as an illegal pyramid
18 scheme (*id.* at 10-20) and had also demonstrated a likelihood of success on its claim that
19 Noland, Harris, and Sacca had made false statements in connection with their operation of
20 SBH (*id.* at 20-25).

21 Accordingly, the FTC filed a pair of motions in *Netforce Seminars* seeking to order
22 Noland, Harris, and Sacca to show cause why they shouldn’t be held in contempt for
23 violating the permanent injunction that was issued in that action. *Netforce Seminars*, Docs.
24 78, 91. On July 6, 2020, after briefing from the parties, *id.* Docs. 82, 84, 98-100, the Court
25 concluded that it was “premature to hold a full-blown contempt hearing” at that time. *Id.*
26 Doc. 101 at 3. The Court reasoned that in order to obtain contempt sanctions, “the FTC
27 must not only succeed on its allegations in [*Noland*] but prove those allegations by clear-
28 and-convincing evidence,” so in light of Noland, Harris, and Sacca’s continued dispute of

1 those allegations, “it ma[de] sense—both as a matter of fairness to the defendants and as a
2 matter of judicial efficiency—to resolve the issue of civil contempt” in *Netforce Seminars*
3 “after the Court addresses the merits of the FTC’s request for a permanent injunction” in
4 *Noland. Id.*

5 The *Noland* case has now reached the dispositive motions stage, and the FTC has
6 filed a motion for summary judgment as to liability. (Docs. 211, 285.)

7 II. AMG Capital And The FTC’s Motion To Modify The Briefing Schedule

8 As the parties are well aware, a case pending before the Supreme Court, *AMG*
9 *Capital Management, LLC v. FTC*, No. 19-508, may affect the scope of remedies available
10 to the FTC should it prevail in *Noland*. (See generally Doc. 242.) The Supreme Court has
11 heard oral argument but has not yet issued an opinion in that case.

12 Given the pendency of *AMG Capital* and the overlapping issues in *Noland* and
13 *Netforce Seminars*, the FTC now moves to modify the briefing schedule in each action.
14 (Doc. 309.)¹ Specifically, the FTC requests leave for the parties to file motions for
15 summary judgment as to monetary remedies (“Remedies Motions”) in *Noland* and a
16 “Motion for Entry of Contempt Judgment and Imposition of Compensatory Sanctions”
17 (“Contempt Motion”) in *Netforce Seminars* within 30 days of the Supreme Court’s ruling
18 in *AMG Capital*. (*Id.* at 1-2.)

19 **DISCUSSION**

20 I. Noland Remedies Motions

21 The FTC argues that because *AMG Capital* will “clarify the extent of the FTC’s
22 authority to seek monetary relief,” briefing the issue of monetary remedies in its earlier
23 motion for summary judgment on liability would have been a waste of time and resources.
24 (*Id.* at 2-3 ¶¶ 4-6.) Nevertheless, the FTC argues, “it would be a poor use of the parties’
25 and the Court’s time to skip summary judgment briefing as to monetary relief” because
26 there is little factual dispute on the issue—the only uncertainty, according to the FTC, is
27 “the law that will apply.” (*Id.* at 3 ¶ 7.) The FTC therefore argues that “good cause” exists

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¹ The FTC’s motion in *Netforce Seminars* was filed at Doc. 102.

1 under Federal Rule of Civil Procedure 16(b)(4) to modify the briefing schedule in *Noland*
2 (in which the dispositive motions deadline of March 12, 2021 has expired) to allow any
3 Remedies Motions to be filed within 30 days of the *AMG Capital* decision. (*Id.* at 3-4 ¶¶ 8-
4 9.)

5 Noland, Harris, Sacca, and Lina Noland (together, the “Individual Defendants”)
6 respond that the FTC’s motion “is premature and prejudicial.” (Doc. 315 at 1.) They
7 contend the motion “is premature because it presupposes the FTC will prevail” and
8 “prejudicial because it forces the individual defendants to guess what the FTC considers
9 the harm the FTC claims to want to redress is.” (*Id.*) They assert they “should not have to
10 wait for the Supreme Court’s decision in *AMG Capital* to find out” what the FTC’s theory
11 of consumer harm is. (*Id.* at 2.) The FTC replies that it is commonplace for courts to allow
12 parties to file separate summary judgment motions on liability and remedies. (Doc. 317 at
13 2.) The FTC also argues that the Individual Defendants have no reason to be “in the dark”
14 about the relief it seeks or the harm it alleges because the FTC has repeatedly stated on the
15 record that “it seeks restitution equal to Defendants’ net revenues,” has provided specific
16 amounts for this figure in its MIDP responses, and briefed the issue of consumer harm in
17 its motion for summary judgment as to liability. (*Id.* at 2-3; Doc. 317-1; *see also* Doc. 285
18 at 21-23.)

19 Rule 16(b)(4) allows the court to modify its scheduling order “only for good cause.”
20 This “‘good cause’ standard primarily considers the diligence of the party seeking the
21 amendment.” *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th
22 Cir. 2013). The court may also “take into account any prejudice to the party opposing
23 modification” but focuses primarily “upon the moving party’s reasons for seeking
24 modification.” *Id.* Where the modification motion comes late in the proceedings and could
25 have been brought earlier, the court may properly deny it, but may also grant it “based on
26 an overall evaluation of the rights of the parties, the ends of justice, and judicial economy.”
27 *United States v. Dang*, 488 F.3d 1135, 1142-43 (9th Cir. 2007) (cleaned up).

28 Here, although the FTC could have moved to modify the briefing schedule earlier

1 in the proceedings, the proposed modification serves the rights of the parties, justice, and
2 judicial economy. The parties have long been aware of the potentially significant effects
3 of *AMG Capital* on the availability of monetary remedies in the *Noland* action. (*See*
4 *generally* Docs. 220, 227-28, 230, 242.) It will serve all parties’ interests, as well as judicial
5 economy, to brief that issue after *AMG Capital* is decided.

6 The Court is not persuaded that modifying the briefing schedule would prejudice
7 the Individual Defendants. The Individual Defendants’ only argument regarding prejudice
8 is that they are “left in the dark as to what the harm (the logical predicate of a violation)
9 the FTC seeks to redress is.” (Doc. 315 at 1.) But the FTC’s motion for summary judgment
10 on liability includes two-and-a-half pages of briefing on consumer harm. (Doc. 285 at 21-
11 23.) Further, in its MIDP responses and supplemental responses, the FTC has repeatedly
12 informed the Individual Defendants that it “seeks equitable monetary relief from all
13 Defendants, equal to Defendants’ revenues obtained from consumers,” and has provided
14 updated amounts and details for its estimated figures over the course of discovery. (Doc.
15 317-1 at 6, 11, 17-20.) The Court therefore concludes that the Individual Defendants have
16 no reason to be unfairly surprised about the harm the FTC seeks to remedy and would not
17 otherwise be prejudiced by the revised briefing schedule.

18 II. Contempt Motion

19 In a previous order in *Netforce Seminars* (Doc. 101 at 3), the Court concluded that
20 the issue of civil contempt should be resolved “after the Court addresses the merits of the
21 FTC’s request for a permanent injunction” in *Noland*. Nevertheless, the FTC now argues
22 that whether *Noland*, *Harris*, and *Sacca* are found in contempt should be resolved *before*
23 the resolution of the FTC’s request for a permanent injunction in *Noland*, because whether
24 the three men violated the *Netforce Seminars* permanent injunction “may be relevant” in
25 determining whether to impose “strong injunctive relief against them” in *Noland*. (Doc.
26 309 at 6 ¶ 15.) The FTC also wishes to resolve the issue of contempt “without the need for
27 an evidentiary hearing.” (*Id.* at 5-6 ¶¶ 13-14.) Thus, the FTC seeks leave “to submit a
28 motion for entry of civil contempt and compensatory contempt sanctions based on the lack

1 of any disputed issue of material fact in [*Netforce Seminars*]” within 30 days of the decision
2 in *AMG Capital*, just like the Remedies Motions. (Doc. 309 at 7 ¶ 16.) The Individual
3 Defendants do not respond to the FTC’s proposed schedule for the Contempt Motion.

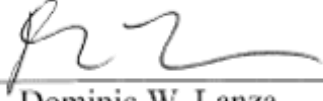
4 The Court concludes that good cause exists to allow the FTC to file the Contempt
5 Motion on the proposed schedule. The Court does not prejudge, however, whether an
6 evidentiary hearing will ultimately be necessary for the FTC to meet its burden to show
7 civil contempt by clear and convincing evidence.² Additionally, this grant of permission
8 for the FTC to file its civil contempt motion earlier than previously contemplated does not
9 necessarily mean the Court will *rule* on that motion before it rules on any pending
10 dispositive motions in *Noland*—the Court will reevaluate the proper decisional sequence
11 after the motions are briefed and *AMG Capital* has been decided.

12 Accordingly,

13 **IT IS ORDERED** that the FTC’s motion for a modified briefing schedule (*Noland*
14 Doc. 309, *Netforce Seminars* Doc. 102) is **granted**.

15 **IT IS FURTHER ORDERED** that the parties may file motions for summary
16 judgment as to remedies in *FTC v. Noland*, 2:20-cv-00047, within 30 days of the issuance
17 of an opinion in *AMG Capital Management, LLC v. FTC*, 19-508, and that the FTC may
18 file a motion for entry of civil contempt and compensatory contempt sanctions in *FTC v.*
19 *Netforce Seminars*, 2:00-cv-002260, within 30 days of the issuance of an opinion in *AMG*
20 *Capital Management, LLC v. FTC*, 19-508.

21 Dated this 19th day of April, 2021.

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24 _____
25 Dominic W. Lanza
26 United States District Judge

27 ² See, e.g., *FTC v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999) (“The
28 standard for finding a party in civil contempt is well settled: The moving party has the
burden of showing by clear and convincing evidence that the contemnors violated a specific
and definite order of the court. The burden then shifts to the contemnors to demonstrate
why they were unable to comply.”) (internal quotation marks omitted).