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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. 8:17-cv-00979-JLS-JDE

Date: November 07, 2017

Title: Joimax, Inc. v. Surgical Orthopedic Implants, Inc.

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Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero  
Deputy Clerk

N/A  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

Not Present

**PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S APPLICATION FOR  
DEFAULT JUDGMENT (Doc. 21)**

Before the Court is an Application for Default Judgment filed by Plaintiff Joimax, Inc. against Defendant Surgical Orthopedic Implants Inc., d.b.a. Maxspine. (App., Doc. 21.) Having reviewed the papers in support of Plaintiff's Application, the Court GRANTS Plaintiff's Application for Default Judgment.

**I. BACKGROUND**

On July 11, 2017, the Clerk of Court entered a default in this case. (Default, Doc. 20.) As such, the factual allegations of the Complaint, except for those concerning damages, are deemed to have been admitted by Defendant. Fed. R. Civ. P. 8(b)(6); *see Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977).

Joimax is a leading manufacturer and distributor of complete systems for minimally invasive endoscopic surgery. (Compl. ¶ 7, Doc. 1). On June 24, 2016, Joimax entered into a distribution agreement with Surgical Orthopedic Implants for its “TESSYS Instrument System” and “TESSYS Disposable Access Kit.” (*Id.* ¶ 9.) The TESSYS Instrument System, which comes in a metal bin with a Joimax logo, has fifty special metal instruments for minimally invasive spinal surgery. (*Id.*) The TESSYS Disposable Access Kit is a separate kit of sterile disposable products to use with the TESSYS Instrument System. (*Id.* ¶ 10.) Plaintiff owns four patents on the “reamers” included in

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the TESSYS Disposable Access Kit and, as part of the distribution agreement, provided Defendant with written notice of its patent rights. (*Id.* ¶¶ 11–16.)

Joimax further owns registered trademarks on “JOIMAX” and “TESSYS” brands and includes certain distinctive trade dress in the design of, and logo on, the TESSYS Instrument System and Disposable Access Kit. (*Id.* ¶¶ 17–24.) As part of the distribution agreement, Joimax provided Defendant with written notice of its trademarks and trade dress. (*Id.* ¶ 24.)

After entering into the distribution agreement with Joimax, Surgical Orthopedic Implants used the TESSYS Instrument System and Disposable Access Kit to manufacture counterfeit reamers. (*Id.* ¶ 26.) The reamers are identical to Joimax’s originals, except that Surgical Orthopedic Implants replaced the plastic connectors with metal ones so that they could be reused. (*Id.*) Surgical Orthopedic Implants then placed counterfeit reamers in the Joimax-branded systems that it sold to surgeons and hospitals. (*Id.* ¶ 27.) Plaintiff alleges that at least 69 surgeons at fifteen hospital received the counterfeit products. (*Id.*) Surgical Orthopedic Implants charged more for the altered reamers, informing customers that they would no longer need the TESSYS Disposable Access Kits. (*Id.* ¶ 28.) Surgical Orthopedic Implants did not receive prior approval from the FDA and ignored the risk of harm to patients. (*Id.* ¶ 28.)

In January 2017, Joimax learned of Defendant’s conduct and terminated the distribution agreement. (*Id.* ¶ 28.) On February 1, 2017, Joimax sent a letter to Defendant accusing it of patent infringement and other wrongdoing. (*Id.* ¶ 28.) Nevertheless, Surgical Orthopedic Implants continued to distribute the altered products. (*Id.* ¶ 28.) Plaintiff filed suit on June 7, 2017, alleging claims for (1) patent infringement, (2) breach of contract, (3) federal trademark infringement, (4) federal trade dress infringement, (5) federal false designation of origin, (6) federal trademark dilution, (7) intentional interference with contractual relations, (8) intentional interference with prospective economic relations, (9) state law trademark infringement, (10) state law trademark dilution, and (11) violations of the UCL. (*Id.* ¶ 32-93.)

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**II. LEGAL STANDARD**

Under Rule 55 of the Federal Rules of Civil Procedure, default judgment is a two-step process. *See Fed. R. Civ. P. 55; see also Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Prior to entry of default judgment, there must be an entry of default. *See Fed. R. Civ. P. 55*. Upon entry of default, the factual allegations of the complaint, save for those concerning damages, are deemed to have been admitted by the defaulting party. *Fed. R. Civ. P. 8(b)(6); see Geddes*, 559 F.2d at 560. “On the other hand, a defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law.” *United States v. Cathcart*, No. C 07-4762 PJH, 2010 WL 1048829, at \*4 (N.D. Cal. Feb. 12, 2010). “[I]t follows from this that facts . . . not established by the pleadings of the prevailing party, or claims . . . not well-pleaded, are not binding and cannot support the judgment.” *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978).

A district court has discretion to grant or deny a motion for default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). The Ninth Circuit has set forth seven factors to be considered by courts in reviewing a motion for default judgment:

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

*Eitel*, 782 F.2d at 1471-72.

“If the court determines that the allegations in the complaint are sufficient to establish liability, it must then determine the ‘amount and character’ of the relief that should be awarded.” *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal. 2010) (quoting 10A Charles Alan Wright, Arthur R. Miller, & May Kay Kane, *Federal Practice and Procedure* § 2688, at 63 (3d ed. 1998)). This is because the allegations of the amount of damages suffered are not necessarily taken as true. *Geddes*, 559 F.2d at 560. Under Ninth Circuit law, a default judgment for money may be entered

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without a hearing where “the amount claimed is a liquidated sum or capable of mathematical calculation.” *Davis v. Fendler*, 650 F.2d 1154, 1161 (9th Cir. 1981).

**III. DISCUSSION**

**A. Plaintiff Has Satisfied Local Rule 55-1**

Plaintiff’s Application satisfies Local Rule 55-1. Plaintiff accompanied its application for default judgment with a sworn declaration stating that: (1) on July 11, 2017, the Clerk of Court entered default against Defendant as to the Plaintiff’s Complaint; (2) Defendant is not an infant or incompetent person; and (3) the Service Members Civil Relief Act does not apply. (Vasin Decl. ¶¶ 2–6, Doc. 21.)

**B. Eitel Factors**

The Court next evaluates the *Eitel* factors to determine if default judgment is appropriate. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

**1. Possibility of Prejudice to the Plaintiff**

“The first *Eitel* factor considers whether a plaintiff will suffer prejudice if a default judgment is not entered.” *Landstar Ranger*, 725 F. Supp. 2d at 920. A plaintiff suffers prejudice when denying default judgment would leave plaintiff without a remedy. *Id.* Plaintiff avers that, after the Clerk of Court entered default, an attorney purporting to represent Defendant contacted Plaintiff’s Counsel to make a settlement offer, which Plaintiff refused. (Vasin Decl. ¶ 7.) This attorney has neither made an appearance in this case, nor has he contacted Plaintiff’s Counsel again. (*Id.*) The Court agrees with Plaintiff that not entering default judgment would prejudice plaintiff as it appears unlikely that the Plaintiff will otherwise be able to obtain relief in this matter.

Accordingly, this factor weighs in favor of granting a default judgment.

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**2. The Merits of Plaintiff's Substantive Claims and the Sufficiency of the Complaint**

These two factors look at the Plaintiff's likelihood of success on the merits, requiring that Plaintiff "state a claim upon which the [plaintiff] may recover." *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002) (quoting *Kloeppling v. Fireman's Fund*, No. C 94-2684 TEH, 1996 WL 75314, at \*2 (N.D. Cal. Feb. 13, 1996)) (modifications in original).

Plaintiff sufficiently pleads a likelihood of success on its claims based on the detailed allegations set forth in the Complaint. Plaintiff's first cause of action is for patent infringement. (Compl. ¶ 32–39.) To prevail on a patent infringement claim, a plaintiff must prove that the defendant "without authority ma[de], use[d], offer[ed] to sell, or s[old] any patented invention." 35 U.S.C. § 271(a). Plaintiff is the owner of four different patents pertaining to its reamers. (Compl. ¶ 11–16.) Plaintiff alleges that Defendant sold reamers that were identical to Plaintiff's patented reamers, except that Defendant had replaced the plastic connectors with metal connectors. (*Id.* ¶ 26.) Plaintiff then sold these counterfeit reamers in Plaintiff's branded kits without Plaintiff's knowledge or permission. (*Id.* ¶ 27). Thus, Plaintiff has adequately alleged patent infringement.

Plaintiff's second cause of action is for breach of contract. (Compl. ¶ 40–44.) "The elements of a claim for breach of contract are: (1) the existence of a contract, (2) performance by the plaintiff, (3) breach by the defendant[,] and (4) damage to plaintiff as a result of defendant's breach." *Landstar Ranger*, 725 F. Supp. 2d at 920. Plaintiff alleges that Plaintiff and Defendant entered into a distribution agreement that allowed Defendant the exclusive right to sell Plaintiff's medical device kits within a certain territory, and provided Defendant with written notice of Plaintiff's intellectual property rights. (Compl. ¶¶ 8–9.) Defendant breached this agreement by selling the counterfeit reamers, failing to notify Plaintiff of the use and sale of the counterfeit reamers, and selling outside of his exclusive territory. (*Id.* ¶ 43.) Accepting these factual allegations as true, Plaintiff has pleaded and proved a claim for breach of contract.

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Plaintiff's third cause of action is for federal trademark infringement. (Compl. ¶¶ 45–52.) To prevail on a trademark infringement claim, a plaintiff must prove that the defendant “use[d] in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1114(1)(a).

Plaintiff's fourth and fifth causes of action are for federal trade dress infringement and false designation of origin. (Compl. ¶¶ 53–66.) To prevail on these claims, a plaintiff must prove that the defendant “use[d] in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which ... is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person.” 15 U.S.C. § 1125(a)(1)(A).

Plaintiff's sixth and ninth causes of action are for federal and California trademark dilution, respectively. (Compl. ¶¶ 67–73, 86–89.) These claims have the same elements: “(1) the mark must be famous and distinctive; (2) the defendant must use the mark in commerce; (3) defendant's use must begin after the mark is famous; and (4) defendant's use must be likely to cause dilution, such as by (a) blurring or (b) tarnishment.” *Lions Gate Entm't Inc. v. TD Ameritrade Servs. Co., Inc.*, 170 F. Supp. 3d 1249, 1269 (C.D. Cal. 2016), *on reconsideration in part sub nom. Lions Gate Entm't Inc. v. TD Ameritrade Holding Corp.*, No. CV 15-05024 DDP (EX), 2016 WL 4134495 (C.D. Cal. Aug. 1, 2016).

Plaintiff's Complaint properly alleges facts establishing each of the elements for the above causes of action. Plaintiff owns registered trademarks on “JOIMAX” and “TESSYS” brands and includes certain distinctive trade dress in the design of, and logo on, the TESSYS Instrument System and Disposable Access Kit. (Compl. ¶¶ 17–24.) Defendant manufactured and sold counterfeit reamers using commerce marks and trade dress that were confusingly similar to the marks and trade dress used by Plaintiff without Plaintiff's authorization or consent. (*Id.* ¶¶ 48–71.) Defendant's conduct was likely to

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deceive buyers into believing that these products were authorized for sale by Plaintiff and thereby exploit Plaintiff's reputation for Defendant's personal gain. (*Id.*) Accepting these factual allegations as true, Plaintiff has pleaded and proved claims for federal trademark infringement, trade dress infringement, false designation of origin, and for federal and California trademark dilution.

Plaintiff's seventh cause of action is for intentional interference with contractual relations. (Compl. ¶¶ 74–79.) To prevail on this claim, a plaintiff must prove "(1) a valid contract between plaintiff and another party; (2) defendant's knowledge of the contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." *Asahi Kasei Pharma Corp. v. Actelion Ltd.*, 169 Cal. Rptr. 3d 689, 699 (Ct. App. 2013), *as modified on denial of reh'g* (Jan. 16, 2014).

Plaintiff's eighth cause of action is for intentional interference with prospective economic relations. (Compl. ¶¶ 80–85.) To prevail on this claim, a plaintiff must prove "(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." *Winchester Mystery House v. Glob. Asylum, Inc.*, 148 Cal. Rptr. 3d 412, 425 (Ct. App. 2012).

Plaintiff has alleged that Defendant knew of Plaintiff's contractual and prospective economic relations with third parties, including surgeons and medical centers. (Compl. ¶¶ 75, 81.) Defendant manufactured and sold counterfeit reamers to these third parties, misrepresenting the altered reamers as part of the Plaintiff's branded system, disrupting Plaintiff's relationships with these third parties. (*Id.* ¶¶ 75, 82.) Accordingly, Plaintiff has adequately alleged facts for each of the elements for its seventh and eighth causes of action.

Plaintiff's tenth cause of action is for a California trademark infringement claim. (*Id.* ¶¶ 90–93.) "Liability for trademark infringement ... exists under California law when an appreciable number of reasonable buyers are likely to be confused by the similarity of plaintiff's and defendants' marks." *E. & J. Gallo Winery v. Pasatiempos*

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*Gallo, S.A.*, 905 F. Supp. 1403, 1415 (E.D. Cal. 1994). For the reasons discussed above with respect to the federal trademark infringement, Plaintiff has also adequately pleaded and proved its claims for California trademark infringement.

Finally, Plaintiff's eleventh cause of action is for violation of California's Unfair Competition Law (UCL). (Compl. ¶¶ 94–98.) The UCL proscribes "unlawful" business acts or practices. Cal. Bus. & Prof. C. § 17200. Because Plaintiff has adequately pleaded and proved Defendant's unlawful conduct in the above causes of action, he has also adequately stated a claim for a violation of the UCL.

The Court finds that Plaintiff's claims have merit for purposes of this factor. Accordingly, this factor weighs in favor of finding default.

**3. Amount of Money at Issue**

Under this factor, "the court must consider the amount of money at stake in relation to the seriousness of Defendant's conduct." *PepsiCo*, 238 F. Supp. 2d at 1176. "If the sum of money at issue is reasonably proportionate to the harm caused by the defendant's actions, then default judgment is warranted." *Landstar Ranger*, 725 F. Supp. 2d at 921. In its Application, Plaintiff seeks \$291,051 in damages, \$20,235 in attorneys' fees, and a permanent injunction. (App. at 6.) Plaintiff's allegations describe serious misconduct by Defendant, for which Plaintiff suffered damaged economic relationships and lost revenue. Therefore, subject to the deductions set forth below, this amount is reasonably proportionate to the harm caused.

Accordingly, this factor weighs in favor of finding default.

**4. The Possibility of a Dispute Concerning Material Facts**

"The fifth *Eitel* factor examines the likelihood of dispute between the parties regarding the material facts surrounding the case." *Craigslist, Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1060 (N.D. Cal. 2010). Where Plaintiffs have filed a well-pleaded complaint, the possibility of dispute concerning material facts is remote. *See, e.g., id.* at 1060-61; *Landstar Ranger*, 725 F. Supp. 2d at 921–22 ("Since [plaintiff] has supported

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its claims with ample evidence, and defendant has made no attempt to challenge the accuracy of the allegations in the complaint, no factual disputes exist that preclude the entry of default judgment.”). As discussed above, Plaintiff’s Complaint is well-pleaded based on the detailed allegations set forth therein.

Accordingly, this factor favors entry of default judgment.

**5. The Possibility of Excusable Neglect**

“The sixth *Eitel* factor considers whether defendant’s default may have been the product of excusable neglect.” *Landstar Ranger*, 725 F. Supp. 2d at 922. This factor favors default judgment when the defendant has been properly served or the plaintiff demonstrates that the defendant is aware of the lawsuit. *Id.* (concluding that this factor favored default judgment and “possibility of excusable neglect is remote” where defendant had been properly served); *Craigslist*, 694 F. Supp. 2d at 1061 (“Plaintiff has proffered evidence showing Defendants were clearly aware of the pending litigation.”). As discussed already, Defendant appears to have been properly served and, through an attorney, was in contact with Plaintiff’s Counsel regarding a possible settlement. (Vasin Decl. ¶ 7.)

Accordingly, this factor favors entry of default judgment.

**6. Policy Favoring Decisions on the Merits**

“The final *Eitel* factor examines whether the strong policy favoring deciding cases on the merits prevents a court from entering default judgment.” *Craigslist*, 694 F. Supp. 2d at 1061. Although, “[c]ases should be decided upon their merits whenever reasonably possible,” *Eitel*, 782 F.2d at 1472, “Rule 55(a) allows a court to decide a case before the merits are heard if defendant fails to appear and defend.” *Landstar Ranger*, 725 F. Supp. 2d at 922. Notwithstanding the strong policy presumption in favor of a decision on the merits, where a defendant fails to appear and respond, a decision on the merits is

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impossible and default judgment is appropriate. *See Craigslist*, 694 F. Supp. 2d at 1061.  
In this case, Defendant has failed to appear and respond.

Accordingly, this factor favors the entry of default judgment.

**IV. REMEDIES**

Plaintiff's Application requests damages, attorneys' fees, and a permanent injunction. (App. at 1-2.)

**A. Damages**

To support its claim for damages, Plaintiff submits a declaration from the General Manager of Joimax, who oversees the company's relationship with its distributors. (Ries Decl., Doc. 21.) By examining Joimax's sales records, he represents that Joimax suffered a \$10,000 per month decline in sales during the four months before Joimax discovered Defendants' infringement and restored its relationship with Defendant's customers. (*Id.* ¶ 4.) He further avers that Defendant refused to return \$57,017 worth of product that was provided to defendant on consignment after the relationship was terminated. (*Id.* ¶ 5.) Although Plaintiff wishes to have the total of \$97,017 trebled under 35 U.S.C. § 284 for willfulness, Plaintiff does not explain how the failure to return goods provided on consignment would, on its own, implicate the exclusive rights granted by the Patent Act. Accordingly, the Court will treble the lost profit damages to reflect Defendant's willfulness and add it to the \$57,017 in unreturned merchandise, thereby awarding \$177,017 in damages.

**B. Attorneys' Fees**

Separately, Plaintiff seeks \$20,235 in attorneys' fees under 35 U.S.C. § 285, arguing that this case qualifies as an "exceptional case." Under section 285, "an 'exceptional' case is simply one that stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated."

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*Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014).

Here, the Court exercises its discretion to grant Plaintiff attorneys fees' due to the brazenness of the infringement, including the fact that Defendant supplied the counterfeit medical devices to Plaintiff's customers without any FDA testing or approval that would ensure their safety.. Accordingly, the Court will award \$20,235 in attorney's fees.

**C. Injunctive Relief**

“[A] plaintiff seeking a permanent injunction must demonstrate (1) that it has suffered irreparable injury; (2) that there is no adequate remedy at law; (3) ‘that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted’; and (4) that it is the public’s interest to issue the injunction.”

*Sennheiser Elec. Corp. v. Eichler*, No. CV 12-10809 MMM (PLAx), 2013 WL 3811775, at \*9 (C.D. Cal. Jul. 19, 2013) (citing *eBay v. MercExchange, LLC*, 547 U.S. 338, 391 (2006). “Injunctive relief is the remedy of choice for trademark and unfair competition cases, since there is no adequate remedy at law for the injury caused by a defendant’s continuing infringement. It is the remedy provided by federal and state trademark infringement statutes.” *Id.* at \*10 (quoting *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d 1175, 1180–81 (9th Cir. 1988.) Since Plaintiff has pleaded and proved its causes of action for federal and state trademark infringement, the Court grants injunctive relief.

**1. Whether Plaintiff Has Established Irreparable Injury and the Absence of an Adequate Remedy at Law**

Because Plaintiff has adequately alleged that Defendant sells products that infringe Plaintiff's patents, are likely to cause customer confusion, and damage Plaintiff's goodwill, Plaintiff has established that it will suffer irreparable harm in the absence of injunctive relief. *Id.* (citing *Microsoft Corp. v. Evans*, No. 1:06 CV 01745 AWI (SMS), 2007 WL 3034661, \*12 (E.D. Cal. Oct.17, 2007) (“Plaintiff [seeking a permanent injunction] has already shown actual success on the merits because the complaint states a claim for infringement, and Defendant has defaulted; further, Plaintiffs have alleged that unless restrained, Defendant will continue to cause irreparable injury for which there is

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no full monetary compensation. This is sufficient for a permanent injunction.”); *Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1084 (C.D. Cal. 2012) (“If an injunction were not granted, Plaintiff would suffer irreparable injury from the ongoing damages to its goodwill and diversion of customers to counterfeit services.”); *see also Deckers Outdoor Corp. v. ShoeScandal.com, LLC*, No. CV 12-7382 ODW (SHx), 2013 WL 4039793, at \*3 (C.D. Cal. Aug. 7, 2013) (denying request for damages on patent claim, granting injunction and granting default judgment against defendant). As such, Plaintiff has established irreparable injury and the absence of an adequate remedy at law.

**D. Whether the Balance of Hardships Favors Entry of a Permanent Injunction**

In this case, “the balance of hardships favors Plaintiff because without an injunction, Plaintiff will lose profits and goodwill, while an injunction will only proscribe Defendant[’s] infringing activities.” *Wecosign, Inc.*, 845 F. Supp. 2d at 1084. Thus, this factor favors granting a permanent injunction.

**E. Whether the Public Interest Favors Entry of a Permanent Injunction**

“[T]he touchstone of the public interest factor is whether an injunction ... strikes a workable balance between protecting the [holder’s] rights and protecting the public from the injunction’s adverse effects.” *Deckers Outdoor Corp.*, 2014 WL 4679001, at \*13 (quoting *i4i Ltd. P’ship v. Microsoft Corp.*, 598 F.3d 831, 863 (Fed. Cir. 2010)). Likewise, “[i]n trademark infringement cases, the public interest is ‘the right of the public not to be deceived or confused. Where defendant’s concurrent use of plaintiff’s trademark without authorization is likely to cause confusion, the public interest is damaged by the defendant’s use.’” *Id.* (internal citations omitted). Here, the public would not suffer any adverse consequences from an injunction precluding Defendant’s counterfeit products from the market and, in fact, would be harmed if they continued to

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purchase infringing goods that have not been approved by the FDA. *Id.* Accordingly, this factor favors granting a permanent injunction.

**V. Conclusion**

For the aforementioned reasons, Plaintiff's Application for Default Judgment is GRANTED. Plaintiff is awarded \$177,017 in damages, \$20,235 in attorneys' fees, and a permanent injunction.

The Court shall enter the concurrently filed judgment and permanent injunction forthwith.

Initials of Preparer: tg