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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GARRAPATA, LLC,

Plaintiff,

v.

**NOROK INNOVATION, INC.; ERIC
POPOWICZ; THUNDERCOM
SYSTEMS LTD; COLIN ANDREWS
aka SIMON THUNDERCOM; BIZX
MARKETING, LLC; AZ
CONNECTIONS, LLC; JEFF
TAYLOR; and DOES 1-30, inclusive,**

Defendant.

Case No.: CV 21-00356-CJC (PDx)

**ORDER GRANTING IN
SUBSTANTIAL PART PLAINTIFF’S
MOTION FOR DEFAULT
JUDGMENT [Dkt. 71] AND DENYING
PLAINTIFF’S APPLICATION TO
SEAL [Dkt. 69]**

I. INTRODUCTION & BACKGROUND

Plaintiff Garrapata, LLC alleges claims for misappropriation of name and likeness (Cal. Civ. Code § 3344), the common law right of publicity, false endorsement under the Lanham Act (15 U.S.C. § 1125(a)), trademark infringement (15 U.S.C. § 1114(1)(A)),

1 and common law trademark infringement against the only remaining Defendants in this
2 action, Norok Innovation, Inc. (“Norok”) and Eric Popowicz (“Popowicz”) (collectively
3 “Defendants”). (Dkt. 1 [Complaint].) Plaintiff alleges that Defendants are responsible
4 for “an online Internet scam that illegally uses [Clint] Eastwood’s celebrity and name to
5 drive traffic to an online marketplace selling cannabidiol (“CBD”) products and to
6 promote CBD products thereon.” (*Id.* ¶ 2.) Plaintiff owns the rights of publicity in Mr.
7 Eastwood’s name, image, likeness, and persona for all purposes, other than those related
8 to the promotion and exploitation of the motion pictures Mr. Eastwood makes. (Compl. ¶
9 5, Dkt. 71-2 [Declaration of Clint Eastwood, hereinafter “Eastwood Decl.”] ¶ 2–3; Dkt.
10 71-3 [Declaration of Howard Bernstein, hereinafter “Bernstein Decl.”] ¶¶ 2–3.) Plaintiff
11 also owns a federally registered trademark, U.S. Registration No. 3265483, in Mr.
12 Eastwood’s name for “Entertainment services, namely, personal appearances and live
13 performance and live recorded performances by a movie star and actor” (the “Registered
14 Mark”). (Compl. ¶ 65, Ex. 3; Bernstein Decl. ¶ 4, Exhibit 1 [Plaintiff’s Trademark
15 Certificate from the United States Patent and Trademark Office].)

16
17 Plaintiff filed this action on January 14, 2021. (Compl.) On January 21, 2021, the
18 complaint and summons were personally served on Norok. (Dkt. 15.) The Clerk entered
19 Norok’s default on February 17, 2021. (Dkt. 27.) On August 6, 13, 20, and 27 of 2021,
20 the complaint and summons were served on Popowicz via publication, (Dkt. 51), with the
21 Court’s approval, (Dkt. 48). The clerk entered Popowicz’s default on September 21,
22 2021. (Dkt. 53.) To date, neither Defendant has appeared in the case. Before the Court
23 is Plaintiff’s motion for default judgment against Defendants. (Dkt. 71 [Motion for
24 Default Judgment, hereinafter “Mot.”].) For the following reasons, Plaintiff’s motion is
25 **GRANTED IN SUBSTANTIAL PART.**¹

26
27
28 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
for May 16, 2022, at 1:30 p.m. is hereby vacated and off calendar.

1 **II. LEGAL STANDARD & ANALYSIS**

2
3 In determining whether granting default judgment is appropriate, the Court
4 examines (1) its jurisdiction, (2) whether Plaintiff has met the procedural requirements
5 for default judgment, (3) the merits of Plaintiff’s motion for default judgment, and
6 (4) whether it is appropriate to grant the relief Plaintiff seeks.

7
8 **A. Jurisdiction and Service of Process**

9
10 In considering whether to enter default judgment against a defendant, a court must
11 first determine whether it has jurisdiction over the subject matter and the parties. *In re*
12 *Tuli*, 172 F.3d 707, 712 (9th Cir. 1999).

13
14 **1. Subject Matter Jurisdiction**

15
16 Here, the Court has federal question jurisdiction over Plaintiff’s federal trademark
17 infringement claims, and supplemental jurisdiction over Plaintiff’s state law claims since
18 they form part of the same case or controversy as the federal claims. *See* 28 U.S.C.
19 §§1331, 1367(a), 1338(a); 15 U.S.C. §§ 1041 *et seq.*; 15 U.S.C. § 1114(a)(A).

20
21 **2. Personal Jurisdiction**

22
23 The Court also has personal jurisdiction over Defendants. “As the party seeking to
24 invoke this Court’s jurisdiction, Plaintiff bears the burden of establishing that this Court
25 has personal jurisdiction over Defendants.” *Craigslist, Inc. v. Naturemarket, Inc.*, 694 F.
26 Supp. 2d 1039, 1052 (N.D. Cal. 2010) (citing *Scott v. Breeland*, 792 F.2d 925, 927 (9th
27 Cir. 1986)). “In the context of a motion for default judgment, the Court may dismiss an
28

1 action *sua sponte* for lack of personal jurisdiction . . . however, a court should allow the
2 plaintiff the opportunity to establish that jurisdiction is proper.” *Id.*

3
4 Plaintiff maintains that the Court possesses specific personal jurisdiction over each
5 Defendant because they “purposefully directed their activities and consummated
6 transactions in California in carrying out their illegal scheme and because their scheme is
7 inflicting harm on businesses and consumers in California.” (Mot. at 4; Compl. ¶ 15.)
8 Plaintiff also alleges that Norok is a Florida corporation with its principal place of
9 business in Los Angeles, California. (Compl. ¶ 6.) Accordingly, the Court has general
10 personal jurisdiction over Norok. *Daimler AG v. Bauman*, 571 U.S. 117, 134 (2014)
11 (“With respect to a corporation, the place of incorporation and principal place of business
12 are paradigm[m] . . . bases for general jurisdiction.”) (internal citation omitted). Plaintiff
13 also alleges that Popowicz is an individual and resident of Los Angeles County,
14 California. Accordingly, the Court may also exercise general personal jurisdiction over
15 Popowicz. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473–74 (1985).

16 17 **B. Service of Process**

18
19 Courts must also determine whether there was sufficient service of process on the
20 party against whom default judgment is requested. *See Mason v. Genisco Tech. Corp.*,
21 960 F.2d 849, 851 (9th Cir. 1992). Here, there has been adequate service of process on
22 each Defendant pursuant to Federal Rule of Civil Procedure 4 because each Defendant
23 was served in compliance with California law. (*See* Dkt. 15 [Proof of Service Upon
24 Defendant Norok Innovation, Inc.]; Dkt. 49 [Order Granting Plaintiff’s Motion for
25 Service by Publication Upon Defendant Eric Popowicz]; Dkt. 51 [Proof of Service Upon
26 Defendant Eric Popowicz].)

C. Procedural Requirements for Default Judgment

Federal Rule of Civil Procedure 55(b)(2) and Central District of California Local Rule 55-1 also require that applications for default judgment set forth the following information: “(1) when and against which party default was entered; (2) the identification of the pleadings to which default was entered; (3) whether the defaulting party is an infant or incompetent person, and if so, whether the person is adequately represented; (4) that the Soldiers’ and Sailors’ Civil Relief Act of 1940 does not apply; and (5) that notice of the application has been served on the defaulting party, if required.” *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003). Those requirements have been satisfied here. First, the clerk entered default against Norok on February 17, 2021, (Dkt. 27), and against Popowicz on September 21, 2021, (Dkt. 53). Second, default was entered as to the Complaint. (*See* Dkts. 27, 53.) Third, Defendants are not infants nor incompetent persons, (Dkt. 71-5 [Declaration of Jordan Susman in Support of Plaintiff’s Motion for Default Judgment, hereinafter “Susman Decl.”] ¶ 14). Fourth, the Soldiers’ and Sailors’ Relief Act of 1940 does not apply, (*id.*). The fifth requirement, notice of the application, does not apply because Defendants failed to appear in this action. Fed. R. Civ. P. 55(b)(2).

D. Merits of the Motion for Default Judgment

After entry of default, a court may grant a default judgment on the merits of the case. Fed. R. Civ. P. 55(a)–(b). “The district court’s decision whether to enter a default judgment is a discretionary one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In exercising their discretion, courts consider the following factors articulated in *Eitel v. McCool*, 782 F.2d 1470, (9th Cir. 1986):

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money

1 at stake in the action, (5) the possibility of a dispute concerning material
2 facts, (6) whether the default was due to excusable neglect, and (7) the
3 strong policy underlying the Federal Rules of Civil Procedure favoring
4 decisions on the merits.

5 *Id.* at 1471–72. Because default has been entered in this case, the Court accepts as true
6 all of “the factual allegations of the complaint, except those relating to the amount of
7 damages.” *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987).
8 Here, the *Eitel* factors weigh in favor of a default judgment.

9
10 **1. Possibility of Prejudice to Plaintiff**

11
12 The first *Eitel* factor requires the Court to consider the harm to the plaintiff if the
13 Court does not grant default judgment. *See PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp.
14 2d 1172, 1177 (C.D. Cal. 2002). This factor weighs in Plaintiff’s favor because without a
15 default judgment it would lack any other recourse for recovery against Defendants since
16 Defendants failed to appear or to defend this suit. *See Seiko Epson Corp. v. Prinko*
17 *Image Co. (USA)*, 2018 WL 6264988, at *2 (C.D. Cal. Aug. 22, 2018) (“Given
18 Defendant’s unwillingness to answer and defend, denying default judgment would render
19 Plaintiffs without recourse.”).

20
21 **2. & 3. The Merits of the Claim and the Sufficiency of the
22 Complaint**

23 Even where default is entered, courts must still determine whether the facts alleged
24 give rise to a cognizable cause of action because “claims [that] are legally insufficient . . .
25 are not established by default.” *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267
26 (9th Cir. 1992). Accordingly, the second and third *Eitel* factors, taken together, “require
27 that a plaintiff state a claim on which [the plaintiff] may recover.” *Philip Morris USA*,
28

1 *Inc. v. Castworld Prod., Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003). Plaintiff has alleged
2 several claims against Defendants. Th Court takes each in turn.

3
4 **a. Common Law Right of Publicity**

5
6 To recover on a common law right of publicity claim, or a misappropriation of
7 name or likeness claim, Plaintiff must prove “(1) the defendant’s use of the plaintiff’s
8 identity; (2) the appropriation of plaintiff’s name or likeness to defendant’s advantage,
9 commercially or otherwise; (3) lack of consent; and (4) resulting injury.” *Laws v. Sony*
10 *Music Entm’t, Inc.*, 448 F.3d 1134, 1138 (9th Cir. 2006). Plaintiff has established these
11 elements.

12
13 With respect to the first two elements, Plaintiff alleges that Defendants have used
14 an aspect of Mr. Eastwood’s identity, *i.e.*, his name, to Defendants’ commercial
15 advantage. Specifically, Plaintiff alleges that Defendants use Mr. Eastwood’s name in
16 hidden metatags so that an online internet search for the terms “Clint Eastwood CBD”
17 leads consumers to a website entitled “online-cbd-shop.com.” (Compl. ¶ 23; Dkt. 1-1
18 [Exhibit 1, Screenshot of Google Search Results for Terms “Clint Eastwood CBD”];
19 Susman Decl. ¶ 2.) Clicking on the link for online-cbd-shop.com takes the consumer to a
20 marketplace selling “61 PRODUCTS FOUND FOR ‘CLINT EASTWOOD CBD
21 PRODUCTS.’” (*Id.* ¶ 24, Dkt. 1-2 [Exhibit 2, Screenshot of Search Results on Online-
22 cbd-shop.com]; Susman Decl. ¶ 3.) Plaintiff alleges that by using Mr. Eastwood’s name
23 in hidden metatags on the marketplace website, Defendants “figuratively posted a sign
24 with Plaintiff’s trademark in front of their online store to attract consumers to their
25 products.” (Compl. ¶ 26; Dkt. 71-20 [Declaration of Eric Lowe, hereinafter “Lowe
26 Decl.”] ¶¶ 5–6.)

1 With respect to the third and fourth elements, Plaintiff alleges that neither Plaintiff
 2 nor Mr. Eastwood consented to such use. (Eastwood Decl. ¶ 2; Bernstein Decl. ¶ 3.)
 3 Finally, Plaintiff alleges that it has been damaged by Defendants’ misuse of Mr.
 4 Eastwood’s name because they were deprived of the economic value of such use. *See*
 5 *Solano v. Playgirl, Inc.*, 292 F.3d 1078, 1090 (9th Cir. 2002) (“[T]he measure of damages
 6 available for misappropriation claims includes the economic value of the use of an
 7 individual’s name and likeness.”).

8
 9 **b. California Civil Code Section 3344**

10
 11 Under Civil Code section 3344, Plaintiff must prove all of the elements of the
 12 common law right of publicity claim plus (1) a knowing use by the defendant, and (2) a
 13 direct connection between the use and the commercial purpose. *Downing v. Abercrombie*
 14 *& Fitch*, 265 F.3d 994, 1001 (9th Cir. 2001). Plaintiff successfully maintains that
 15 “Defendants’ misuse of Mr. Eastwood’s name in hidden fields on the marketplace
 16 website was no accident[.]” (Mot. at 9.) The Complaint asserts that “[a]t all times
 17 mentioned in this Complaint, all of the Defendants acted in concert to knowingly cause,
 18 facilitate, control, induce, or otherwise participate in the wrongful conduct alleged
 19 herein.” (Compl. ¶ 14.) Plaintiff also states plainly that the use of the hidden metatags
 20 was to attract consumers to purchase CBD products from the Defendants. (*Id.* ¶ 36.)
 21 Plaintiff therefore successfully states a section 3344 claim.

22
 23 **c. False Endorsement Under the Lanham Act (15 U.S.C. §**
 24 **1125(a)); Trademark Infringement (15 U.S.C. §**
 25 **1114(1)(A), and Common law Trademark Infringement**

26 The elements of claims for False Endorsement under the Lanham Act, Trademark
 27 Infringement under the Lanham Act, and common law trademark infringement are
 28 identical. *See Einstein v. Baby Einstein Co. LLC*, 2009 WL 10670676, at * 4 (C.D. Cal.

1 Dec. 21, 2009); *Rearden LLC v. Rearden Commerce, Inc.*, 683 F.3d 1190, 1221 (9th Cir.
2 2012); *Grey v. Campbell Soup Co.*, 650 F. Supp. 1166, 1173 (C.D. Cal. 1986). Plaintiff
3 must show that Defendants, without consent, used in commerce a reproduction,
4 counterfeit, copy, or colorable imitation of Plaintiff's registered mark, in connection with
5 distributing goods, and that such use is likely to cause confusion, or to cause mistake, or
6 to deceive. *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d 1175, 1178 (9th Cir.
7 1988); 15 U.S.C. § 1114(1)(a).

8
9 Plaintiff has shown all elements of their trademark claims. First, Plaintiff owns all
10 rights related to the Registered Mark in Mr. Eastwood's name and all common law
11 trademark rights. (Eastwood Decl. ¶¶ 3–4; Bernstein Decl. ¶¶ 3–4.) Second, Plaintiff
12 alleges that Defendants have used the mark in commerce to sell CBD products without
13 Plaintiff's consent by using Mr. Eastwood's name in hidden metatags. (Compl. ¶ 5;
14 Lowe Decl. ¶¶ 5–6.) Finally, Plaintiff alleges facts sufficient to show Defendants create,
15 at least, "initial interest confusion" for consumers by using Mr. Eastwood's name in
16 hidden metatags. *See Playboy Enters., Inc. v. Netscape Commc'ns Corp.*, 354 F.3d 1020,
17 1025 (9th Cir. 2004) ("Initial interest confusion is customer confusion that creates initial
18 interest in a competitor's product."); *Brookfield Commc'ns, Inc. v. W. Coast Entm't*
19 *Corp.*, 174 F.3d 1036, 1062 (9th Cir. 1999); (Compl. ¶ 26.) Indeed, Plaintiff alleges that
20 consumers are initially confused about whether Mr. Eastwood has endorsed the CBD
21 products at issue here because search results for Mr. Eastwood's name in connection with
22 CBD products guides consumers to Defendants' CBD marketplace which offers for sale
23 CBD products. (Compl. ¶ 26; Exhibits 1–2.) This is made plain by Plaintiff's allegations
24 and supporting evidence that a search on Defendants' online marketplace for "CLINT
25 EASTWOOD CBD PRODUCTS" produces results for 61 CBD items. (*Id.*) And even if
26 the consumer realizes that Mr. Eastwood does not actually endorse CBD products, the
27 harm has been done. "Once the consumer's attention is captured, the consumer might
28 well realize that he or she has arrived at the defendant's (and not the plaintiff's website),

1 and yet might stay there and purchase the defendant’s similar products.” *Soilworks, LLC*
2 *v. Midwest Indus. Supply, Inc.*, 575 F. Supp. 2d 1118, 1130 (D. Ariz. 2009) (internal
3 quotes and citations omitted). “Although a sale procured in this manner does not
4 ultimately result from the consumer’s confusion as to the source of the products, it is
5 procured nonetheless through the defendant’s unfair use of the plaintiff’s trademark and
6 associated goodwill.” *Id.* Plaintiff therefore successfully states its trademark claims.

7 8 **4. The Sum of Money at Stake**

9
10 The fourth *Eitel* factor requires the Court to “consider the amount of money at
11 stake in relation to the seriousness of [Defendant’s] conduct.” *PepsiCo, Inc.*, 238 F.
12 Supp. 2d at 1176. “Default judgment is disfavored where the sum of money at stake is
13 too large or unreasonable in relation to defendant’s conduct.” *Vogel v. Rite Aid Corp.*,
14 992 F. Supp. 2d 998, 1012 (C.D. Cal. 2014). Here, Plaintiff seeks a significant sum of
15 money: \$3 million “as the fair market value of Defendants’ misuse of Mr. Eastwood’s
16 name in . . . hidden fields on the CBD marketplace website[.]” Though the Court
17 ultimately finds that \$3 million is not supported by the evidence, the amount sought is not
18 unreasonable in relation to Defendants’ unlawful conduct of exploiting and misusing
19 Plaintiff’s rights for their own commercial gain.

20
21 Plaintiff is correct that the standard for measuring damages in a right of publicity
22 case is the fair market value of the right to use plaintiff’s name or likeness in the way the
23 defendant used it. *See Hoffman v. Capital Cities/ABC, Inc.*, 33 F. Supp. 2d 867, 875
24 (C.D. Cal. 1999) (holding that Dustin Hoffman was entitled to compensatory damages in
25 an amount representing the fair market value of the right to use his name and likeness),
26 *reversed on other grounds, Hoffman v. Capital Cities/ABC, Inc.*, 255 F.3d 1180 (9th Cir.
27 2001); *White v. Samsung Elec.*, 971 F.2d 1395, 1399 (9th Cir. 1992) (similar). But
28 Plaintiff acknowledges that ascertaining the fair market value of lending Mr. Eastwood’s

1 name to endorse CBD products is difficult because Mr. Eastwood has only agreed to one
 2 prior endorsement deal and Mr. Eastwood would have never lent his name to endorse
 3 CBD products. (Mot. at 15.)

4
 5 Nevertheless, Plaintiff presents evidence that \$3 million is what Plaintiff would
 6 have charged for allowing Mr. Eastwood’s name to be used in hidden metatags in
 7 association with CBD products. (Mot. at 15–19.) Specifically, Plaintiff points to (1) the
 8 license fee of Mr. Eastwood’s one prior endorsement; (2) Howard Bernstein’s declaration
 9 of the minimum amount Plaintiff would consider to license Mr. Eastwood’s name to such
 10 products; (3) a comparison with the license fees obtained by actors of similar statures; (4)
 11 the amount recently awarded to Mr. Eastwood for the wrongful use of his name in a
 12 similar lawsuit for misappropriation, and (5) the analysis and declaration of a professor of
 13 marketing at the University of Southern California Marshall School of Business. The
 14 Court takes each in turn.

15
 16 **a) Mr. Eastwood’s Prior Endorsement Fee**

17
 18 Plaintiff represents that the only time it licensed Mr. Eastwood’s name and likeness
 19 was for a special, Chrysler-sponsored, Super Bowl television commercial in 2012 entitled
 20 *Halftime in America*, which addressed the United States’ resilience and recovery from the
 21 Great Recession. According to Plaintiff, Mr. Eastwood felt strongly about the
 22 commercial and its message, accepting a fee “well below his market value” at \$2
 23 million.² (Eastwood Decl. ¶ 5; Bernstein Decl. ¶¶ 5–8.) By contrast, Plaintiff represents
 24

25
 26 ² Plaintiff filed an application to seal the portions of Howard Bernstein’s declaration which provide the
 27 amount Mr. Eastwood received for the Chrysler commercial *Halftime in America*. (Dkt. 69.) A party
 28 seeking to file documents under seal “bears the burden of overcoming [the] strong presumption” in favor
 of public access to court records. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th
 Cir. 2016) (quotation omitted). “The presumption of access is ‘based on the need for federal courts,
 although independent—indeed, particularly because they are independent—to have a measure of

1 that Defendants used Mr. Eastwood’s name “to lure consumers to a crass and cheap-
2 looking CBD marketplace advertising unknown CBD products that Mr. Eastwood does
3 not use and does not believe in.” (Mot. at 16; Susman Decl. ¶¶ 2, 3, 7, Exhibits 1, 2, 5, 6;
4 Eastwood Decl. ¶ 3; Bernstein Decl. ¶¶ 5–7.) Plaintiff maintains that Mr. Eastwood’s fee
5 would therefore be more than the \$2 million he received for *Halftime in America*.

6
7 Though the Court agrees that a premium should be awarded to Mr. Eastwood given
8 his own apparent repugnancy to endorsement deals and the CBD products at issue in this
9 case, the Court cannot ignore the fundamental differences between a Super Bowl
10 commercial and using a name in a hidden metatag. With a commercial, average
11 consumers may happen upon it while watching a television program. With a hidden
12 metatag, consumers must know or think to search for Mr. Eastwood in connection with
13 CBD products to find Defendants’ platforms and their products. The level of exposure
14 provided to the endorsed products from a commercial compared to a hidden metatag is
15 likely lightyears apart. Though *Halftime in America* may provide an appropriate
16 benchmark for similar endorsement campaigns, it is an imperfect measure of damages in
17 this case given the fundamental difference between the way Mr. Eastwood’s name was
18 used to endorse the products at issue here.

19
20 accountability and for the public to have confidence in the administration of justice.” *Id.* (quotation
21 omitted). “[C]ompelling reasons’ must be shown to seal judicial records attached to a dispositive
22 motion.” *Id.* at 1179. As a threshold issue, Plaintiff cites the incorrect standard, offering that good
23 cause exists to seal this information rather than compelling reasons. *See Szabo v. Sw. Endocrinology*
24 *Assocs. PLLC*, 2021 WL 3411084, at *1 (D. Ariz. July 27, 2021). (“A motion for default judgment—far
25 from being a mundane procedural motion (such as a motion to extend a deadline)—is a case-
26 dispositive motion which requires the Court to undertake an in-depth analysis.”) At any rate, the Court
27 disagrees that there is even good cause to seal this information. Contrary to Plaintiff’s position, this
28 information would not harm either Chrysler’s or Mr. Eastwood’s competitive standing. Plaintiff has
offered as part of its damages evidence information containing the amounts other celebrities, whom
according to Plaintiff are of similar stature to Mr. Eastwood, received for endorsement deals. (Susman
Decl. ¶ 9, Exs. 8–11.) This is especially true considering Plaintiff has explicitly maintained throughout
its motion and supporting evidence that the fee Mr. Eastwood received for *Halftime in America* was less
than the fair market value of Mr. Eastwood’s services for the commercial. (*See, e.g.*, Mot. at 16;
Bernstein Decl. ¶¶ 6–7.) These facts together strongly indicate that the risk to Mr. Eastwood’s or
Chrysler’s competitive standing is minimal.

1 The Court is not persuaded by these figures. As a threshold issue, the source of
2 these figures appears to be nothing more than news articles rather than first-hand
3 knowledge of the amounts paid to these other actors. (*See id.*) Second, these
4 endorsement deals likely involve differing levels of involvement from the actor. For
5 example, Selena Gomez may be expected to appear in photo campaigns or commercials
6 for Coach, whereas Mr. Eastwood is only lending his name here to a *hidden* metatag.
7 Without more information about these campaigns, it is difficult to use the deals of other
8 actors, concerning non-metatag campaigns, with other brands, to truly assess the fair
9 market value of Defendants’ use of Mr. Eastwood’s name here. The Court therefore
10 assigns this evidence little weight.

11 **d) Mr. Eastwood’s Other Legal Action**

12
13
14 In 2020, Mr. Eastwood and Plaintiff commenced an action against other defendants
15 that impermissibly used Mr. Eastwood’s name and likeness in a series of fraudulent news
16 articles that made it appear Mr. Eastwood was endorsing certain CBD products. *See*
17 *Eastwood, et al. v. Mediatonas UAB*, No. 2:20-cv-06503-RGK-JDE (C.D. Cal. Oct. 1,
18 2021) (hereinafter “Previous CDCA Action”). On October 1, 2021, the court in the
19 Previous CDCA Action granted Mr. Eastwood and Garrapata’s motion for default
20 judgment, and awarded them \$6 million in damages. (*Id.*) In arriving at the figure, the
21 Court considered the license fee Mr. Eastwood received for *Halftime in America*,
22 Plaintiff’s declaration regarding a potential license fee, comparable license fees, and the
23 expert license fee estimate of Joseph C. Nunes. (*Id.*) The Court concluded that
24 Plaintiffs’ \$6 million estimate of Mr. Eastwood’s fair market value for using his name in
25 news articles was reasonable.

26
27 However, the facts and circumstances surrounding the Previous CDCA Action are
28 distinguishable from the facts of this action. Mr. Eastwood is not being portrayed in

1 fraudulent news articles but in hidden metatags. Again, a consumer may happen upon a
2 news article but must think to search for Mr. Eastwood's name in connection to CBD
3 products to find Defendants' products here. Given Mr. Eastwood's self-proclaimed
4 reluctance to do endorsement deals, let alone endorse CBD products, the Court seriously
5 questions the number of individuals that would think to search for Mr. Eastwood's name
6 and CBD products in the first place. Therefore, the Previous CDCA Action, while
7 informative, is not directly on-point.

8
9 **e) Expert License Fee Estimate**

10
11 Plaintiff also offers a declaration from Joseph C. Nunes, who holds the Joseph A.
12 DeBell Endowed Professorship in Business Administration and is a Professor of
13 Marketing at USC's Marshall School of Business. (Dkt. 74-18 [Declaration of Joseph
14 Nunes, hereinafter "Nunes Decl."].) Plaintiff offers that through his research and
15 consulting experience, Mr. Nunes is familiar with the sums received by celebrities for
16 numerous endorsement deals and the criteria that go into determining those fees. (*Id.*)
17 Mr. Nunes has reviewed the evidence that is part of this Motion and has determined that
18 the fair market value of Defendants' misuse of Mr. Eastwood's name and likeness easily
19 exceeds \$3 million. (*Id.*) Mr. Nunes arrived at this sum based upon several factors,
20 including: (1) Mr. Eastwood's stature in the motion picture industry; (2) Mr. Eastwood's
21 limited experience in endorsing products; (3) the intent by Defendants to use Mr.
22 Eastwood's name in hidden online fields to lure consumers to a CBD marketplace; (4) the
23 reputation of the CBD products advertised by Defendants; (5) the purpose behind
24 *Halftime in America*, and the inconsistency of CBD products with Mr. Eastwood's
25 reputation. (*Id.* ¶¶1-8.)

26
27 Mr. Nunes' declaration is helpful to the Court in assessing Mr. Eastwood's stature
28 in the Hollywood industry, the fees involved in endorsement deals, and the inconsistency

1 of CBD products with Mr. Eastwood’s reputation. However, there is little in Mr. Nunes’
2 declaration regarding the actual exposure Defendants would hope to gain from the use of
3 Mr. Eastwood’s name, which undoubtedly would impact the fair market value of its use.
4 Thus, Mr. Nunes’ declaration leaves open the questions the Court has previously raised
5 about the specific type of endorsement at issue here.

6
7 **f) Evaluating the Evidence**
8

9 Considering the evidence presented, the Court finds that \$2 million is a reasonable
10 estimate of the fair market value of the use of Mr. Eastwood’s name in hidden metatags
11 and is supported by the evidence. The one and only endorsement deal Mr. Eastwood
12 accepted was a \$2 million fee for his work in a Super Bowl commercial, which he
13 maintains was far below his fair market value. Though the Court accepts that this fee
14 was likely below the fair market value of Mr. Eastwood’s services, it cannot ignore the
15 fundamental differences between a Super Bowl commercial campaign and the use of Mr.
16 Eastwood’s name in a hidden metatag. Without evidence concerning the exposure gained
17 from the hidden metatag or estimations of other similar campaigns, the Court believes
18 that *Halftime in America*, though useful, is not on all-fours with this case. However,
19 there is no denying Mr. Eastwood’s massive celebrity status nor his clear reluctance to
20 engage in endorsement deals, especially those concerning CBD products. Accordingly, a
21 \$2 million figure appropriately compensates Plaintiff for the premium that would be
22 necessarily required to induce it to agree to such a deal. In other words, \$2 million is a
23 reasonable representation of the fair market value of Mr. Eastwood’s services in lending
24 his influential and known name to a hidden metatag campaign for products he likely
25 would have been unwilling to endorse in the first place.

5. & 6. The Possibility of a Dispute Concerning Material Facts and Whether the Default was Due to Excusable Neglect

1 The fifth and sixth *Eitel* factors require the Court to determine whether it is likely
2 that there would be a dispute as to material facts and whether Defendant’s failure to
3 litigate is due to excusable neglect. Where a plaintiff’s complaint is well-pleaded and the
4 defendant makes no effort to properly respond, the likelihood of disputed facts is low.
5 *See Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 921 (C.D. Cal.
6 2010). There is no indication here that Defendants’ default was due to excusable neglect
7 because they failed to appear altogether despite being served with the Complaint. *See*
8 *Adobe Sys. Inc. v. Kern*, 2009 WL 5218005, at *6 (N.D. Cal. Nov. 24, 2009)
9 (“Defendant’s voluntary decision to allow default to be entered contradicts any argument
10 for excusable neglect.”). Given that Plaintiff’s factual allegations are taken as true, and
11 that Defendants have failed to oppose Plaintiff’s motion, the Court is not aware of any
12 factual disputes that would preclude the entry of default judgment. Accordingly, both of
13 these *Eitel* factors weigh in favor of granting default judgment.
14
15
16

7. The Public Policy Favoring Decisions on the Merits

17
18
19 Because public policy favors resolution of cases on the merits, this factor always
20 weighs against granting a motion for default judgment. “The mere enactment of Rule
21 55(b), however, indicates that ‘this preference, standing alone, is not dispositive.’”
22 *Prinko Image Co.*, 2018 WL 6264988, at *3 (quoting *PepsiCo*, 238 F. Supp. 2d at 1177).
23 Indeed, Defendants’ choice not to defend themselves renders a decision on the merits
24 against them “impractical, if not impossible.” *PepsiCo*, 238 F. Supp. 2d at 1177.
25 Because no other factor weighs against default judgment, the policy favoring resolution
26 on the merits does not prevent the Court from granting default judgment in this case.
27
28

1 For the foregoing reasons, the Court finds that the *Eitel* factors favor granting
2 Plaintiff’s motion for default judgment against Defendants on all claims.

3
4 **E. Relief Sought**

5
6 Once a court concludes that default judgment is appropriate, it must determine
7 what relief is warranted. A plaintiff carries the burden of proving his requests for relief.
8 *See Bd. of Trs. of the Boilermaker Vacation Tr. v. Skelly, Inc.*, 389 F. Supp. 2d 1222,
9 1226 (N.D. Cal. 2005). Here, Plaintiff seeks (1) a permanent injunction; (2) monetary
10 damages; (3) and attorney fees and costs. (Mot. at 14–25.)

11
12 **1. Permanent Injunction**

13
14 Pursuant to 15 U.S.C. § 1116(a), the Court has the power to grant injunctions
15 “according to the principles of equity and upon such terms as the court may deem
16 reasonable, to prevent the violation of any right of the registrant of a mark.” 15 U.S.C. §
17 1116(a). A plaintiff seeking a permanent injunction must demonstrate: (1) irreparable
18 injury, (2) lack of other adequate remedies; (3) a balance of the hardships that tips in its
19 favor; and (4) no negative impact on the public interest due to the permanent injunction.
20 *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

21
22 Here, Plaintiff has shown actual success on the merits. Defendants have
23 impermissibly used Mr. Eastwood’s name to promote and sell CBD products without
24 Plaintiff’s consent in violation of Plaintiff’s rights of publicity. Moreover, Defendants
25 have infringed upon Plaintiff’s trademarks in Mr. Eastwood’s name, creating a likelihood
26 of confusion and thus establishing irreparable harm. *Phillip Morris USA Inc. v. Shalabi*,
27 352 F. Supp. 2d 1067, 1074 (C.D. Cal. 2004) (“Irreparable harm to reputation and
28 goodwill is presumed as a matter of law where, as here, the plaintiff has demonstrated a

1 likelihood of confusion arising from the infringement.”); *Sony Computer Entertainment*
2 *America Inc. v. GameMasters*, 87 F. Supp. 2d 976, 984, 54 U.S.P.Q.2d (BNA) 1401,
3 1407 (N.D. Cal. 1999) (“once plaintiff establishes a likelihood of confusion, ‘it is
4 ordinarily presumed that the plaintiff will suffer irreparable harm if injunctive relief does
5 not issue’”) (quoting *Rodeo Collection, Ltd. v. West Seventh*, 812 F.2d 1215, 1220 (9th
6 Cir. 1987)).

7
8 Deeming the allegations as true, Mr. Eastwood also does not want to be associated
9 with CBD products and any indication that he is damages his reputation. Without a
10 response from Defendants, there is not enough information before the Court to determine
11 what hardship Defendants would suffer if the injunction is granted. However, the harm
12 to Plaintiff is clear and thus the balance of hardships tips toward Plaintiff.

13
14 Finally, there is no indication that a permanent injunction would not be in the
15 public’s interest. Indeed, the public has an interest is not being confused or misled by
16 fraudulent celebrity endorsements. *See Century Real Estate Corp. v. Sandlin*, 846 F.2d
17 1175, 1181 (9th Cir. 1988). Thus, Plaintiff has demonstrated it is entitled to permanent
18 injunctive relief against Defendants.

19
20 Accordingly, Defendants and their officers, agents, employees, representatives, and
21 all persons acting in concert or participating with them, are permanently restrained and
22 enjoined from (1) engaging in or performing directly or indirectly the use of Clint
23 Eastwood’s name, likeness, and personal to promote and sell any products, and (2) using
24 any names, words, designations or symbols consisting of, incorporating in whole or part,
25 or otherwise similar to Clint or Eastwood or any other common law trademark owned by
26 Plaintiff or Mr. Eastwood in any buried code, hidden field, metatags, search terms,
27 keywords, key terms, hits generating pages, or any other devices used, intended, or likely
28 to cause any web site or web sites listed by any Internet search engines in response to any

1 searches that include any terms identical with or confusingly similar to the Clint
2 Eastwood mark.

3 4 **2. Monetary Damages**

5
6 As explained above, the Court finds that \$2 million in monetary damages
7 represents the fair market value of the right to use Mr. Eastwood's name in the like and
8 manner in which Defendants used it. *See Hoffman*, 33 F. Supp. 2d at 875.

9 10 **3. Attorney Fees and Costs**

11
12 Plaintiff also seeks attorneys' fees and costs pursuant to California Civil Code
13 section 3344 and the Lanham Act. Civil Code sections 3344(a) and 3344.1(a)(1) provide
14 that "[t]he prevailing party in any action under this section shall also be entitled to
15 attorney's fees and costs." "The mandatory fee provision of section 3344, subdivision (a)
16 leaves no room for ambiguity." *Kirby v. Sega of Am., Inc.*, 144 Cal. App. 4th 47, 62
17 (2006). When a party properly requests attorneys' fees in default actions, "the court is
18 obliged to calculate a 'reasonable' fee in the usual manner," *i.e.*, the lodestar method."
19 *Vogel v. Harbor Plaza Ctr., LLC*, 893 F.3d 1152, 1159 (9th Cir. 2018).

20
21 "The lodestar is calculated by multiplying the number of hours the prevailing
22 party reasonably expended on the litigation by a reasonable hourly rate." *Ferland v.*
23 *Conrad Credit Corp.*, 244 F.3d 1145, 1149 n.4 (9th Cir. 2001). The party seeking fees
24 bears the burden of documenting the hours expended in the litigation and must submit
25 evidence supporting the hours and rates claimed. *Hensley v. Eckerhart*, 461 U.S. 424,
26 433 (1983). Although "a court must specifically explain the reasons for a reduction of
27 the requested fees by more than 10%, such explanation need not be elaborate so long as it
28 is clear." *Klein v. Law Offices of D. Scott Carruthers*, 2015 WL 3626946, at *5 (N.D.

1 Cal. June 10, 2015) (citing *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111–12 (9th
2 Cir. 2008)). “[T]he district court has a great deal of discretion in determining the
3 reasonableness of the fee.” *Camacho*, 523 F.3d at 978.

4
5 The Court lacks adequate information at this time to support an award of attorneys’
6 fees and costs. In reviewing the bills Plaintiff submitted to the Court, it is unclear if
7 Plaintiff is seeking an award of attorneys’ fees incurred in litigating this case against the
8 other former Defendants who Plaintiff voluntarily dismissed earlier in this action. (*See*
9 Dkt. 43 [Plaintiff’s Notice of Dismissal With Prejudice of Defendant BizX Marketing,
10 LLC]; Dkt. 64 [Plaintiff’s Notice of Dismissal With Prejudice of Defendants AZ
11 Connections, LLC and Jeff Taylor]; Dkt. 68 [Plaintiff’s Notice of Dismissal Without
12 Prejudice of Defendants Colin Andrews and Thundercom Systems Ltd.].) The Court is
13 also unclear as to whether Plaintiff settled with these former Defendants or why the
14 remaining Defendants would be responsible for the entirety of Plaintiff’s legal bills and
15 costs in prosecuting an action against other defendants, especially when some have been
16 dismissed with prejudice. *See Kenner v. Bitterroot Timber Frames, LLC*, 2022 WL
17 1265839, at *5 (D. Mont. Apr. 27, 2022) (“[C]ourts often condition dismissal without
18 prejudice on a plaintiff’s payment of the defendant’s attorneys fees and costs[.]”); (Dkts.
19 43, 64.) Therefore, the Court denies Plaintiff’s request for attorneys’ fees and costs
20 without prejudice.

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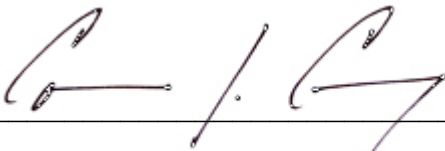
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1 **III. CONCLUSION**

2
3 For the foregoing reasons, Plaintiffs' motion for default judgment is **GRANTED**
4 **IN SUBSTANTIAL PART**. Plaintiff is awarded \$2,000,000 in damages and the
5 requested injunctive relief. Plaintiff may bring a renewed motion for attorneys' fees and
6 costs in connection with this default judgment no later than **May 25, 2022**. The Court
7 will enter judgment against Defendants and in favor of Plaintiff.

8
9 DATED: May 13, 2022

10 
11 _____
12 CORMAC J. CARNEY
13 UNITED STATES DISTRICT JUDGE

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16 CC: FISCAL

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