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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Jessica Hinton, et al.,

9 Plaintiffs,

10 vs.

11 Completely Innocent LLC,

12 Defendant.
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) No. CV-21-01019-PHX-SPL

) **ORDER**

15 Before the Court is Plaintiffs Jessica Hinton, Cielo Jean Gibson, Katarina Van
16 Derham, and Claudia Sampedro’s (collectively, “Plaintiffs”) Motion for Default Judgment
17 Against Defendant Completely Innocent LLC. (Doc. 18). No response to the Motion has
18 been filed. Having reviewed Plaintiffs’ Motion, the exhibits attached thereto, and the record
19 in this matter, the Court will grant the Motion.

20 **I. BACKGROUND**

21 On June 11, 2021, Plaintiffs filed a Complaint against Defendant Completely
22 Innocent LLC, doing business as Club Luxx (“Defendant” or “Club Luxx”). (Doc. 1). The
23 Complaint seeks damages and injunctive relief for Defendant’s alleged misappropriation
24 and unauthorized publication of images of Plaintiffs to promote its nightclub. (*Id.* at 2).
25 The Complaint has seven counts: (1) false association, in violation of § 43 of the Lanham
26 Act, 15 U.S.C. § 1125 *et seq.*; (2) a violation of the common law right of publicity; (3)
27 unfair or deceptive trade practices under A.R.S. Title 44, Chapter 9, *et seq.*; (4) unfair
28 competition; (5) negligence and *respondeat superior*; (6) conversion; and (7) unjust

1 enrichment. (*Id.* at 12–19). However, Plaintiffs have withdrawn the third through seventh
2 causes of action, leaving only the Lanham Act claim and the right of publicity claim at
3 issue with this Motion. (Doc. 19 at 5 n.1). The Court will therefore *not* consider an entry
4 of default judgment against Defendant as to Plaintiffs’ other five claims (unfair or
5 deceptive trade practices, unfair competition, negligence and *respondeat superior*,
6 conversion, and unjust enrichment) and will instead dismiss those Counts in their entirety.

7 Defendant was served on July 12, 2021 and its deadline to answer or otherwise move
8 against the Complaint was August 3, 2021. (Doc. 8). Defendant has failed to answer or
9 respond to the Complaint or otherwise appear in this action. On August 31, 2021, Plaintiffs
10 filed an Application for Entry of Default against Defendant pursuant to Federal Rule of
11 Civil Procedure (“FRCP”) 55(a). (Doc. 10). On September 2, 2021, the Clerk of Court
12 entered default as to Defendant. (Doc. 11). On October 18, 2021, this Court ordered
13 Plaintiffs to show cause by October 22, 2021 why the action should not be dismissed for
14 failure to prosecute. (Doc. 14). On October 22, 2021, Plaintiffs filed a Motion for Default
15 Judgment pursuant to FRCP 55(b)(2) requesting an entry of default judgment and relief.
16 (Doc. 15). This Court denied Plaintiffs’ Motion without prejudice and gave Plaintiffs an
17 opportunity to refile the Motion in accordance with the Court’s Order. (Doc. 17). On
18 December 16, 2021, Plaintiffs filed a second Motion for Default Judgment—the Motion
19 presently before this Court. (Doc. 18).

20 Plaintiffs seek \$85,000 in actual damages, an order permanently enjoining
21 Defendant from using Plaintiffs’ images, and an award to Plaintiffs of all costs and fees
22 incurred in prosecuting this action. (Doc. 19 at 13). To the extent this Court concludes that
23 Plaintiffs’ evidence does *not* sufficiently establish the fair market value of Defendant’s use
24 of Plaintiffs’ images for commercial purposes, Plaintiffs request the Court conduct an
25 inquest into the issue of damages pursuant to FRCP 55(b)(2). (*Id.*). Defendant has not
26 responded to Plaintiffs’ Motion.

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1 **II. DISCUSSION**

2 **A. Subject Matter Jurisdiction, Personal Jurisdiction, and Service of Process**

3 When default judgment is sought against a non-appearing party, a court has “an
4 affirmative duty to look into its jurisdiction over both the subject matter and the parties.”
5 *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999) (“To avoid entering a default judgment that
6 can later be successfully attacked as void, a court should determine whether it has the
7 power, i.e., the jurisdiction, to enter judgment in the first place.”). A court has a similar
8 duty with respect to service of process. *See Fishman v. AIG Ins. Co.*, No. CV 07-0589-
9 PHX-RCB, 2007 WL 4248867, at *3 (D. Ariz. Nov. 30, 2007) (“Because defendant has
10 not been properly served, the court lacks jurisdiction to consider plaintiff’s motions for
11 default judgment.”). These considerations are “critical because ‘[w]ithout a proper basis
12 for jurisdiction, or in the absence of proper service of process, the district court has *no*
13 *power to render any judgment* against the defendant’s person or property unless the
14 defendant has consented to jurisdiction or waived the lack of process.” *Id.* (citing *S.E.C.*
15 *v. Ross*, 504 F.3d 1130, 1138–39 (9th Cir. 2007)).

16 First, as to subject-matter jurisdiction, the Court may exercise subject-matter
17 jurisdiction because Plaintiffs have stated a claim under the Lanham Act, “which ‘confers
18 broad jurisdictional powers upon the courts of the United States’ in conjunction with 28
19 U.S.C. § 1331.” *La Quinta Worldwide LLC v. Q.R.T.M., S.A. de C.V.*, 762 F.3d 867, 872–
20 73 (9th Cir. 2014). “The Lanham Act grants federal subject-matter jurisdiction over ‘all
21 actions arising under this chapter, without regard to the amount in controversy or to
22 diversity or lack of diversity of the citizenship of the parties.” *Id.* (citing 15 U.S.C. §
23 1121(a)). As to Plaintiffs’ only remaining state-law claim—violation of the common-law
24 right of publicity—this Court exercises its supplemental jurisdiction because the claim
25 arises out of the same case or controversy, *i.e.*, Defendant’s unlawful use of Plaintiffs’
26 images. 28 U.S.C. § 1367(a) (“[T]he district courts shall have supplemental jurisdiction
27 over all other claims that are so related to claims in the action within such original
28 jurisdiction that they form part of the same case or controversy under Article III. . . .”); *see*

1 also *Kuba v. I–A Agric. Ass’n*, 387 F.3d 850, 855–56 (9th Cir. 2004) (“Nonfederal claims
2 are part of the same ‘case’ as federal claims when they derive from a common nucleus of
3 operative fact and are such that a plaintiff would ordinarily be expected to try them in one
4 judicial proceeding.”).

5 Next, as to personal jurisdiction, the Court has personal jurisdiction over Defendant
6 because Defendant is a citizen of Arizona and because Defendant was properly served. *See*
7 *Pennoyer v. Neff*, 95 U.S. 714 (1877) (noting that “every State possesses exclusive
8 jurisdiction and sovereignty over persons and property within its territory.”); *Benny v.*
9 *Pipes*, 799 F.2d 489, 492 (9th Cir. 1986) (noting that a federal court lacks personal
10 jurisdiction over defendant unless defendant properly served). According to the Complaint,
11 Defendant “is a limited liability company organized and existing pursuant to the laws of
12 the State of Arizona doing business as a night club under the name Club Luxx” in Phoenix,
13 Arizona. (Doc. 1 at 3). As to service of process, Defendant—through its statutory agent,
14 Tony Herrera—was served copies of the summons, complaint, and preliminary order by a
15 certified private process server in person on July 12, 2021. (Doc. 8 at 1). The Court finds
16 that service in this case was proper under the relevant federal and state rules, which
17 authorize service of a limited liability company by in-person delivery of the summons and
18 complaint to an agent of the company who is authorized to receive service. *See* Fed. R.
19 Civ. P. 4(h); Ariz. R. Civ. P. 4.1(i).

20 With preliminary considerations of jurisdiction and service of process out of the
21 way, the Court turns to whether default judgment is appropriate.

22 **B. Default Judgment Analysis: *Eitel* Factors**

23 “A defendant’s default does not automatically entitle a plaintiff to a default
24 judgment.” *Hartford Life & Accident Ins. Co. v. Gomez*, No. CV-13-01144-PHX-BSB,
25 2013 WL 5327558, at *2 (D. Ariz. Sept. 24, 2013). Instead, once a default has been entered,
26 the district court has discretion to grant a default judgment. *See* Fed. R. Civ. P. 55(b)(2);
27 *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Factors the Court may consider
28 include: (1) the possibility of prejudice to the plaintiff; (2) the merits of the claim; (3) the

1 sufficiency of the complaint; (4) the amount of money at stake; (5) the possibility of a
2 dispute concerning material facts; (6) whether default was due to excusable neglect; and
3 (7) the policy favoring a decision on the merits (collectively, the “*Eitel* factors”). *See Eitel*
4 *v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). In applying the *Eitel* factors, “the
5 factual allegations of the complaint, except those relating to the amount of damages, will
6 be taken as true.” *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977).

7 **i) The First, Fifth, Sixth, and Seventh *Eitel* Factors**

8 “In cases like this one, in which [Defendant has] not participated in the litigation at
9 all, the first, fifth, sixth, and seventh factors are easily addressed.” *Zekelman Indus. Inc. v.*
10 *Marker*, No. CV-19-02109-PHX-DWL, 2020 WL 1495210, at *3 (D. Ariz. Mar. 27, 2020).
11 The first factor—the possibility of prejudice to the plaintiff—weighs in favor of granting
12 default judgment. Defendant has failed to appear in this action, despite being served on
13 July 12, 2021. (Doc. 8). If Plaintiffs’ Motion is denied, then Plaintiffs will likely be without
14 other recourse for recovery. *Zekelman*, 2020 WL 1495210, at *3 (citing *PepsiCo, Inc. v.*
15 *Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002)).

16 The fifth and sixth factors—the possibility of a dispute concerning material facts
17 and whether default was due to excusable neglect—also weigh in favor of granting default
18 judgment. Given the sufficiency of the Complaint (discussed below) and Defendant’s
19 default, the Court finds that no genuine dispute of material facts would preclude granting
20 the Motion. And because Defendant was properly served and has never appeared in this
21 case, the Court finds that it is unlikely that Defendant’s failure to appear and the resulting
22 default was the result of excusable neglect. *See id.* at *4 (“Due to Defendants’ failure to
23 participate, there is no dispute over material facts (except as to damages) and no indication
24 that default is due to excusable neglect.”).

25 The seventh factor—the policy favoring a decision on the merits—generally weighs
26 in favor of denying default judgment because “[c]ases should be decided upon their merits
27 whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. But the mere existence of FRCP
28 55(b) “indicates that this preference, standing alone, is not dispositive.” *PepsiCo*, 238 F.

1 Supp. 2d at 1177. Moreover, Defendant’s unexplained absence at this juncture of the case
2 makes a decision on the merits impossible. Thus, the Court is not precluded from entering
3 default judgment against Defendant. *See Emp. Painters’ Tr. v. Ethan Enters., Inc.*, 480 F.3d
4 993, 1000–01 (9th Cir. 2007); *Zekelman*, 2020 WL 1495210, at *4 (citation omitted)
5 (“[T]he default mechanism is necessary to deal with wholly unresponsive parties who
6 could otherwise cause the justice system to grind to a halt. Defendants who appear to be
7 ‘blowing off’ the complaint should expect neither sympathy nor leniency from the court.”).

8 **ii) The Second and Third *Eitel* Factors**

9 The second and third factors—the merits of the claims and the sufficiency of the
10 complaint—weigh in favor of granting default judgment. “These two factors are often
11 analyzed together and require courts to consider whether a plaintiff has stated a claim on
12 which it may recover.” *Zekelman*, 2020 WL 1495210, at *5 (citation omitted). When the
13 complaint sufficiently states a claim for relief, these factors favor a default judgment. *See*
14 *Danning v. Lavine*, 572 F.2d 1386, 1388–89 (9th Cir. 1978). “Of all the *Eitel* factors, courts
15 often consider the second and third factors to be the most important.” *Zekelman*, 2020 WL
16 1495210, at *5 (citation omitted).

17 Here, the Court finds that, taking the allegations in the Complaint as true, Plaintiffs
18 have sufficiently stated claims for relief against Defendant for violations of the Lanham
19 Act and of Arizona’s common-law right of publicity. First, under the Lanham Act, a claim
20 for false association has the following elements:

- 21 1) the defendant used a word, term, name, symbol, or device
22 (or any combination thereof) or any false designation of
23 origin, false or misleading description of fact, or false or
24 misleading representation of fact;
- 25 2) the usage was in commerce, in connection with goods or
26 services;
- 27 3) the usage is likely to cause confusion, or to cause mistake,
28 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; and
- 4) the plaintiff has been or is likely to be injured as a result of
the usage.

1 *Id.* at *7–8 (citing 15 U.S.C. § 1125(a)(1)(A)). Here, Plaintiffs have clearly established the
2 elements of a § 1125(a)(1)(A) false association claim. Defendant used images of Plaintiffs
3 on social media posts for Club Luxx without first seeking or obtaining permission from
4 Plaintiffs. (Doc. 1 at 5–8). Defendant’s use of Plaintiffs’ images on its social media¹ was
5 likely to cause confusion or deceive viewers into believing that Plaintiffs worked at,
6 promoted, endorsed, or were otherwise affiliated with Club Luxx or the events being
7 advertised. Such a representation of Plaintiffs was false, as none had ever been employed
8 at or affiliated with Club Luxx at any time. (*Id.* at 9). The Plaintiffs neither consented to,
9 nor received any remuneration for, Defendant’s use of their images. (*Id.* at 8). Finally,
10 Plaintiffs were injured by being denied the fair market value of Defendant’s use of their
11 images in promotional, marketing, and advertising media on its websites and social media.

12 Turning to Plaintiffs’ right of publicity claim, the Court first notes that Arizona law
13 recognizes a right of publicity. *See In re Estate of Reynolds*, 235 Ariz. 80, 82–83 (Ct. App.
14 2014). A right of publicity claim requires the plaintiff to show “(1) the defendant’s use of
15 the plaintiff’s name or likeness, (2) the appropriation of the plaintiff’s name or likeness to
16 the defendant’s advantage, (3) lack of consent, and (4) resulting injury.” *Lemon v. Harlem*
17 *Globetrotters Int’l, Inc.*, 437 F. Supp. 2d 1089, 1100 (D. Ariz. 2006). Here, Defendant used
18 Plaintiffs’ images on its own social media posts for its own commercial advantage.
19 Plaintiffs never consented to Defendant’s use of their images and were injured because
20 they were denied fair market revenue for Defendant’s use of their name or likeness. This
21 Court finds that Plaintiffs have sufficiently stated claims—for violations of the Lanham
22 Act and of Arizona’s common-law right of publicity—on which they may recover.
23 Therefore, the second and third *Eitel* factors favor default judgment in Plaintiffs’ favor.

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25 ¹ Courts have recognized that online advertisements are “in commerce.” *Zekelman*,
26 2020 WL 1495210, at *8 (citing *TrafficSchool.com, Inc. v. Edriver, Inc.*, 653 F.3d 820, 829
27 n.3 (9th Cir. 2011)). To the extent that the second element of a false association claim is at
28 issue, this Court finds that the social media posts constituted online advertisements for
Club Luxx and that Plaintiffs’ images were therefore used “in commerce, in connection
with goods or services.” *See* 15 U.S.C. § 1125(a)(1)(A).

1 **iii) The Fourth *Eitel* Factor**

2 Under the fourth factor, this Court “must consider the amount of money at stake in
3 relation to the seriousness of Defendant’s conduct.” *Philip Morris USA, Inc. v. Castworld*
4 *Prods., Inc.*, 219 F.R.D. 494, 500 (C.D. Cal. 2003). “When the money at stake in the
5 litigation is substantial or unreasonable, default judgment is discouraged.” *Zekelman*, 2020
6 WL 1495210, at *4 (internal quotations omitted) (citation omitted).

7 Here, Plaintiffs seek \$85,000. While \$85,000 is no small sum, this Court does not
8 find it to be so substantial or unreasonable as to discourage default judgment. Instead, this
9 Court finds that \$85,000 is an appropriate and reasonable damages calculation in this case
10 for several reasons. First, the \$85,000 sum represents the combined damages sustained by
11 not one, but *four* individual Plaintiffs. It also represents the combined damages caused by
12 Defendant’s use of at least *ten* different images of Plaintiffs over a nearly three-year
13 period—this was not a one-off instance. Second, this Court acknowledges that Plaintiffs
14 reasonably withdrew five of their seven claims, evidencing Plaintiffs’ efforts to narrow and
15 simplify their case for purposes of this Motion. Third, and most importantly, Plaintiffs
16 sufficiently support their damages calculation with the sworn declaration of Stephen
17 Chamberlin. (Doc. 19-1 at 2). Mr. Chamberlin is a model and talent agent with extensive
18 experience in the industry and with valuating image uses and model contracts. (*Id.*). The
19 declaration explains the methodology of Mr. Chamberlin’s valuations, including the many
20 factors considered when determining the fair market value of each image use. Plaintiffs
21 provided the Court with details of Mr. Chamberlin’s damages estimate in the present case,
22 including how it breaks down per Plaintiff and per image used. (*Id.* at 21). All told, given
23 the supporting documentation and the overall reasonableness of Plaintiffs’ damages
24 calculation, this Court finds that the fourth factor weighs in favor of default judgment.

25 All told, this Court finds that the *Eitel* factors weigh in favor of default judgment as
26 to Counts One (Lanham Act false association claim) and Two (right of publicity claim).
27 The Court now turns to the relief sought by Plaintiffs.

28 ///

1 **C. Relief Sought**

2 As noted above, Plaintiffs seek \$85,000 in actual damages, an award of all costs and
3 fees, and injunctive relief permanently enjoining Defendant from using Plaintiffs’ images.
4 As a starting point, “[a] judgment by default shall not be different in kind from . . . that
5 prayed for in the demand for judgment’ contained in the complaint.” *U.S. v. Dutson*, No.
6 04-2585-PHX-EHC, 2006 WL 1390816, at *1 (D. Ariz. Mar. 7, 2006) (citing Fed. R. Civ.
7 P. 54(c)). This requirement creates no issue here, however, as the relief sought is consistent
8 with the relief requested in the Complaint. (*See* Doc. 1 at 20).

9 As to actual damages, this Court finds that \$85,000 is appropriate. Under the
10 Lanham Act, the award of monetary remedies in a § 1125(a) false association action
11 includes an award of defendant’s profits, any damages sustained by the plaintiff, and the
12 costs of the action. 15 U.S.C. § 1117(a). Here, Plaintiffs seek actual damages based on “the
13 compensation each Plaintiff would and should have received for the use of her images by
14 Defendant.” (Doc. 19 at 12–13). As noted above, Plaintiffs offer the sworn declaration of
15 Mr. Chamberlin as evidence that \$85,000 represents the combined fair market value of
16 such compensation for all four Plaintiffs. (Doc. 19-1 at 2). Review of the declaration
17 persuades this Court that \$85,000 is appropriate. Mr. Chamberlin’s extensive experience
18 as a model and talent agent supports the credibility of his fair market valuation. (*Id.* at 2–
19 3, 17–19) Mr. Chamberlin reviewed all relevant and available information—including,
20 among other things, the Complaint, the photographic images of Plaintiffs used by
21 Defendant, the product advertised and media used, each Plaintiff’s individual modeling
22 profile, and the nature of Defendant’s business. (*Id.* at 4). Mr. Chamberlin explicitly did
23 *not* consider reputational damages, career damages, or what profits Defendant earned from
24 its use of Plaintiffs’ images—damages that tend to be more forward-looking or
25 hypothetical in nature. (*Id.* at 6). Instead, Mr. Chamberlin focused exclusively on “the fair
26 market value of Defendant’s use of each Plaintiff’s image in promotional, marketing and
27 advertising media, on websites, social media and other forum.” (*Id.* at 3). In doing so he
28 “employed the same approach, methodology, and process that [he] would typically employ

1 when determining what to charge a company or other entity that is interest in hiring models
2 [he] represents.” (*Id.* at 7). In presenting his final fair market valuation, Mr. Chamberlin
3 breaks down the \$85,000 damage total per Plaintiff and per image usage. (*Id.* at 21). The
4 Court finds Mr. Chamberlin’s declaration to be thorough, well-founded, and sufficient
5 evidence of the actual damages Plaintiffs suffered in this case. Therefore, this Court finds
6 it appropriate to award them \$85,000 in actual damages.

7 In addition to actual damages, Plaintiffs seek an award of all costs and fees incurred
8 in prosecuting this action. The Lanham Act permits an award of the costs of the action to
9 a plaintiff who establishes a violation under § 1125(a) and an award of reasonable
10 attorneys’ fees to the prevailing party in “exceptional cases.” *See* 15 U.S.C. § 1117(a).
11 However, an award of attorneys’ fees is “never automatic and may be limited by equitable
12 considerations.” *Rolex Watch, U.S.A., Inc. v. Michel Co.*, 179 F.3d 704, 711 (9th Cir. 1999)
13 (citation omitted). Here, while such an award may be appropriate, the Court is unaware of
14 the amount of such costs and fees, as Plaintiffs have not yet submitted accounting records,
15 affidavits, or other evidence that indicate and verify the amount of fees and costs incurred.
16 The Court directs Plaintiffs to file any motion for attorneys’ fees and/or costs in accordance
17 with FRCP 54(d), LRCiv 54.1, and LRCiv 54.2.

18 Finally, Plaintiffs seek an order permanently enjoining Defendant from using
19 Plaintiffs’ images. The Lanham Act states that a district court “shall have power to grant
20 injunctions, according to the principles of equity and upon such terms as the court may
21 deem reasonable, to prevent . . . a violation under [§ 1125(a)].” 15 U.S.C. § 1116(a); *see*
22 *also Levi Strauss & Co. v. Shilon*, 121 F.3d 1309, 1314 (9th Cir. 1997); *Interstellar Starship*
23 *Servs., Ltd. v. Epix, Inc.*, 304 F.3d 936, 948 (9th Cir. 2002). Injunctive relief may be
24 appropriate, even in the default judgment setting under FRCP 55. *Dutson*, 2006 WL
25 1390816, at *1 (citing *S.E.C. v. Worthen*, 98 F.3d 480 (9th Cir. 1996); *Playboy Enters.*
26 *Int’l, Inc. v. Muller*, 314 F. Supp. 2d 1037, 1040 (D. Nev. 2004)). That said, “[a] plaintiff
27 is not automatically entitled to an injunction simply because it proves its affirmative
28 claims.” *PepsiCo*, 238 F. Supp. 2d at 1177 (citing *Pyrodyne Corp. v. Pyrotronics Corp.*,

1 847 F.2d 1398, 1402 (9th Cir. 1988) (“[T]he grant of injunctive relief is not a ministerial
2 act flowing as a matter of course.”)); *see also Monsanto Co. v. Geertson Seed Farms*, 561
3 U.S. 139, 165 (2010) (“An injunction is a drastic and extraordinary remedy, which should
4 not be granted as a matter of course.”). Rather, “[a]ccording to well-established principles
5 of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a
6 court may grant such relief.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).
7 The four factors a plaintiff must demonstrate are: “(1) that it has suffered an irreparable
8 injury; (2) that remedies available at law, such as monetary damages, are inadequate to
9 compensate for that injury; (3) that, considering the balance of hardships between the
10 plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest
11 would not be disserved by a permanent injunction.” *Id.*

12 Here, Plaintiffs have failed to address any of the four factors required for this Court
13 to impose a permanent injunction. Instead, Plaintiffs’ Motion “assumes that injunctive
14 relief should automatically be issued against the Default Defendants for failure to appear
15 and answer the Complaint.” *Magna-RX, Inc. v. Holley*, No. CV 05-3545-PHX-EHC, 2008
16 WL 5068977, at *4 (D. Ariz. Nov. 25, 2008). While Plaintiffs allege that they were denied
17 the fair market value of Defendant’s use of their images and that their reputations,
18 character, and careers were harmed—allegations this Court takes as true—they make no
19 attempt to demonstrate that these harms are irreparable² absent an injunction, that legal

21 ² The Court notes that, under the Lanham Act, “[a] plaintiff seeking [a permanent
22 injunction] shall be entitled to a rebuttable *presumption* of irreparable harm upon a finding
23 of a violation identified in this subsection.” 15 U.S.C. § 1116(a) (emphasis added).

24 However, Plaintiffs fail to “address or provide authority as to whether default
25 judgment constitutes ‘a finding of a violation.’” *Amazon.com, Inc. v. Expert Tech Rogers
26 Pvt. Ltd.*, No. 20-cv-07405-PJH (JSC), 2021 WL 4461601, at *10 (N.D. Cal. Sept. 22,
27 2021) (quoting § 1116(a)). Plaintiffs also fail to address “whether the statute’s amended
28 language abrogates the Ninth Circuit’s prior holding that ‘actual irreparable harm must be
demonstrated to obtain a permanent injunction [in a Lanham Act case].” *Id.* (citing *Herb
Reed Enters., LLC v. Fla. Ent. Mgmt., Inc.*, 736 F.3d 1239, 1249 (9th Cir. 2013)).
Therefore, absent any effort by the Plaintiffs to address these issues, this Court will not
presume that irreparable harm occurred.

1 remedies such as monetary damages are inadequate to compensate them, that the balance
2 of hardships is in Plaintiffs' favor, or that the public interest would not be disserved by a
3 permanent injunction. *See id.* ("Factual allegations from Plaintiff's complaint alone, even
4 admitted as true, are not sufficient to grant a permanent injunction. Plaintiff must satisfy
5 the four-factor test in *eBay*."). This Court will not conduct the four-factor analysis *sua*
6 *sponte* and therefore denies Plaintiffs' request for a permanent injunction.

7 **III. CONCLUSION**

8 Having reviewed Plaintiffs' Motion and supporting documents, and having
9 considered the *Eitel* factors in doing so, this Court concludes that the entry of default
10 judgment is appropriate as to Plaintiffs' Lanham Act and right of publicity claims.

11 Accordingly,

12 **IT IS ORDERED:**

- 13 1. That Plaintiffs' Motion for Default Judgment (Doc. 18) is **granted**. Default
14 judgment, pursuant to FRCP 55(b)(2), is entered in favor of Plaintiffs on Counts
15 One (Lanham Act false association claim) and Two (right of publicity claim).
- 16 2. That Counts Three through Seven of the Complaint are **dismissed in their**
17 **entirety**.

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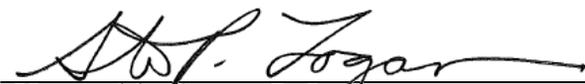
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- 3. That Plaintiffs shall be awarded **\$85,000 in actual damages** pursuant to 15 U.S.C. § 1117(a).
- 4. That Plaintiffs’ request for costs and fees is **denied without prejudice**. Plaintiffs shall have the opportunity to timely file an application for attorneys’ fees and costs in accordance with FRCP 54(d), LRCiv 54.2, and LRCiv 54.1;
- 5. That Plaintiffs’ request for a permanent injunction is **denied**.
- 6. That the Clerk of Court shall enter judgment accordingly and terminate this action.

Dated this 7th day of January, 2022.


Honorable Steven P. Logan
United States District Judge