

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

REGIONS BANK, etc.,

Plaintiff,

v.

CASE NO. 8:12-CV-1837-T-17MAP

MARVIN I. KAPLAN, etc.,
et al.,

Defendants.

MARVIN I. KAPLAN, etc.,

Counterclaim/
Crossclaim Plaintiffs,

v.

ROBERT NICHOLAS SHAW, et
al.,

Crossclaim Defendants.

ORDER

Dkt. 273 Motion for Final Default Judgment Against G. Todd
Smith, Gary T. Smith, Lucy B. Smith and Smith
Advertising & Associates, Inc.

Crossclaimants Marvin I. Kaplan, R1A Palms, LLC, Triple Net Exchange, LLC,
MK Investing, LLC and BNK Smith, LLC ("Crossclaimants") move for a Final Default
Judgment against G. Todd Smith, Gary T. Smith, Lucy B. Smith and Smith Advertising
& Associates, Inc. as to liability and entitlement to damages, with a reservation as to the
amount of damages, on the Amended Counterclaim and Crossclaim (Dkt. 93).

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The Amended Counterclaim and Crossclaim includes the following claims as to G. Todd Smith, Gary T. Smith, Lucy B. Smith, and Smith Advertising & Associates, Inc.:

Count I	Fraud	G. Todd Smith, Smith Advertising & Associates, Inc.
Count II	Conspiracy to Defraud	G. Todd Smith, Gary T. Smith, Lucy B. Smith, Smith Advertising & Associates, Inc.
Count III	Negligent Misrepresentation	G. Todd Smith and Smith Advertising & Associates, Inc.
Count IV	Violation of 18 USC Sec. 1962(c) and Sec. 1964	G. Todd Smith, Gary T. Smith, Lucy B. Smith, Smith Advertising Associates, Inc.
Count V	Violation of 18 USC Sec. 1962(d) and Sec. 1964	G. Todd Smith, Gary T. Smith, Lucy B. Smith, and Smith Advertising & Associates, Inc.
Count VI	Violation of Secs. 772.103(3), 772.104, <u>Fla. Stat.</u>	G. Todd Smith, Gary T. Smith, Lucy B. Smith, Smith Advertising & Associates, Inc.
Count VII	Violation of Secs. 772.103(4), 772.104, <u>Fla. Stat.</u>	G. Todd Smith, Gary T. Smith, Lucy B. Smith, Smith Advertising & Associates, Inc.
Count VIII	Violation of Sec. 772.11, <u>Fla. Stat.</u>	G. Todd Smith, Gary T. Smith, Lucy B. Smith, Smith Advertising & Associates, Inc.
Count IX	Conversion	G. Todd Smith, Gary T. Smith, Lucy B. Smith and Smith Advertising & Associates, Inc.
Count X	Violation of Sec. 501.201 <u>et seq.</u> , <u>Fla. Stat.</u> , FDUTPA	G. Todd Smith, Gary T. Smith, Lucy B. Smith, Smith Advertising & Associates, Inc.

Count XI	Violation of Sec. 68.065, <u>Fla. Stat.</u>	Smith Advertising & Associates, Inc.
Count XII	Breach of Contract	Smith Advertising & Associates, Inc., G. Todd Smith, Gary T. Smith

Crossclaim Defendants G. Todd Smith, Gary T. Smith, Lucy B. Smith and Smith Advertising & Associates, Inc. have been served. (Dkts. 137, 168). A Clerk's Default has been entered as to all Crossclaim Defendants (Dkts. 139, 169, 170, 171).

A defendant, by his default, admits a plaintiff's well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established. Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc., 561 F.3d 1298, 1308 (11th Cir. 2009). Under Florida law, a defendant still has the right to contest unliquidated damages, but no other issue, once a default has been entered against him. Banks v. SFRC Medical Dept. Officials, 2011 WL 900544 (S.D. Fla. 2011).

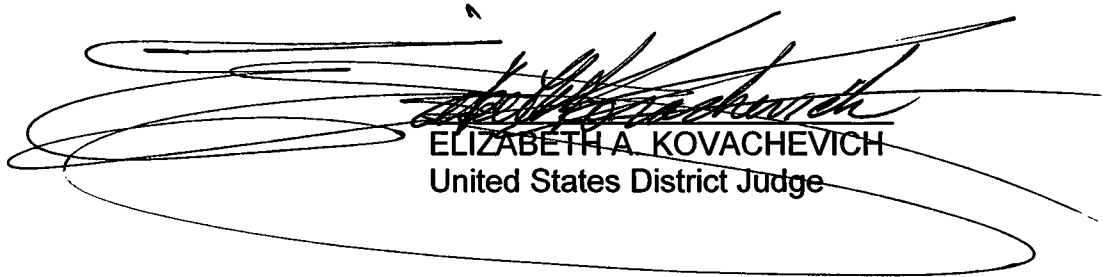
After consideration, the Court grants Crossclaimants' Motion for Final Default Judgment as to liability, and entitlement to damages; the Court reserves jurisdiction to determine the amount of damages. Accordingly, it is

ORDERED that Crossclaimants' Motion for Final Default Judgment (Dkt. 273) is **granted**. The Clerk of Court shall enter a Final Default Judgment as to liability and entitlement to damages in favor of Crossclaimants Marvin I. Kaplan, R1A Palms, LLC, Triple Net Exchange, LLC, MK Investing, LLC and BNK Smith, LLC and against Crossclaim Defendants G. Todd Smith, Gary T. Smith, Lucy B. Smith, and Smith Advertising & Associates, Inc. on the above counts of the Amended Counterclaim and Crossclaim (Dkt. 93). The Court **reserves jurisdiction** for determination of the amount

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of damages.

DONE and ORDERED in Chambers in Tampa, Florida on this 24th day of
March, 2015.



ELIZABETH A. KOVACHEVICH
United States District Judge

Copies to:
All parties and counsel of record