

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 12-cv-01306-REB-KLM

SALBA CORP., N.A., a Canadian corporation,
SALBA SMART NATURALS PRODUCTS, a Colorado limited liability company,
WILLIAM A. RALSTON, and
RICHARD L. RALSON,

Plaintiffs,

v.

X FACTOR HOLDINGS, LLC, an inactive Florida limited liability company, and
ANCIENT NATURALS, LLC, a Florida limited liability company,
Defendants and Counter-Claimants, and
MITCHELL A. PROPSTER, a resident of the State of Florida,
CORE NATURALS, LLC, a Florida limited liability company, and
NATURAL GUIDANCE, LLC, a Florida limited liability company,

Defendants.

**ORDER ADOPTING RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

The matter before me is the **Recommendation of United States Magistrate Judge** [#165] filed March 25, 2015. No objection having been filed to the recommendation, I review it for plain error only. **See *Morales-Fernandez v. Immigration & Naturalization Service***, 418 F.3d 1116, 1122 (10th Cir. 2005). I perceive no error, much less plain error, in the recommendation of the magistrate judge. I approve and adopt the recommendation.

As detailed by the magistrate judge, the entity defendants, Core Naturals, LLC, Natural Guidance, LLC, X Factor Holdings, LLC, and Ancient Naturals, LLC, have been

warned that they may appear and act in this case only through counsel. Additionally, they have been warned that a failure to obtain counsel may result in the entry of default judgment on the claims of the plaintiffs against the defendants and dismissal of the counterclaims of the entity defendants. For the reasons detailed by the magistrate judge, the entry of default and default judgment and dismissal of the counterclaims of the entity defendants is merited.

In addition to the authority cited by the magistrate judge, I address also the criteria outlined in *Gripe v. City of Enid, Okl.*, 312 F.3d 1184, 1188 (10th Cir. 2002), citing *Ehrenhaus v. Reynolds*, 965 F.2d 916, 918 (10th Cir. 1992). The plaintiffs have been prejudiced because, absent participation of the entity defendants through counsel, the plaintiffs are not able to advance their claims to resolution on the merits. The entity defendants have interfered with the judicial process by effectively refusing to defend against the claims of the plaintiffs and by asserting counterclaims, but effectively failing to prosecute their counterclaims. The entity defendants are culpable because their failure to defend and to prosecute is caused solely by the entity defendants. The entity defendants were warned that dismissal was a possible sanction for their failure to defend and to prosecute and there is no indication that a sanction lesser than entry of default judgment and dismissal without prejudice would be efficacious. I therefore find and conclude that the recommendation of the magistrate judge should be approved and adopted.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#165] filed March 25, 2015, is approved and adopted as an order of this court;
2. That under Fed. R. Civ. P. 55(a), default shall enter against defendants, Core

Naturals, LLC, Natural Guidance, LLC, X Factor Holdings, LLC, and Ancient Naturals, LLC, on each of the claims asserted against these defendants by the plaintiffs in the **Amended Complaint With Jury Demand** [#62] filed January 14, 2014;

3. That if the plaintiffs seek entry of default judgment against one or more of the defendants, Core Naturals, LLC, Natural Guidance, LLC, X Factor Holdings, LLC, and Ancient Naturals, LLC, then by May 15, 2015, the plaintiffs shall file a motion for default judgment which includes the documents required by Fed. R. Civ. P. 55 and D.C.COLO.LCivR 55.1 and any other documents necessary to the entry of default judgment providing the relief sought by the plaintiffs;

4. That under Fed. R. Civ. P. 37(b)(2)(A)(v) and 41(b), the counterclaims of Core Naturals, LLC, Natural Guidance, LLC, X Factor Holdings, LLC, and Ancient Naturals, LLC, as asserted in the **Answer and Counterclaims in Response To Amended Complaint** [#89] and the **Answer and Counterclaims in Response To Amended Complaint** [#95], are dismissed for failure to prosecute, for failure to comply with court orders, and for lack of counsel;

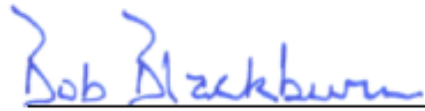
5. That when final judgment is entered in this case, judgment shall enter in favor of the plaintiffs and against defendants, Core Naturals, LLC, Natural Guidance, LLC, X Factor Holdings, LLC, and Ancient Naturals, LLC, on each of the counterclaims asserted by these defendants in the **Answer and Counterclaims in Response To Amended Complaint** [#89] and the **Answer and Counterclaims in Response To Amended Complaint** [#95]; and

6. That concerning the counterclaims of Core Naturals, LLC, Natural Guidance, LLC, X Factor Holdings, LLC, and Ancient Naturals, LLC, the plaintiffs are **AWARDED**

their costs, which shall be taxed by the clerk under Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1 after entry of final judgment in this case.

Dated April 24, 2015, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge