IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

AMERISTAR, LLC

Defendant,

and

AMERISTAR MK Ltd. Liability Company, FRED W. FREITAG IV, and HIGHLINE GOLD INC. a/k/a HIGHLINE GOLD LLC a/k/a HIGHLINE GOLD CORPORATION LLC,

Relief Defendants.

Case No. 24-CV-169-KHR

ORDER GRANTING DEFAULT JUDGMENT AGAINST DEFENDANT AMERISTAR, LLC

Before the Court is Plaintiff's Motion for Default Judgment Against Defendant AmeriStar, LLC ("AmeriStar"). [ECF No. 35]. Plaintiff, the United States Securities and Exchange Commission ("SEC"), requests entry of default judgment as to liability against Defendant AmeriStar pursuant to Fed. R. Civ. P. 55(b)(2). AmeriStar has not responded to the Motion for Default Judgment, and the time for doing so has expired. *See* Local Civil

Rule 7.1(b)(2)(A). Having considered the Motion, the entire case file, and the applicable law, the Court finds default judgment holding AmeriStar liable is warranted.

BACKGROUND

Plaintiff brings three claims against AmeriStar, and one claim against Fred W. Freitag, IV, AmeriStar MK Ltd. Liability Company a/k/a AmeriStar MK, LLC, and HighLine Gold Inc. a/k/a HighLine Gold LLC a/k/a HighLine Gold Corporation LLC ("Relief Defendants"). [ECF No. 1]. Plaintiff makes the following allegations: Beginning in August 2023, and continuing today, AmeriStar offers investments to the public through social media accounts, and until August 2024, it also did so through at least two websites. AmeriStar attracts investors with advertisements on Facebook and Instagram accounts. AmeriStar previously used a website ("AmeriStar Website") that was available to the public as of about August 18, 2024, which contained marketing materials, including an investor brochure ("Investor Brochure") and at least two versions of a private placement memorandum ("PPM"). AmeriStar also solicited investors through another website with the address of bankingsecure.app/en/ ("Banking Secure Website"). While occasionally inaccessible, the Banking Secure Website appeared accessible on September 3, 2024. Collectively, these materials are referred to as the "Offering Materials."

Through these channels, AmeriStar claimed that it offered high yield, FDIC-insured investments. The AmeriStar Website claimed that it was offering securities that combined the return from its purchase of Certificates of Deposit ("CDs") with fees from its purported "courtesy deposit" program. AmeriStar told investors they could essentially double the typical rate of return for a CD by investing with AmeriStar's "courtesy deposit" program because AmeriStar would both purchase the CD (which would generate interest payments), and also use that CD to generate a fee from businesses looking to borrow money from a bank. These businesses would purportedly pay AmeriStar this fee if AmeriStar would purchase CDs from a bank because, AmeriStar claimed, its "courtesy deposit" would cause the bank to look favorably on the business's loan application. For example, the AmeriStar Website stated: "AmeriStar combines a Certificate of Deposit and a Courtesy Deposit, to generate two returns," and in response to a "Frequently Asked Question" that the investment seems too good to be true, the website explained, "Well you are right, no FDIC bank could ever have interest of 12% in this market. But AmeriStar is not providing a CD at 12%. The investment is into a Regulation D private offering that combines a CD and a Courtesy Deposit." AmeriStar bolstered the "courtesy deposit" program by claiming that it would purchase CDs in a way to ensure that insurance provided by the FDIC would protect all investor funds.

AmeriStar offered and sold these investments in the form of notes, which are securities under federal law as explained below. These notes stated that repayment of the principal investment is due by a certain date and that AmeriStar will make monthly interest payments based on a specified annualized rate of return.

The SEC claims this scheme, which involves the ongoing solicitation of investors on social media, is a fraud. AmeriStar did not purchase the CDs for investors or make "courtesy deposits" for those investors like it said it would, and bank records do not reflect the purchase of CDs from the specific banks identified in its offering materials. Instead, investor money flowed into accounts of Relief Defendants and a large amount of investor money was sent to companies that sale precious metals.

LEGAL STANDARD

Default is to be entered against a party who fails to appear or otherwise defend a lawsuit. *See Jones v. Marquis Properties, LLC*, 212 F. Supp. 3d 1010, 1015 (D. Colo. 2016); Fed. R. Civ. P. 55(a). "Even after entry of default, however, it remains for the court to consider whether the unchallenged facts constitute a legitimate basis for the entry of a judgment." *Greenwich Ins. Co. v. Daniel Law Firm*, No. 07-CV-02445-TB-J, 2008 WL 793606, at *1 (D. Colo. Mar. 22, 2008) (citation omitted). Rule 55 of the Federal Rules of Civil Procedure grants the district court the authority to enter default judgment. *Purzel Video GmbH v. Biby*, 13 F. Supp. 3d 1127, 1135 (D. Colo. 2014); Fed. R. Civ. P. 55(b)(2).

> [D]efault judgment must normally be viewed as available only when the adversary process has been halted because of an essentially unresponsive party. In that instance, the diligent party must be protected lest he be faced with interminable delay and continued uncertainty as to his rights. The default judgment remedy serves as such a protection.

Jones, 212 F. Supp. 3d at 1015 (quoting *In re Rains*, 946 F.2d 731, 732–33 (10th Cir. 1991) (internal quotation marks and citation omitted)).

A party, however, "is not entitled to a default judgment as of right; rather the entry of a default judgment is entrusted to the 'sound judicial discretion' of the court" and trial courts "are vested with broad discretion in deciding whether to enter a default judgment." *Greenwich Ins. Co.*, 2008 WL 793606, at *2 (internal quotation marks omitted).

> Before granting a motion for default judgment, the Court must take several steps. First, the Court must ensure that it has personal jurisdiction over the defaulting defendant and subject matter jurisdiction over the action. *See Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202–03 (10th Cir. 1986). Next,

> the Court should consider whether the well-pleaded allegations of fact—which are admitted by the defendant upon default—support a judgment on the claims against the defaulting defendant. *See Fed. Fruit & Produce Co. v. Red Tomato, Inc.*, 2009 WL 765872, at *3 (D. Colo. Mar. 20, 2009) ("Even after entry of default, however, it remains for the court to consider whether the unchallenged facts constitute a legitimate basis for the entry of a judgment."). "In determining whether a claim for relief has been established, the well-pleaded facts of the complaint are deemed true." *Id.* (citing *Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1323 (7th Cir. 1983)).

Jones, 212 F. Supp. 3d at 1015. "If the Court finds that the unchallenged facts create a legitimate basis for the entry of a [default] judgment, it may enter default judgment against a defendant." *Prudential Ins. Co. of Am. v. Sommerfield*, No. 16-CV-2819-WJM-KLM, 2017 WL 5989441, at *3 (D. Colo. Dec. 4, 2017) (internal citations and quotations omitted).

RULING OF THE COURT

Entry of Default

The Court will first consider the adequacy of Plaintiff's service of process of the Complaint on AmeriStar. [ECF No. 1]. Plaintiff filed the Complaint on September 4, 2024. [ECF No. 1]. Plaintiff then served AmeriStar on September 5, 2024. Plaintiff submitted a Return of Service showing AmeriStar was served with a copy of the Summons and the Complaint at 1095 Sugar View Drive, Suite 500, Sheridan, WY 82801. [ECF. No. 10]. Ameristar failed to file a responsive pleading, and Plaintiff filed an Application for Clerk's Entry of Default against AmeriStar on December 5, 2024. [ECF No. 31]. The Clerk of Court entered default against AmeriStar on December 10, 2024. [ECF No. 32]. The Court finds service of process was adequate, and that AmeriStar was properly found to be in default.

Jurisdiction

The Court next addresses the issue of default judgment, beginning with jurisdiction. "[W]hen entry of a default judgment is sought against a party who has failed to plead or otherwise defend, the district court has an affirmative duty to look into its jurisdiction both over the subject matter and the parties." *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1203 (10th Cir. 1986). "Jurisdiction to resolve cases on the merits requires both authority over the category of claim in suit (subject-matter jurisdiction) and authority over the parties (personal jurisdiction)." *Ruhrgas Ag v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999).

In determining jurisdiction "[t]he Court must first address the adequacy of service of process." *Bain v. U.S. Dep't of the Treasury - I.R.S.*, No. 12-CV-02111-REB-KLM, 2013 WL 3155937, at *3 (D. Colo. Apr. 26, 2013), *report and recommendation adopted*, No. 12-cv-02111-REB-KLM, 2013 WL 2237486 (D. Colo. May 20, 2013) (internal citations and quotations omitted). As stated above, service of process was proper.

Next, the Court has both subject matter and personal jurisdiction over this lawsuit. This Court has subject matter jurisdiction over this matter under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)-(e) and 78aa], which generally provide jurisdiction to adjudicate claims arising under the Securities Act and Exchange Act, respectively.

"Regarding personal jurisdiction, the movants need only make a *prima facie* showing [of personal jurisdiction] if the motion [for default judgment] is decided only on the basis of the parties' affidavits and other written materials." *Bain*, 2013 WL 3155937, at *3 (internal citations and quotations omitted). Courts may obtain personal jurisdiction in three ways: "consent by the parties, presence in the forum state, [or] actions by the defendant which affect people in the forum state." *Christian v. OneM Commc'ns Ltd.*, No. 22-CV-00024-NDF, 2023 WL 7385609, at *2 (D. Wyo. Sept. 20, 2023) (internal citations and quotations omitted).

Federal courts "may exercise personal jurisdiction over a nonresident defendant only so long as there exists 'minimum contacts' between the defendant and the forum State ... [and] [t]he defendant's contacts with the forum state [are] such that maintenance of the suit 'does not offend traditional notions of fair play and substantial justice.' " *World Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945)). A party meets the minimum contacts requirement if it "purposefully avails itself of the privilege of conducting activities within the forum State." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Engaging in such conduct within the forum State "make[s] being sued there foreseeable so that the defendant could 'reasonably anticipate' the suit." *Fireman's Fund Ins. Co. v. Thyssen Min. Const. of Canada, Ltd.*, 703 F.3d 488, 493 (10th Cir. 2012) (quoting *World Wide Volkswagen*, 444 U.S. at 297, 100 S.Ct. 580).

This Court also has personal jurisdiction under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27(a) of the Exchange Act [15 U.S.C. §§ 78aa(a)] because AmeriStar was served with process [ECF No. 10] and because AmeriStar is a Wyoming limited liability company ("LLC") and certain transactions, acts, practices, and courses of conduct constituting violations of the federal securities laws occurred within Wyoming. The Court, therefore, may exercise both subject matter and personal jurisdiction in this matter.

Legal Basis for Default Judgment

Once default is entered, the party may move for entry of default judgment. Fed. R. Civ. P. 55(b). "[U]pon the entry of default against a defendant, the well-pleaded allegations in the complaint are deemed admitted." *Richfield Hosp., Inc. v. Shubh Hotels Detroit, LLC*, No. 10-cv-00526-PAB-MJW, 2011 WL 3799031, at *1 (D. Colo. Aug. 26, 2011); *see also Olcott v. Delaware Flood Co.*, 327 F.3d 1115, 1125 (10th Cir. 2003). "The court may conduct hearings or make referrals ... when, to enter or effectuate judgment, it needs to: (A) conduct an accounting; (B) determine the amount of damages; (C) establish the truth of any allegation by evidence; or (D) investigate any other matter." Fed. R. Civ. P. 55(b)(2)(B). Regardless, "decisions to enter judgment by default are committed to the district court's sound discretion." *Dennis Garberg & Assocs. Inc. v. Park-Tech Intern. Corp.,* 115 F.3d 767, 771 (10th Cir. 1997). "[A] court may enter a default judgment without a hearing only if the amount claimed is a liquidated sum or one capable of mathematical calculation." *Hunt v. InterGlobe Energy, Inc.*, 770 F.2d 145, 148 (10th Cir. 1985) (citing *Venable v. Haislip*, 721 F.2d 297, 300 (10th Cir. 1983).

The Court finds Plaintiff has adequately pled claims that AmeriStar engaged in deceptive Conduct in Violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) Thereunder and Section 17(a)(1) and (3) of the Securities Act. As detailed above in the Background section of this Order, Plaintiff has alleged the necessary facts, deemed admitted by AmeriStar's default, to show that AmeriStar's fraudulent conduct violates Section 10(b) and Rules 10b-5(a) and (c) thereunder of the Exchange Act and Sections 17(a)(1) and (3) of the Securities Act because AmeriStar is engaging in deceptive conduct. To prove fraud under Rule 10b-5(a) and (c) and Sections 17(a)(1) and (3), Plaintiff must prove that AmeriStar, directly or indirectly: (1) committed a deceptive or manipulative act; (2) in furtherance of the alleged scheme to defraud; (3) with scienter (for Section 10(b) and Section 17(a)(1)) or negligence (for Section 17(a)(3)). *SEC v. McDuffie*, No. 12-cv02939, 2014 WL 4548723, at *10 (D. Colo. Sept. 15, 2014). Accordingly, the Court finds that AmeriStar violated Section 10(b) of the Exchange Act, Rule 10b-5(a) and (c) thereunder, and Sections 17(a)(1) and (3) of the Securities Act.

Through the conduct detailed above and that alleged in Plaintiff's Complaint, AmeriStar also violated Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)]. These sections "make it unlawful to offer or sell a security in interstate commerce if a registration statement has not been filed as to that security, unless the transaction qualifies for an exemption from registration." *SEC v. Gordon*, 522 F. App'x 448, 450 (10th Cir. 2013) (quoting *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1085 (9th Cir. 2010)). "To make a prima facie case under §§ 5(a) and (c), the SEC must show that: '(1) no registration statement was in effect as to the securities, (2) the defendant sold or offered to sell these securities, and (3) interstate transportation or communication and the mails were used in connection with the sale or offer of sale.'" *SEC v. GenAudio Inc.*, 32 F.4th 902, 921 (10th Cir. 2022) at 939 (quoting *SEC v. Levin*, 849 F.3d 995, 1001 (11th Cir. 2017) (*quoting SEC v.Cont'l Tobacco Co*., 463 F.2d 137, 155 (5th Cir. 1972)). While there are exemptions that can be asserted as affirmative defenses, the burden of proof is upon the party claiming the exemption's benefit. *Id*. (citing *Quinn & Co. v. SEC*, 452 F.2d 943, 945-46 (10th Cir. 1971)). Plaintiff has alleged, and AmeriStar has admitted by its default, that AmeriStar offered and sold securities in the form of notes by using the instruments of interstate commerce, including but not limited to telephone and internet, and that there was no registration statement in effect or filed as to these securities. AmeriStar also has not proven that any exemption applies. Accordingly, the Court finds that AmeriStar violated Sections 5(a) and (c) of the Securities Act.

<u>*Damages*</u>

While Plaintiff will ultimately seek injunctive relief, disgorgement, and civil penalties against AmeriStar, the analysis and facts involved in appropriate remedies for AmeriStar overlaps with those involved with the Relief Defendants, and it appears at least one Relief

Defendant will oppose the requested relief. Consequently, Plaintiff's request for default judgment as to Ameristar's liability is granted, and Plaintiff may request all remedies in one motion. Specifically, the Court enters default judgment finding that AmeriStar violated Sections 5(a) and (c) and Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a) and (c); 77q(a)], and Section 10(b) of the Exchange Act of 1934 ("Exchange Act") [15 U .S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

CONCLUSION AND ORDER

Plaintiff has sufficiently proved the alleged causes of action against AmeriStar. AmeriStar has failed to timely appear, answer, or defend against the allegations stated in Plaintiff's Complaint.

IT IS THERFORE ORDERED Plaintiff's Motion for Default Judgment as to Liability Against Defendant AmeriStar, LLC [ECF No. 35] is GRANTED.

IT IS FURTHER ORDERED that default judgment is entered finding that AmeriStar violated Sections 5(a) and (c) and Section 17(a) of the Securities Act of 1933 [15 U.S.C. §§ 77e(a) and (c); 77q(a)], and Section 10(b) of the Exchange Act of 1934 [15 U .S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

Dated this 18th day of February, 2025.

Kelly H. Rankin
United States District Judge