No. 25-2607

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Consumer Financial Protection Bureau,

Plaintiff-Appellee,

v.

FDATR, Inc., and Dean Tucci

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Illinois
Hon. Georgia N. Alexakis
Case No. 1:20-cv-6879

BRIEF OF APPELLEE CONSUMER FINANCIAL PROTECTION BUREAU

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JURISDICTIONAL STATEMENT

Appellant's jurisdictional statement is complete and correct as to the substantive basis for the district court's and this Court's jurisdiction in this matter but misidentifies the dates of the final judgment and the appeal: the final judgment was entered on May 9, 2025, and the appeal was noticed on September 10, 2025.

INTRODUCTION

For nearly five years, the district court labored to resolve the civil enforcement action brought by the Consumer Financial Protection Bureau (Bureau) to hold Defendant-Appellant Tucci and his corporate co-defendant FDATR[1] accountable for an unlawful scheme that tricked financially distressed consumers out of millions of dollars. At every step along the way, Tucci dragged his feet by (among other things) improperly refusing to participate in discovery and flouting his deadlines, including by ignoring his deadline to respond to the Bureau's motion for summary judgment for nearly two years. After the district court was finally able to enter a final judgment in May 2025, Tucci prolonged the proceedings for another two months with post hoc objections that the district court rejected as frivolous. Now, Tucci has filed this appeal, in which he asks this Court to send this case all the way back to square one.

Tucci's request for a complete redo should be denied because none of the arguments scattered throughout his brief identifies any ground that would warrant reversing any ruling by the district court. Many of his arguments have been waived (some of them twice) or are otherwise untimely. All of them border on frivolous. To start, he lacks standing to assert his challenge to the default judgment entered against FDATR, a company he says he no longer owns or controls in any way. His challenge—which he raised for the first time over three years after

[1] This appeal was filed purportedly on behalf of both FDATR, Inc., and Dean Tucci, but as explained below, *infra* pp. 15–16, Tucci's counsel lacks authority to represent FDATR.

the judgment was entered—also came too late. Even ignoring those two major hurdles, his challenge to the default judgment is meritless. That means that Tucci's challenge to the separate judgment entered against him, based solely on his assertion that the FDATR default judgment is invalid, must fail as well. And while Tucci also litters his brief with perfunctory criticisms of the district court's orders granting summary judgment and awarding restitution and civil money penalties as remedies, all of them can easily be rejected as waived, baseless, or both.

The district court should therefore be affirmed in all respects.

ISSUES PRESENTED

1. Did the district court abuse its discretion by denying Tucci's motion to vacate a default judgment that had been entered three years earlier against FDATR without objection from Tucci, and after the company had been served with process and a motion for default judgment in the manner required by the applicable Federal Rules of Civil Procedure?

2. Did the district court abuse its discretion by denying Tucci's motion to vacate the judgment entered against him where the court held that Tucci's sole basis for the motion—that the judgment against him was based on a purportedly void default judgment against FDATR—was procedurally improper and lacked any merit?

3. Did the district court properly find Tucci liable on summary judgment after examining the evidence submitted by the Bureau to support its summary judgment motion where Tucci's opposition failed to cite any contrary evidence in the record?

4. Did the district court properly award:

    a. legal restitution based on undisputed evidence substantiating FDATR's and Tucci's net revenues and without applying limitations that apply only to equitable remedies?

b. civil money penalties as authorized by the Consumer Financial Protection Act after finding Tucci liable on summary judgment?

STATEMENT OF THE CASE

A. FDATR's Business Practices

Tucci founded FDATR in 2014. App.046. From that time until at least 2019, FDATR solicited consumers nationwide, promising to reduce or eliminate consumers' student loan debts and improve consumers' credit scores. App.005. FDATR attracted customers through radio and television advertisements placed by two other companies owned or controlled by Tucci. Supp.App.062–63, 66–67, 83–87. FDATR also advertised its services through its website, fedslrelief.com, and through Facebook ads that linked to the website. Supp.App.116–134; ECF No. 80-9.[2] On both the website and in Facebook advertisements, FDATR claimed that its services would "Reduce or Eliminate Your Payments" and "Improve Credit Scores." Supp.App.119, 122–23; ECF No. 80-9 at 2–10. On its website, FDATR additionally claimed that it would "Cut Loan Payments in HALF," "Restore Financial Aid Eligibility," and "Restore your ability to get your Diplomas & Transcripts." Supp.App.119, 122–23. The advertisements instructed consumers to call a toll-free number, which connected them to FDATR's telemarketing call center. Supp.App.083, 116, 117, 133, 146. FDATR's telemarketing-sales agents routinely told consumers that the company had helped thousands of customers with services that resulted in lower student loan payments or in consumers' student loans being forgiven, leaving customers debt-free and owing $0 in payments. Supp.App.136–139, 143; App.047.

[2] "ECF No." refers to docket entry numbers in the district court proceedings.

When consumers enrolled in the company's services, FDATR's agents sent prospective customers a variety of documents and charged each consumer between $1 and $99, purportedly to ensure that it had a valid payment method on file. Supp.App.088–96, 138–39. FDATR also charged customers either a $499 one-time payment, or $600 paid over a three-to-six-month installment period. App.047. Tucci testified that FDATR spent at least three to six months to "get a file completed" and always requested and received payment of standard fees at or near the time of enrollment and before it achieved any results. App.047, 52.

FDATR's consumer services typically consisted of handling loan-consolidation paperwork. App.046. But, as Tucci admitted, loan consolidations do not necessarily result in lower loan payments, do not eliminate payments, and can result in higher monthly payments. Supp.App.100–01; App.047. Tucci also admitted that FDATR did not track whether its services achieved these promised results. App.048. FDATR thus had no basis to assert that its services would result in lower monthly payments, cut student loan payments in half, eliminate consumers' monthly student loan payments entirely, or restore consumers' access to diplomas and transcripts. App.052. Tucci also admitted that FDATR performed no services that would improve customers' credit scores or remove negative items from credit reports and that FDATR did not track whether its services achieved these promised results. App. 048, 052. FDATR thus likewise had no basis to assert that its services would improve consumers' creditworthiness. App.052. Unsurprisingly, customers complained that the company did not deliver on any of its promises. App.018.

The State of Illinois sued Tucci and FDATR in 2017 for the same conduct at issue in this action. App.048. Nonetheless, Tucci and FDATR continued engaging in that conduct until the company ceased operating in 2019. *Id*. At least 6,046 customers collectively paid FDATR

$2,195,989.75 in total—between $1 and $2,275 per customer—for the company's purported student-loan debt-relief and credit-repair services. App.020. After accounting for $78,856.47 in refunds to 485 customers, FDATR ultimately received from consumers $2,117,133.28 in net revenues. *Id.*; App.054.

In 2020, the State of Illinois involuntarily dissolved FDATR for failure to file an annual report and pay an annual franchise tax. App.046 n.3.

B. Tucci's Relationship to FDATR

FDATR was part of a family of companies owned by Tucci, most of which were involved in telemarketing. Tucci formed FDATR in 2014 as an immediate successor to his company Teldebt Solutions Inc. (Teldebt), another company that telemarketed student-loan debt-relief services to consumers. Supp.App.059–60; ECF Nos. 80-3 at 1–2; 80-6 at 26:8–29:5, 45:7–54:1, 58:23–61:11. FDATR obtained consumer leads from Direct Marketing Power and National Media Calls—two other companies operated by Tucci and in the business of placing radio advertisements to generate telemarketing sales leads for debt-relief companies. Supp.App.062–63, 66–67, 83–87; ECF No. 80-6 at 112:12–114:2.

At all relevant times, Tucci was actively involved in FDATR's business practices. Tucci signed the lease for the office space in which FDATR operated and was the registrant listed for the company's website. ECF Nos. 80-5 at ¶¶ 18–19; 80-6 at 52:21–53:23. He was responsible for FDATR's marketing method of soliciting consumers through radio advertisements that directed consumers to call FDATR's toll-free number. Supp.App.077, 83–87. He drafted advertisements and telemarketing sales scripts, hired employees for FDATR, made firing decisions, and trained FDATR's telemarketing sales agents. App.046, 051, 054. Tucci monitored FDATR's chargebacks—that is, complaints consumers make with a bank to contest credit card charges.

App.047. Until at least 2017, Tucci also controlled FDATR's bank accounts, served as the signatory on those accounts, and regularly moved money between bank accounts held by FDATR and his other companies. ECF Nos. 80-5 at ¶ 21; 80-6 at 98:16–100:11.

In 2016, Tucci created another company, DMP Holdings, and transferred ownership of FDATR into it to protect FDATR's assets from a creditor. ECF No. 45-6 at 2, 12–16. Tucci claims he then "gave" FDATR to former defendant Kenneth Wayne Halverson by transferring ownership again in 2017. Supp.App.071, 72, 111–12. After that transfer, Tucci worked as a "consultant" for FDATR, which continued to operate as it had before in the same office space, under the same lease signed by Tucci, with the same employees, and using the same phones and phone system. ECF No. 80-6 at 43:20–44:16. As a consultant, Tucci retained his responsibilities for advertising, marketing, and training. App.048. And Tucci continued to actively manage FDATR until April 2019—one month before the company stopped taking money from consumers according to records from the company's customer relationship management software. Supp.App.071–72; App.018.[3]

C. Relevant Statutory Background

This case arises under two laws designed to protect consumers from unscrupulous actors: (1) the Telemarketing Sales Rule (TSR), 16 C.F.R. §§ 310.3, 310.4, the implementing rule of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101–6108, and (2) the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536.

[3] Tucci's brief includes a section labeled "Tucci's Facts," Br. at 20–24, which makes various assertions unsupported by any citation to the record, including a lengthy attack on a Bureau witness whose testimony Tucci mischaracterizes as the basis for the Bureau's "entire case," Br. at 23–24. In fact, the Bureau relied extensively on other evidence, including Tucci's own testimony. *See* ECF No. 80-2 at ¶¶ 4, 5, 7–12, 15, 16, 18–22, 24, 26, 28–31, 33–38, 40–50; *see also* App.046–48, 51–53. Tucci's unsupported assertions should be ignored, including because Tucci does not contend that they are relevant to any of his arguments.

Telemarketing Sales Rule. The TSR prohibits both a "telemarketer" and a "seller" from misrepresenting "[a]ny material aspect of the performance, efficacy, nature, or central characteristic of goods or services that are the subject of a sales offer," as well as "any material aspect of any debt relief service," including "the percentage of the debt amount that a customer may save by using such service" and "the effect of the service on a customer's creditworthiness." 16 C.F.R. § 310.3(a)(2)(iii), (x). A "telemarketer" is any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(hh). A "seller" is any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. 16 C.F.R. § 310.2(ee). "Telemarketing," in turn, is "a plan, program, or campaign which is conducted to induce the purchase of goods or services … by use of one or more telephones and which involves more than one interstate telephone call." 16 C.F.R. § 310.2(ii).

Where a telemarketer or seller offers debt-relief and credit-repair services, the TSR also prohibits them from requesting or receiving money from consumers until specific criteria are met. *Id*. § 310.4(a)(5)(i) (prohibiting advance fees for debt-relief services), (a)(2) (prohibiting advance fees for credit-repair services). In addition, the TSR prohibits persons, including individuals, from providing substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that constitutes deception or violates an advance-fee ban under the rule. *Id*. § 310.3(b) (describing assisting and facilitating).

Consumer Financial Protection Act. The CFPA applies to any "covered person" that "engages in offering or providing a consumer financial product or service" for use by consumers

primarily for personal, family, or household purposes, including "financial advisory services" such as debt-relief and credit-repair services, 12 U.S.C. § 5481(5)(A), (6)(A), (15)(A)(viii). The CFPA also applies to any "related person," including a "director, officer, or employee charged with managerial responsibility for ... such covered person" or a "shareholder, consultant, joint venture partner, or other person ... who materially participates in the conduct of the affairs of such covered person." *Id*. § 5481(25)(C)(i), (ii). A "related person" is deemed a "covered person" under the act. *Id*. § 5481(25)(B).

The CFPA prohibits any "covered person" from engaging in deceptive acts or practices. *Id*. §§ 5531, 5536(a)(1)(B). An act or practice is deceptive if there is a material representation that is likely to mislead consumers acting reasonably under the circumstances. *See CFPB v. Gordon*, 819 F.3d 1179, 1193 (9th Cir. 2016); *CFPB v. Hanna & Associates, P.C.*, 114 F. Supp. 3d 1342, 1370 (N.D. Ga. 2015) ("deceptive practice" has the same meaning under the CFPA that it has under the Federal Trade Commission Act).

An individual is liable for a corporation's violations of the CFPA if "(1) he participated directly in the deceptive acts or had the authority to control them and (2) he had knowledge of the misrepresentations, was recklessly indifferent to the truth or falsity of the misrepresentation, or was aware of a high probability of fraud along with an intentional avoidance of the truth." *Gordon*, 819 F.3d at 1193 (quoting *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009)); *see also CFPB v. CashCall, Inc.*, 35 F.4th 734, 749 (9th Cir. 2022); *cf. FTC v. World Media Brokers*, 415 F.3d 758, 764 (7th Cir. 2005) (analogous standard for assessing individual liability in FTC matters). For violations of Federal consumer financial law, the CFPA authorizes courts to grant legal or equitable relief, including injunctions, restitution, and civil money penalties. 12 U.S.C. § 5565(a)(2)(C), (G), (H).

D. Proceedings and Decisions Below

The Bureau filed its complaint on November 20, 2020, naming as defendants FDATR, FDATR's then-president Halverson, and Tucci. Supp.App.001–15. FDATR and Halverson were both served via personal service on Halverson on November 25, 2020. Supp.App.016–17, ECF No. 10. Tucci waived the service of summons. ECF No. 13. Halverson passed away soon after service and was then dismissed from the action. ECF Nos. 17, 18. FDATR failed to answer the Complaint and on September 17, 2021, the Bureau sought entry of default against FDATR. Supp.App.018–19. The district court took the request for default under advisement and requested that any objections or responses to it be filed by September 29, 2021. ECF No. 36. Tucci filed no response and made no objections. The Clerk of Court entered default against FDATR on October 6, 2021. ECF Nos. 38, 39.

Around October 2021, Tucci retained new counsel. ECF No. 41. During an October 20, 2021, status hearing, Tucci's counsel responded that he represented only Tucci when the assigned Magistrate Judge wondered aloud whether he might seek relief from the default judgment against FDATR. Supp.App.026. On February 1, 2022, the Bureau filed a motion for default judgment under Rule 55(b) against FDATR. Supp.App.032–33. Tucci again did nothing. The district court entered a default judgment and order against FDATR on February 7, 2022. App.001–015.

A contentious discovery period followed, which required motions to compel Tucci's initial disclosures, written discovery responses, and deposition, and even an admonition by the lower court reminding Tucci of his obligation to cooperate in discovery. ECF Nos. 47, 53, 65. The Bureau sought summary judgment against Tucci on October 14, 2022. ECF No. 80. Tucci sought one extension but then failed to file a response. ECF Nos. 82–84. On September 17, 2024,

after Tucci had ignored his deadline for nearly two years, the district court gave Tucci a final chance to file his summary judgment response. ECF No. 91. Then on November 21, 2024, after receiving two additional extensions and hiring a different attorney, ECF Nos. 100, 103, Tucci filed an opposition to summary judgment, which failed to respond to the Bureau's statement of material facts and cited no record evidence, App.022–39.

The district court granted summary judgment in favor of the Bureau on January 10, 2025. App.043. The district court started its opinion by noting that Tucci's opposition to summary judgment did "not include *any* citations to the record" despite having more than two years to prepare it. App.045. It then explained that FDATR's liability had been established by the default judgment against it, and that Tucci had waived any objection he had to its entry by failing to object beforehand or during the years that had since passed. App.049–50. But the court also made clear that it had independently reviewed the evidence supporting both the Bureau's statement of material facts and the factual findings supporting the default judgment. Based on that review, it determined that all those facts were well-supported by the Bureau's "substantively accurate" citations to substantial record evidence. App.045–46, 47, 53; *see also* App.114; Supp.App.165–66. The court thus concluded that there was no genuine dispute as to any material fact concerning Tucci's liability under both the TSR and CFPA. App.053–54.

Undeterred by the district court's ruling, Tucci's counsel filed a motion for summary judgment on January 22, 2025, which was labeled as brought on behalf of FDATR, not Tucci. ECF No. 107. And on January 28, 2025, Tucci's counsel filed a motion to vacate the default judgment against FDATR that had been entered nearly three years earlier, again purportedly on behalf of FDATR itself rather than Tucci. App.057–70. During a hearing held two days later, when the district court questioned whether and how Tucci's counsel had obtained proper

authority to appear or file motions on behalf of FDATR, Tucci's counsel was unable to articulate any basis. Supp.App.150–55. Later during the same hearing, the district court (1) converted Tucci's motion for summary judgment to a motion for reconsideration of the summary judgment decision and denied it and (2) denied the motion to vacate FDATR's default judgment because it was untimely and failed to show excusable neglect under Federal Rule of Civil Procedure 60(b) or any other good cause for relief. App.071; Supp.App.163, 168. After reviewing additional briefing about restitution and civil money penalties, the district court entered a final judgment and injunction order against Tucci, including monetary relief consisting of $2,117,133.28 in restitution and $41,123,897 in civil money penalties on May 9, 2025. Supp.App.176–93.

Tucci filed a Rule 60 motion to quash, vacate, and stay the enforcement of prior orders on May 27, 2025, ECF No. 134, with an amended motion filed on June 4, 2025, Supp.App.194–96. The district court denied that motion on July 18, 2025, concluding that: (1) Tucci lacked standing to challenge the default judgment against FDATR; (2) Tucci's motion was untimely because it was brought over three years after the default judgment was entered; and (3) Tucci's arguments that improper service rendered the default judgment void lacked merit. App.112–115. In addition to rejecting Tucci's asserted grounds for vacating the default judgment against FDATR, the district court further explained that "even if it voided [that] judgment ... that decision would not affect Tucci's liability" because "nothing in that default judgment precluded Tucci from doing anything," especially where "the Court relied [on] the default judgment's factual findings [only] after finding that they were 'supported by uncontested evidence' presented by the Bureau." App.114. This appeal followed. ECF No. 148.

SUMMARY OF ARGUMENT

Tucci's brief fails to establish any grounds for reversing any determination by the district court. Tucci primarily seeks to overturn the denial of his motion to vacate the default judgment against corporate co-defendant FDATR—the company he says he no longer owns or controls. But that attempt runs aground before it even reaches the merits. The district court acted well within its discretion when it correctly concluded (1) that Tucci has no standing to challenge a default judgment entered against a separate defendant, FDATR, and (2) even if Tucci had standing, his challenge was untimely because Tucci waited three years to raise it.

Even if those threshold issues are ignored, none of Tucci's arguments for vacating the default judgment have any merit. He contends that the judgment is void because the Bureau failed to properly serve FDATR with the summons and complaint or the default judgment papers, but the Bureau fully complied with the applicable Federal Rules of Civil Procedure. He also claims that his failure to object to the default judgment until three years after its entry resulted from excusable neglect, but that blinks reality. Tucci knew about the default and default judgment as soon as each was entered, declined to challenge either at the time, and offers no credible excuse for standing idly by then or for so long afterwards. And his duplicative argument that relief is justified because the default judgment was "out of his control" is meritless for the same reasons.

Tucci fares no better when it comes to any of the other issues raised in his brief. He claims that vacating the default judgment against FDATR would require also vacating the judgment against him, but Tucci has identified no reason that the first judgment should not stand. He also contends that he was improperly precluded from defending himself against liability on summary judgment, but the record shows the district court gave him ample opportunity to do so.

Indeed, the court was more than generous in allowing him to file a response in his defense after he had ignored his initial deadline by nearly two years. Tucci lost not because he wasn't allowed to defend himself but because he was unable to rebut the Bureau's overwhelming evidence. And his cursory arguments that the CFPA and TSR did not apply to him or FDATR should be summarily dismissed because they misunderstand the law and are unsupported by citation to any evidence. Finally, his equally perfunctory arguments that there was something improper about the remedies awarded to the Bureau amount to little more than unexplained citations to inapplicable precedent.

The district court should therefore be affirmed in all respects.

STANDARD OF REVIEW

Motion to Vacate. This Court reviews the denial of a motion to vacate under Federal Rule of Civil Procedure 60(b) for abuse of discretion. *Bakery Mach. & Fabrication, Inc. v. Traditional Baking, Inc*., 570 F.3d 845, 848 (7th Cir. 2009). "The district court has great latitude in making a Rule 60(b) decision because that decision 'is discretion piled on discretion.'" *Id*. (citation omitted). Accordingly, abuse of discretion in denying a Rule 60(b) motion is "established only when no reasonable person could agree with the district court." *Id.*

Default Judgment. This Court reviews a grant of default judgment also for abuse of discretion. *Swaim v. Moltan Co.*, 73 F.3d 711, 716 (7th Cir. 1996). It likewise should be overturned only if "no reasonable person could agree with [the district court's] judgment." *Pretzel & Stouffer, Chartered v. Imperial Adjusters, Inc*., 28 F.3d 42, 45 (7th Cir. 1994) (cleaned up).

Summary Judgment. A district court's grant of summary judgment is reviewed de novo. *Great W. Cas. Co. v. Nationwide Agribusiness Ins. Co.*, 167 F.4th 448, 454–55 (7th Cir. 2026).

"Summary judgment is appropriate if there is no genuine dispute as to any material fact, and the moving party is entitled to judgment as a matter of law." *Driveline Systems, LLC v. Arctic Cat, Inc.*, 936 F.3d 576, 579 (7th Cir. 2019) (cleaned up).

Restitution. This Court reviews the calculation of restitution for abuse of discretion, with any embedded findings of fact reviewed for clear error. *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, No. 23-2309, 2026 WL 2198120, at *12 (7th Cir. July 30, 2026). To the extent a challenge to a district court's grant of restitution raises legal questions, it is reviewed de novo. *FTC v. Credit Bureau Ctr.*, LLC, 937 F.3d 764, 768 (7th Cir. 2019).

Civil Money Penalties. A district court's award of civil penalties is also reviewed for abuse of discretion. *CFPB v. Consumer First Legal Grp., LLC*, 6 F.4th 694, 711 (7th Cir. 2021). Under this standard, a civil penalty award can be overturned if the district court applied an incorrect legal standard or reached a clearly erroneous conclusion of fact. *Pearson v. Target Corp.*, 968 F.3d 827, 831 (7th Cir. 2020).

ARGUMENT

I. The District Court Acted Well Within Its Discretion in Denying Tucci's Motion to Vacate the Default Judgment against FDATR

Relief under Federal Rule of Civil Procedure 60(b) "is an extraordinary remedy granted only in exceptional circumstances." *In re Cook Medical, Inc.*, 27 F.4th 539, 542 (7th Cir. 2022) (cleaned up); *see also BLOM Bank SAL v. Honickman*, 605 U.S. 204, 210 (2025) ("Relief under Rule 60(b)(6) requires extraordinary circumstances."). There are no exceptional circumstances here to warrant such extraordinary relief. To the contrary, the circumstances presented in this case demonstrate that the district could did not abuse its discretion in denying Tucci's motion to vacate FDATR's default judgment. First, Tucci does not articulate any grounds on which he has

standing to challenge the default judgment against FDATR. Second, Tucci's motion, coming three years after default judgement was entered, is untimely. Finally, Tucci does not advance any meritorious grounds that support vacating the judgment under Rule 60(b).

A. Tucci has no standing to challenge the default judgment entered against FDATR

As the district court correctly concluded, Tucci lacks standing to challenge the default judgment entered against FDATR. App.112. The district court specifically noted that Tucci failed to make any third-party standing argument when it denied his motion to vacate, and Tucci repeats that failure here. If anything, he concedes the issue when he acknowledges that he "may not have the authority to step in and challenge" the default judgment in this appeal. Br. at 34. Under virtually identical circumstances, this Court specifically held that an individual owner had "no standing" to challenge a default judgment entered against his company. *Rewards Network Establishment Servs. v. Lajaunie*, 857 F. App'x 856, 857 (7th Cir. 2021). That same result is appropriate here. The district court's denial of Tucci's motion to vacate the default judgment against FDATR can be affirmed on that ground alone.

That result does not change simply because Tucci's counsel put FDATR's name on the cover of his brief and asserts that FDATR joins Tucci's request for relief. *See* Br. at 1, 50. To the extent Tucci took these steps to suggest that relief should be granted because FDATR would have standing to seek it, he misses the mark. Whether FDATR has standing to challenge the judgment is irrelevant: It is not a proper party to this appeal since Tucci's counsel lacks authority to represent the company. In the proceedings below, Tucci repeatedly disavowed any control over or connection to the company, App.059, 65; Supp.App.151–52, 156–58, 195, 198, 209; *see also* ECF No. 107 at 2. Accordingly, when Tucci's counsel filed a motion under FDATR's name in the district court, the court specifically questioned his authority to do so. Supp.App.151–58.

Tucci's counsel could provide no basis. *Id*. Nor does Tucci contend on appeal that he has authority to retain counsel for FDATR. To the contrary, he has renewed his disavowals of the company. *See, e.g.*, Br. at 34 ("[Tucci] was not an officer or shareholder of the company when suit was filed"), 39 ("[Tucci] had no control of FDATR" when FDATR was served or default judgment entered against it).

Tucci also does not contend that someone else has authorized his counsel to represent FDATR. He instead says that *nobody* has authority to act on the company's behalf. *See* Br. at 42–44. Tucci's brief also tacitly acknowledges that his counsel cannot seek relief under FDATR's name, as the brief suggests that relief should be granted sua sponte if Tucci lacks standing to pursue it—and not because FDATR has standing and seeks that relief in its own right.[4] FDATR is therefore not a proper party to this appeal, and the misleading label on Tucci's brief cannot change the fact that the district court properly denied Tucci's motion to vacate for lack of standing.

B. The district court acted within its discretion when it found that Tucci's motion was not timely

Even assuming Tucci has standing to challenge the default judgment against FDATR, the district court did not abuse its discretion in holding that his challenge was not timely because it was not raised within a "reasonable time." *See* App.111–12, 115; *see also* Fed. R. Civ. P. 60(c)(1) (providing that a "motion [to vacate a judgment] under Rule 60(b) must be made within a reasonable time"). To determine whether a movant met that standard under the relevant facts, this Court considers "the interest in finality, the reasons for the delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and the consideration of prejudice, if any, to

[4] For the reasons detailed below, *infra* pp. 20–24, the district court's conclusion that sua sponte relief was not warranted also should be affirmed.

other parties." *Ingram v. Merrill Lynch, Pierce, Fenner & Smith, Inc*., 371 F.3d 950, 952 (7th Cir. 2004) (citation omitted). Each of those factors weighs in favor of concluding that Tucci's delay of over *three years* after entry of the default judgment was not reasonable.

Start with the third factor: when Tucci learned about the judgment. That weighs heavily against Tucci because Tucci had ample notice of the default judgment at the time it was entered. Tucci's counsel of record was electronically served with the judgment upon its entry on February 7, 2022. App.002–15; *see* United States District Court for the Northern District of Illinois General Order 16-0020 §§ VI, XI (about electronic transmission of district court orders). Moreover, starting nearly six months *before* the default judgment was entered, Tucci received repeated notice that it was likely coming when: (1) on September 17, 2021, the Bureau moved for entry of default against FDATR, Supp.App.018–19; (2) on September 22, 2021, the district court set a September 29, 2021, deadline for objections, ECF No. 36; and (3) on October 6, 2021, the court entered a default order, ECF No. 39. Perhaps most damning, during an October 20, 2021, conference, the Magistrate Judge specifically raised the issue of whether Tucci's counsel would seek to lift the default. Supp.App.026. Finally, on February 1, 2022, the Bureau moved for default judgment. Supp.App.032–33. Tucci thus had more than ample opportunity to exercise any right he might have to object to the default judgment before and after it was entered against FDATR. But he chose not to do so.

As to the second factor, Tucci's reasons for delay also weigh heavily against him because the above timeline makes clear that he had no legitimate justification for waiting three years to act. The excuse Tucci gives—that the orders against FDATR became relevant to him only when the final order of judgment was entered against him—defies credulity. Br. at 33. The Bureau's complaint put Tucci on notice of his liability vis-à-vis FDATR at the outset of the case by plainly

alleging how Tucci is subject to both the CFPA and the TSR and how he is liable for FDATR's illegal conduct. The complaint alleges, for example, that Tucci was individually liable because he "was a key decision maker" for the company, was responsible for its marketing and sales practices, "arranged for [it] to provide its services through telemarketing," and had actual or constructive knowledge of its unlawful conduct. Supp.App.003–4, 7–13. And the Bureau relied heavily on Tucci's testimony about his knowledge of and management of FDATR to support its motion for default judgment against the company. Supp.App.042–47. Throughout the entire five years that this case was pending before the district court, Tucci had more than sufficient reason to be aware that a default judgment against FDATR would impact him. He therefore cannot plausibly claim that his choice to bury his head in the sand justifies his delay in acting on information that was readily available to him.

The first and fourth factors also weigh against Tucci because granting his tardy motion would both prejudice the Bureau and undermine courts' interest in finality. The Bureau spent substantial resources over the five years it took to bring this case to a close, including three years litigated on the understanding that FDATR's liability had been resolved. The Bureau would indisputably be prejudiced if it were made to litigate it again simply because Tucci would like another bite at the apple. And that prejudice would also impact the consumers harmed by Tucci's conduct and who are owed compensation under the court's restitution order. Supp.App.182–83. Nor should Tucci's desire for a redo be permitted to force the district court (or this Court) to expend more of its time and resources on a litigation in which a valid final judgment has at long last been entered. A litigant like Tucci who causes repeated delays by refusing to cooperate in discovery, taking more than two years to respond to summary judgement, and seeking to defend a corporate defendant only after final judgment is entered, should not be allowed to prolong

otherwise simple cases like this one ad infinitum. *See, e.g.* ECF Nos. 47, 53, 65, 116, 121; *see also C.K.S. Eng'rs, Inc. v. White Mountain Gypsum Co*., 726 F.2d 1202, 1206 (7th Cir. 1984) ("[W]here a defaulting party was aware of or should have been aware of its responsibilities to the opposing party and to the court, and failed to live up to those responsibilities through unexcused carelessness or negligence, the default judgment has been left intact."). Avoiding that absurdly wasteful outcome—which would also incentivize other litigants to forego timely objections in favor of post hoc challenges after final judgment is entered—is at the core of the judicial interest in finality that Rule 60's "reasonable time" requirement is intended to protect.

Tucci nonetheless contends that his motion was timely because it was filed within one year after the judgment against him became final on May 9, 2025. Br. at 33, 41–42. Tucci is wrong. While Rule 60(c) states that motions seeking relief under Rule 60(b)(1), (2), or (3) must be made "no more than a year after the entry" of the relevant judgment or order, that period "represents an extreme limit," not a safe harbor. *Kagan v. Caterpillar Tractor Co.*, 795 F.2d 601, 610 (7th Cir. 1986). Accordingly, a motion may still be "rejected as untimely if not made within a 'reasonable time,' even though the one-year period has not expired." *Id*.

Here, Tucci made a deliberate choice to delay *any* action until over three years after default judgment was entered. He asserts that the judgment against FDATR did not technically become final until Tucci's individual liability had been finally resolved as well, Br. at 41, but that does not make his delay reasonable. Tucci could have asserted whatever right he had to challenge the default against FDATR at the time (or before) the judgment was entered. That is why the district court rightly concluded that Tucci had forfeited any objection to the default judgment by the time summary judgment on Tucci's individual liability had been briefed, App.050, before final judgment was entered against him. It would be absurd to conclude that, by

engaging in this self-evidently dilatory course of conduct, Tucci filed his motion "within a reasonable time." Fed. R. Civ. P. 60(c)(1); *cf. United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 275 (2010) (Rule 60 "does not provide a license for litigants to sleep on their rights"). Accordingly, the district court did not abuse its discretion in denying Tucci's motion to vacate as untimely. And, as with Tucci's lack of standing, this reason independently justifies affirming the district court's decision denying Tucci's motion.

C. Tucci articulates no grounds that justify vacating the default judgment

Even ignoring Tucci's lack of standing and unreasonable delay, the district court did not abuse its discretion in concluding that Tucci had failed to establish any grounds to justify vacating the default judgment against FDATR. Tucci argues that relief is justified (1) under Rule 60(b)(4) because FDATR was not properly served with the summons and complaint or the default judgment papers, (2) under Rule 60(b)(1) because of his excusable neglect, and (3) under Rule 60(b)(6) because other reasons justify relief. But Tucci fails to establish that service was improper under the applicable Federal Rules of Civil Procedure, that his years-long failure to object to or challenge the default judgment was excusable, or that any distinct "other" reason justifies relief.

i. Tucci has not shown that the judgment is void and therefore default judgment cannot be vacated under Rule 60(b)(4)

Tucci contends that FDATR's default judgment is void because FDATR (1) lacked the capacity to be sued, (2) did not have service of process effectuated on it, and (3) was not properly served with the motion for default judgment. The district court did not abuse its discretion when it concluded that each of these arguments is meritless because FDATR was amenable to suit under governing state law and properly served with the summons and complaint as well as the default judgment papers under the applicable Federal Rules of Civil Procedure. App.112–15.

Capacity to be sued. Tucci is wrong to suggest (at 34–35) that FDATR lacked capacity to be sued because it had been administratively dissolved. As an initial matter, he has waived that argument twice because (1) the first time he even hinted at it was in his reply brief in the lower court, *see* App.099 (raising issue in reply brief); Supp.App.201–14 (failing to raise issue in motion to vacate); App.057–70 (same in motion to vacate purportedly filed on behalf of FDATR); *see also Wonsey v. City of Chicago*, 940 F.3d 394, 399 (7th Cir. 2019) (arguments raised for the first time in a reply brief are waived), and (2) he only gestures at it vaguely here, *see* Br. at 34–35; *see also Schaefer v. Universal Scaffolding & Equip., LLC*, 839 F.3d 599, 607 (7th Cir. 2016) ("Perfunctory and undeveloped arguments [on appeal] are waived.").

In any case, the argument also fails on the merits. As an Illinois corporation, FDATR could be sued for up to five years after its dissolution. 805 Ill. Comp. Stat. 5/12.80 (governing dissolved corporation's capacity to be sued); *see also* Fed. R. Civ. P. 17(b)(2) ("Capacity to sue or be sued is determined ... (2) for a corporation, by the law under which it was organized."). Here, FDATR was dissolved on September 29, 2020, App.046 n.3, and the Bureau filed suit less than two months later, Supp.App.014. There is thus no question that FDATR had the capacity to be sued under Illinois state law and thus under Federal Rule of Civil Procedure 17(b)(2) at the time.

Service of process. Tucci's argument (at 35–36) that FDATR was not properly served also fails. Under Federal Rule of Civil Procedure 4, a plaintiff may serve a corporation "by delivering a copy of the summons and of the complaint to an officer" of that corporation. Fed. R. Civ. P. 4(h)(1)(B). That is precisely what the Bureau did: It sent a process server to personally

deliver the summons and complaint to FDATR's then-president, Kenneth Wayne Halverson.[5] Supp.App.016–17. Accordingly, the district court did not abuse its discretion in concluding that the Bureau did all it needed to do to bring FDATR within the district court's jurisdiction. App.112–15.

Tucci's contention that the Bureau should have, but failed, to comply with Illinois law is doubly incorrect. As the district court correctly held, "Illinois rules do not overrule the federal rules in federal court …." App.113. Besides, and as the district court also recognized, *id.*, the Bureau's personal service on FDATR's president at his Illinois residence *did* comply with Illinois law. *See* 735 Ill. Comp. Stat. 5/2-204 (stating a private corporation may be served "by leaving a copy of the process with ... any officer ... of the corporation found anywhere in the State.").

While Tucci contends (at 35–36) that personal service on FDATR's president was inadequate under Illinois law after FDATR was dissolved, the district court recognized that he both waived that argument by raising it only in his reply and misreads the relevant statutes in any event, App.114–15. Tucci asserts that, after dissolution, an Illinois corporation must be served only at its registered office or through a registered agent or the Illinois Secretary of State. Br. at 35–36 (citing 805 Ill. Comp. Stat. 5/5.05; 805 Ill. Comp. Stat. 5/5.25). But those statutes merely provide that service "*can*" or "*may*" be had by the prescribed methods, such as service on a registered agent. Nothing in those statutes suggests that service cannot be effectuated using other methods permitted by Illinois law. To the contrary, one of the statutes Tucci cites specifically

[5] To the extent Tucci takes issue with the proof of service because it stated that Halverson was FDATR's registered agent rather than its president, this issue does not change the analysis. Where the proof of service identifies the recipient and when and where service occurred, an error in the individual's title does not invalidate service of process. *See Relational, LLC v. Hodges*, 627 F.3d 668, 672 (7th Cir. 2010) (a prima facie showing of valid service requires simply producing a return of service identifying the recipient and noting when and where service occurred).

provides that "[n]othing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law." 805 Ill. Comp. Stat. 5/5.25(d). Accordingly, Tucci has not shown—and cannot show—that the Bureau failed to serve FDATR consistent with Illinois law.

Service of default judgment papers. Like his argument on service of process, Tucci's argument that FDATR was not properly served with the default judgment papers—i.e., the Bureau's request for entry of default and motion for default judgment—fails because it ignores the governing federal rule. Rule 5 of the Federal Rules of Civil Procedure governs service of motions and other papers in federal district court, just as Rule 4 governs service of process. Under Rule 5, the Bureau was not required to serve FDATR *at all* because the company was "in default for failing to appear." Fed. R. Civ. P. 5(a)(2); *Cent. Ill. Carpenters Health & Welfare Tr. Fund v. Con-Tech Carpentry, LLC*, 806 F.3d 935, 937 (7th Cir. 2015).

Nevertheless, the Bureau went above and "beyond [its] legal requirements," *see id.*, when it served FDATR by mailing its default judgment papers to the company's last known address, i.e., the address of its president, as is permitted under Rule 5(b)(2)(C), Supp.App.019, 34; *see also Trade Well Int'l v. United Cent. Bank*, 825 F.3d 854, 860 (7th Cir. 2016) ("[S]ervice of process was valid under Rule 5 because all documents were mailed to Trade Well's last known address."). Tucci complains that the Bureau should instead have mailed those papers to the "last corporate address given by FDATR to the Secretary of State" before the corporation ceased operating and dissolved. Br. at 37. But the Bureau knew that the company was no longer located at that address, Supp.App.218, and so complied with Rule 5 by effecting service at the last address it knew could be associated with FDATR, Supp.App.019, 34.

Tucci did not explain below, and does not explain here, why the Bureau needed to serve the company at all under Rule 5, or why his preferred address should have taken precedence over the one the Bureau used. Besides, any technical noncompliance with Rule 5 would not justify overturning a default judgment where the Bureau made sure that the person with the biggest stake in the proceedings against the company (Tucci himself) had actual notice of both the request for entry of default and motion for default judgment. *See McKinnie v. Roadway Express, Inc.*, 341 F.3d 554, 557 (6th Cir. 2003) (holding noncompliance with Rule 5 did "not provide a sufficient basis to reverse ... summary judgment" where non-movant "had actual notice that the summary judgment motion had been filed"); Supp.App.019, 34. Accordingly, Tucci has not shown that the default judgment against FDATR should be overturned because of any failure to properly serve the company.

ii. Tucci has not shown excusable neglect that would justify vacating the default judgment under Rule 60(b)(1)

For the same reasons that his motion to vacate was not timely, *supra* pp. 16–20, Tucci cannot show that it was "excusable neglect" for him to sit on his hands for months while he watched the district court determine FDATR's liability. To vacate a default judgment under Rule 60(b)(1), "the moving party must demonstrate: (1) good cause for the default; (2) quick action to correct it; and (3) a meritorious defense to the complaint." *Wehrs v. Wells*, 688 F.3d 886, 890 (7th Cir. 2012) (quotations omitted); *Acosta v. DT & C Glob. Mgmt., LLC*, 874 F.3d 557 (7th Cir. 2017) (clarifying that this standard applies to Fed. R. Civ. P. 60(b)(1)).[6] Tucci's implausible, self-serving assertion that he was not aware that FDATR's liability would impact him is insufficient to satisfy any of those three factors.

[6] Tucci incorrectly relies on a Ninth Circuit case that uses different factors. *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691 (9th Cir. 2001).

First, there is no "good cause for the default" as Tucci's excuses for deliberately choosing to stand by as the district court entered default judgment do not establish "extraordinary circumstances" justifying his failure to act. *Jones v. Phipps*, 39 F.3d 158, 164 (7th Cir. 1994). As detailed above, *supra* p. 17, Tucci had ample notice that default judgment against FDATR was impending, but chose not to act. In fact, the district court called for objections before entering default against FDATR, ECF Nos. 36, 38, but Tucci did nothing. And since the complaint that initiated the litigation made clear that the Bureau asserted that FDATR's liability extended to him, *supra* pp. 17–18, Tucci's excuse that he did not realize that the judgment could be relevant to him does not hold water. He therefore cannot establish that default resulted from anything other than his "willful disregard for duties, simple carelessness, or negligence." *Jones*, 39 F.3d at 164. Nor is Tucci helped by his contention (at 43–44) that his failures should be excused because "he had ... no authority" to act. That merely confirms that, as explained above, he has no standing to challenge the default judgment now. *See supra* pp. 14–15.

Second, Tucci's corrective action was anything but quick. This Court has held that a litigant who waited even five weeks failed to take quick action. *Jones*, 39 F.3d at 165; *see also Acosta*, 874 F.3d at 565 (waiting two to three months to respond after learning of default judgment was not quick action); *C.K.S. Eng'rs, Inc.*, 726 F.2d at 1208 (two-month delay was not quick action). The district court entered default against FDATR on October 6, 2021, and—after specifically raising the possibility of a challenge during a hearing with Tucci's counsel, Supp.App.026—entered default judgment on February 7, 2022, but Tucci stood idly by until 2025. *Supra* pp. 17–18. Tucci's three-year delay strips him of any claim to the relief he seeks.

Third, Tucci articulates no meritorious defenses. A meritorious defense "must at least 'raise[ ] a serious question regarding the propriety of a default judgment and ... [be] supported by

a developed legal and factual basis.'" *Wehrs*, 688 F.3d at 890 (citing *Jones*, 39 F.3d at 165). The only defense to which Tucci points (at 44) is that the district court lacked jurisdiction over FDATR and the default judgment is void. But that argument is not meritorious for the reasons described above. *Supra* pp. 20–24.

Elsewhere in his brief (at 49), Tucci separately asserts that "Defendants never were nor could have been acting as a 'covered person' as defined by the CFPA or the TSR." But this Circuit has consistently held that a general denial of the complaint's allegations, without any factual support, is insufficient to state a meritorious defense. *See Wehrs*, 688 F.3d at 890; *see also Pretzel & Stouffer*, 28 F.3d at 46. And that is all Tucci offers in the seven short lines that he devotes to this argument without citing *any* record evidence. Br. at 48–49.

In any event, there can be no genuine dispute that both FDATR and Tucci were subject to the CFPA and the TSR. As the Bureau established with undisputed evidence in the lower court, FDATR was a "covered person" under the CFPA because it offered "financial advisory services" when it (falsely) told consumers that it could lower or eliminate their student-loan payments and improve their creditworthiness. Supp.App.038 (citing, *e.g.*, Supp.App.116–134 (website pages)); *see also* Supp.App.045–46 (citing 12 U.S.C. § 5481(5), (6), (15)(A)(viii)(II)); *Gordon*, 819 F.3d at 1192–93 (holding that defendant who promised consumers that defendant's services would reduce their loan payments offered financial advisory services under the CFPA). And Tucci was also subject to the CFPA as a "related person," and therefore a "covered person," because of his control over and participation in FDATR's unlawful acts and practices. App.053–54 (applying 12 U.S.C. § 5481(25) to Tucci).

The Bureau also established below that FDATR was subject to, and violated, the TSR as a "telemarketer" and "seller" because it used telemarketing to obtain customers for its illusory

debt-relief and credit-repair services. Supp.App.042. And Tucci was subject to the same statute and liability through his participation in FDATR's scheme. App.051–52. Tucci claims without citation that FDATR never promised that it could cut loan payments in half, Br. at 48–49, but that is not what the record below showed, Supp.App.122. And Tucci's assertion (at 49) that FDATR never "act[ed] as a credit repair company" does not mean that the company didn't promise to repair consumers' credit or sell those illusory services through telemarketing. It merely confirms that FDATR's promises to help consumers improve their credit scores were false and, therefore, provides no reason to doubt that both Tucci and FDATR were covered by the CFPA and TSR.

iii. Tucci does not advance any theory that would warrant relief under Rule 60(b)(6)

Finally, Tucci cannot demonstrate that he is entitled to relief under Federal Rule of Civil Procedure 60(b)(6), the catchall provision that allows courts to relieve a party from a final judgment or order for "any other reason that justifies relief." Fed. R. Civ. P. 60. Tucci's argument that "preventing the entry of default judgment was out of his control" fails for two reasons. First, "Rule 60(b)(6) provides only grounds for relief not already covered by the preceding five paragraphs," including 60(b)(1). *BLOM Bank SAL*, 605 U.S. at 211. Because Tucci's argument here merely rehashes his excusable neglect argument under Rule 60(b)(1), it is not appropriate for relief under Rule 60(b)(6). Second, Tucci's arguments for vacating the default judgment fail to establish sufficient grounds under *any* prong of Rule 60(b) for the reasons explained above, *supra* pp. 20–27, let alone the "extraordinary circumstances" necessary to justify relief under Rule 60(b)(6), *BLOM Bank SAL*, 605 U.S. at 210.

II. The District Court Did Not Abuse Its Discretion in Denying Tucci's Motion to Vacate the Judgment Against Himself.

Tucci fails to show that the district court abused its discretion in declining to vacate the judgment entered against Tucci individually. According to Tucci, that judgment should be vacated under Federal Rule of Civil Procedure 60(b)(5) because it was based on the default judgment against FDATR, which Tucci contends should be vacated. But, as explained above, there are no grounds to vacate the judgment against FDATR. Accordingly, the district court acted well within its discretion in denying Tucci's motion to vacate the judgment against himself.

III. The District Court Correctly Granted Summary Judgment Against Tucci on Liability.

The district court correctly concluded that there was no genuine dispute that Tucci was individually liable for the unlawful scheme he perpetrated through FDATR. App.051–54. It recognized that the default judgment established FDATR's liability but did not rely on that judgment to establish any material facts as to Tucci. The court instead examined the uncontested evidence presented by the Bureau in support of both default and summary judgments, much of which was Tucci's own testimony. App.045–46, 52 ("[B]ased on the Court's review of the underlying evidence, the Bureau's citations [to the record] are substantively accurate."), 114 ("[T]o the extent the Court relied [on] the default judgment's factual findings, it did so after finding that they were 'supported by uncontested evidence' presented by the Bureau."). Tucci's contention (at 38–40) that the district court's summary judgment ruling against him was not "an [a]djudication on the [m]erits" therefore lacks any basis.

Nor can Tucci support his assertion (at 38) that he was somehow precluded from contesting the Bureau's claims. Even though Tucci blatantly ignored his first deadline to respond to the Bureau's summary judgment motion, the district court generously provided Tucci with

more than two years to file a response. App.045 n.2. But Tucci squandered that opportunity by submitting an opposition that failed to raise any genuine dispute, including because it did not contain *any* citations to the record. App.045. And while Tucci also complains (at 40) that the default judgment established FDATR's liability before the court ruled on Tucci's liability, he does not explain how that judgment prevented him from litigating the underlying facts. Nor can he because (as explained above) the district court based its decision as to Tucci on the Bureau's overwhelming and undisputed evidence, not the default judgment alone. App.046 (concluding that "the factual findings set forth in the default judgment order" are "supported by uncontested evidence."). Besides, even if the district court had relied solely on the default judgment as Tucci claims—which it did not—he has identified no error in the district court's conclusion that he waived any objection to that judgment long before summary judgment was briefed. *See* App.049–50. It is therefore clear that the district court found Tucci liable on summary judgment because of his own failures and the evidence marshalled by the Bureau, not because anything prevented Tucci from defending himself.

Finally, Tucci separately contends (at 48–49) that neither he nor FDATR is subject to the TSR and CFPA, the statutes under which both were found liable. To the extent he asserts that this undermines the district court's determination on summary judgment, he is plainly wrong. As discussed above, *supra* pp. 26–27, there can be no genuine dispute that Tucci and FDATR were covered by both the TSR and CFPA. The district court's ruling on summary judgment should therefore be affirmed.

IV. The District Court Properly Imposed Restitution and Civil Money Penalties

The district court's imposition of restitution and civil money penalties against Tucci, as well as FDATR, is supported by both the law and undisputed facts. Tucci's efforts to argue

otherwise are undeveloped and should be rejected as waived on that ground alone. *Schaefer*, 839 F.3d at 607. But even if the Court considers them, they are meritless.

A. The district court properly awarded restitution of the amounts Tucci and FDATR wrongfully took from consumers

The district court properly awarded the Bureau $2,117,133.28 in legal restitution to be used to redress the consumers harmed by FDATR's and Tucci's conduct. App.089–91; Supp.App.182–83. This Court has recognized that, when an unlawful scheme deceives consumers into paying fees, a legal restitution award can "appropriately refund[] to customers the amount that has not yet been returned by" the scheme's perpetrators. *FTC v. Credit Bureau Center, LLC*, 81 F.4th 710, 718 (7th Cir. 2023). That is precisely what the district court did here when it relied on undisputed evidence to establish that the $2,117,133.28 restitution amount represented FDATR's net revenues, App.089—i.e., $2,195,989.75 in gross receipts minus $78,856.47 in refunds to consumers, App.020. Tucci provides no genuine grounds to question the correctness of the district court's award and therefore cannot show that the court abused its discretion.

Tucci's contention that the restitution award improperly exceeded his net profits is meritless. Tucci asserts (at 47) that *Liu v. Sec. & Exch. Comm'n*, 591 U.S. 71 (2020), "limited restitution under § 5565(a) [of the CFPA] to strictly a firm's net profits," but that decision did not sweep so broadly. The CFPA authorizes "*any* appropriate legal or equitable relief," 12 U.S.C. § 5565(a)(1) (emphasis added)—including legal restitution, *id*. § 5565(a)(2)(C). It therefore authorizes more than just the "categories of equitable relief" to which this Court held *Liu* applies in the other case Tucci cites (at 47). *CFPB v. Consumer First Legal Group, LLC*, 6 F.4th 694, 710–11 (7th Cir. 2021) (applying *Liu* where the district court "understood itself to be awarding equitable relief" rather than legal restitution). Here, the district court thoroughly

explained that it was awarding legal, not equitable, restitution because the Bureau sought to impose a general "personal liability against Tucci" rather than to trace and obtain "'particular funds or property' in Tucci's possession." App.090 (citing *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213 (2002)). And Tucci's brief nowhere disputes the district court's conclusion that its restitution award was legal in nature. Accordingly, any rule taken from *Liu* that would limit the scope of equitable remedies, which were not awarded here, is irrelevant.

B. The district court properly awarded the amount of civil money penalties for the defendants' violations of the CFPA

The district court correctly awarded $41,123,897 in civil money penalties against Tucci under the CFPA. In passing that statute, Congress required courts to impose a civil money penalty on any person that violates Federal consumer financial law. 12 U.S.C. § 5565(c)(1) ("Any person that violates, through any act or omission, any provision of Federal consumer financial law *shall* forfeit and pay a civil penalty pursuant to this subsection." (emphasis added)). Congress also expressed its judgment as to the penalty amount that was appropriate for each violation, depending on the perpetrator's level of culpability. 12 U.S.C. § 5565(c); *see also FTC v. Day Pacer LLC*, 125 F.4th 791, 810 (7th Cir. 2025) (discussing Congress's discretion to set statutory factors to govern civil penalty calculations). Here, Tucci does not dispute that the district court correctly calculated the statutorily appropriate penalty amount for his 6,046 violations of the CFPA.

Tucci instead asserts in passing (at 47, 48) that any penalty is "improper in connection with a default judgment" and violates the Seventh Amendment. His failure to meaningfully develop any argument means it can be rejected on waiver grounds alone. *Schaefer*, 839 F.3d at 607. In any event, his assertion rests on a mistaken premise: As the district court noted, it imposed the civil penalty against Tucci after finding him liable on summary judgment, not

because it had entered a default judgment against him. App.091. And as the court further explained, "[t]he Seventh Amendment does not entitle parties to a jury trial where there are no factual issues for a jury to resolve." App.091 (quoting *Burks v. Wisconsin Dep't. of Transp.*, 464 F.3d 744, 759 (7th Cir. 2006)); *see also Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 336 (1979) (noting that procedures like directed verdict, summary judgment, and partial retrial do not violate the Seventh Amendment).

To the extent Tucci means to argue instead that he was entitled to have a jury decide the penalty amount, the district court correctly recognized that he is wrong on that as well. App.091–92. The right to a jury trial does not extend to the assessment of civil money penalties where, as here, Congress assigned the determination of the amount of the civil penalty to the courts and set forth factors for judges to consider. *Tull v. U.S.*, 481 U.S. 412, 425–27 (1987). Tucci cites *SEC v. Jarkesy*, 603 U.S. 109 (2024), but does not explain how its holding supports his position. In that case, the Supreme Court held only that the SEC's imposition of liability and civil penalties through administrative proceedings violated the Seventh Amendment. *Id*. at 119–121. As multiple courts have recognized, nothing in *Jarkesy* undermines *Tull's* holding that a judge may determine the appropriate amount of a civil penalty if liability is first established in a manner consistent with the Seventh Amendment. *See, e.g.*, *SEC v. Halitron, Inc.*, No. 24-1052, 2025 WL 678776, at *4 (2d Cir. Mar. 3, 2025) (recognizing that "*Jarkesy* ... did not abrogate *Tull*"); *SEC v. TKO Farms, Inc.*, No. 8:22-CV-00941-RGK-KES, 2024 WL 4896204, at *1 (C.D. Cal. Sept. 20, 2024) (reasoning that "*Jarkesy's* holding that parties may have the right to a jury trial for liability would not abrogate *Tull's* holding that parties have no right to a jury trial for remedies"). That is precisely what the district court properly did here.

C. Neither the restitution award nor the civil penalties violated the Eighth Amendment

Tucci also cannot prevail on his perfunctory argument that the district court's restitution and civil penalty awards violated the Eighth Amendment. Because Tucci did not make this argument at all to the district court, *see* Supp.App.172–75, and fails to meaningfully develop it or support it with any legal authority in his brief on appeal, *see* Br. at 48, it is doubly waived, *Schaefer*, 839 F.3d at 607; *Soo Line R.R. Co. v. Consol. Rail Corp.*, 965 F.3d 596, 601 (7th Cir. 2020); *Wheeler v. Hronopoulos*, 891 F.3d 1072, 1073 (7th Cir. 2018) ("Failing to bring an argument to the district court means that you waive that argument on appeal."). At any rate, Tucci's argument fails on the merits as to both remedies awarded by the district court.

Tucci's Eighth Amendment argument fails as to the restitution award because "purely remedial sanctions are not subject to Eighth Amendment scrutiny" at all. *Grashoff v. Adams*, 65 F.4th 910, 916 (7th Cir. 2023). That the restitution Tucci was ordered to pay is a purely remedial sanction is beyond question. After all, it merely requires him to pay back the money that he and FDATR unlawfully deceived consumers into paying.

Nor does Tucci's argument fare any better when it comes to the civil penalty award. Even assuming that the Eighth Amendment applies to civil penalties awarded under the CFPA, "decisions about the appropriate punishment for an offense belong in the first instance to the legislature." *Stop Illinois Health Care Fraud, LLC v. Sayeed*, 100 F.4th 899, 907 (7th Cir. 2024) (cleaned up). Here, the district court faithfully applied the CFPA to award the appropriate penalty for the thousands of separate unlawful acts that Tucci committed. App.092–93. In offering an alternative, Tucci argued only that the penalty calculation should account for the number of days violations occurred, Supp.App.174 (ECF No. 128) at 3, which the district court rightly concluded would have *increased* the penalty amount, App.092. Moreover, Tucci did not

argue that the district court should reduce the penalty amount based on the statutory mitigating factors. App.093. Even on appeal, he does not dispute the district court's math or argue that any mitigation was warranted under the statute. He has thus provided no grounds to question the presumption that the district court's award of the penalty specifically authorized by Congress is constitutional. *See Sayeed*, 100 F.4th at 907.

CONCLUSION

For these reasons, the Court should affirm the district court in all respects.

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Respectfully submitted,

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This brief complies with the type-volume limitation in Seventh Circuit Rule 32(c) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), it contains 10,703 words.

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