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

WESTGATE MFG, INC.; and
MIKE VERNICA,

Plaintiffs,

v.

NORCO WHOLESALE ELECTRIC
SUPPLY INC.;
CORONA WHOLESALE ELECTRIC
INC.; and
REYNALDO MEJIA,

Defendants.

Case No. 5:21-cv-02059-JWH-SPx

**ORDER GRANTING PLAINTIFFS'
MOTION FOR DEFAULT
JUDGMENT [ECF No. 24]**

1 Before the Court is the motion of Plaintiffs Westgate MFG, Inc. and Mike
2 Vernica for default judgment.¹ The Court finds this matter appropriate for
3 resolution without a hearing. *See* Fed. R. Civ. P. 78; L.R. 7-15. After
4 considering the papers filed in support, and in the absence of any opposition,²
5 the Court orders that the Motion is **GRANTED**, as set forth herein.

6 I. BACKGROUND

7 A. Procedural History

8 Plaintiffs filed their Complaint commencing this action in December
9 2021, asserting seven claims for relief:

- 10 • patent infringement (35 U.S.C. § 271);
- 11 • false marking (35 U.S.C. § 292);
- 12 • federal trademark infringement (15 U.S.C. § 1114);
- 13 • false designation of origin (15 U.S.C. § 1125(a));
- 14 • unfair competition (Cal. Bus. & Prof. Code § 17200);
- 15 • false advertising (Cal. Bus. & Prof. Code § 17500); and
- 16 • common law trademark infringement and unfair competition.

17 Plaintiffs filed the instant Motion in March 2022, and it is unopposed.

18 B. Factual History

19 In their Complaint, Plaintiffs allege the following facts:

20 Plaintiff Vernica is the sole inventor and owner of U.S. Patent
21 No. 7,780,461 (the “’461 Patent”), which claims a new and improved electrical
22 ground clamp.³ Plaintiff Westgate possesses the exclusive rights to produce,
23 market, and sell products covered by the ’461 Patent and to enforce the
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26 ¹ Pls.’ Mot. for Default J. (the “Motion”) [ECF No. 24].

27 ² The Court considered the following papers: (1) Compl. (the
“Complaint”) [ECF No. 1]; and (2) the Motion (including its attachments).

28 ³ Complaint ¶¶ 20 & 21.

1 '461 Patent.⁴ Westgate sells a grounding clamp that is covered by the
2 '461 Patent (the "Licensed Product").⁵

3 Plaintiffs believe that Defendant Reynaldo Mejia is the president of
4 (1) Defendant Corona Wholesale Electric Inc., a suspended company; and
5 (2) the company that stands in its place, Defendant Norco Wholesale Electric
6 Supply Inc.⁶ Defendants sold grounding clamps that infringe the '461 Patent
7 (the "Accused Product") on Amazon.com.⁷ The Accused Product is a lower-
8 quality near-copy of Westgate's Licensed Product, incorporating the same
9 patented inventions.⁸ Defendants have sold the Accused Product with
10 Westgate's registered WESTGATE Mark.⁹

11 II. LEGAL STANDARD

12 A court may issue a default judgment following the entry of default by the
13 Clerk of the Court. Fed. R. Civ. P. 55(b). This Court's Local Rules require an
14 applicant for default judgment to submit a declaration that conforms to the
15 requirements of Rule 55(b) of the Federal Rules of Civil Procedure and sets forth
16 the following information:

- 17 (1) When and against which party the default was entered;
- 18 (2) The identification of the pleading to which default was
19 entered;
- 20 (3) Whether the defaulting party is an infant or incompetent
21 person, and if so, whether that person is represented by a general
22 guardian, committee, conservator or other representative;

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24 ⁴ *Id.* ¶ 20.

25 ⁵ *Id.* ¶ 23.

26 ⁶ *Id.* ¶¶ 24-31.

27 ⁷ *Id.* ¶ 32.

28 ⁸ *Id.* ¶¶ 24 & 32-36. *See* Complaint, Ex. A (U.S. Trademark Registration
No. 5,410,387 (the "WESTGATE Mark")) [ECF No. 1-1].

⁹ *Id.* ¶ 24.

1 (4) That the Servicemembers Civil Relief Act (50 U.S.C. App.
2 § 521) does not apply; and

3 (5) That notice of the application has been served on the
4 defaulting party, if required by F. R. Civ. P. 55(b)(2).

5 L.R. 55-1.

6 The decision to enter default judgment is committed to the sound
7 discretion of the district court. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092-93 (9th
8 Cir. 1980). In *Eitel v. McCool*, 782 F.2d 1470 (9th Cir. 1986), the Ninth Circuit
9 set forth the following factors for a court to consider in determining whether to
10 grant default judgment:

11 (1) the possibility of prejudice to the plaintiff; (2) the merits of
12 plaintiff's substantive claim; (3) the sufficiency of the complaint;
13 (4) the sum of money at stake in the action; (5) the possibility of a
14 dispute concerning material facts; (6) whether the default was due to
15 excusable neglect; and (7) the strong policy underlying the Federal
16 Rules of Civil Procedure favoring decisions on the merits.

17 *Id.* at 1471-72. Upon the entry of default, the well-pleaded factual allegations of
18 a complaint are deemed true; however, allegations pertaining to the amount of
19 damages must be proven. *See TeleVideo Systems Inc. v. Heidenthal*, 826 F.2d 915,
20 917 (9th Cir. 1987). A plaintiff must provide evidence of her damages, and a
21 court may rely on the declarations submitted by the plaintiff or may order a full
22 evidentiary hearing. Fed. R. Civ. P. 55(b)(2). Further, the damages sought must
23 not "differ in kind from, or exceed in amount, what is demanded in the
24 pleadings." Fed. R. Civ. P. 54(c).

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1 **III. DISCUSSION**

2 Plaintiffs move this Court to enter default judgment against Defendants
3 with respect to all but one of Plaintiffs’ seven claims for relief.¹⁰ Specifically,
4 Plaintiffs seek (1) the issuance of a permanent injunction against Defendants;
5 and (2) an award of Plaintiffs’ attorneys’ fees and costs.¹¹ To obtain that relief,
6 Plaintiffs must meet the procedural requirements described above and must
7 establish that, on balance, the *Eitel* factors weigh in their favor.

8 **A. Procedural Requirements**

9 Plaintiffs have satisfied the procedural requirements for the entry of
10 default judgment. Pursuant to Rule 55, Plaintiffs did not petition for a default
11 judgment until after the Clerk entered Defendants’ defaults.¹² Additionally,
12 Plaintiffs’ moving papers include a declaration by Plaintiffs’ counsel that
13 provides the information required by the Local Rules.¹³

14 **B. Eitel Factors**

15 **1. Possibility of Prejudice to Plaintiffs**

16 Plaintiffs will suffer prejudice if the Court does not enter a default
17 judgment in their favor. Because Defendants have not appeared in this action, a
18 default judgment is the only means by which Plaintiffs may obtain relief. Absent
19 a default judgment by this Court, Plaintiffs would be “be forced to continue the
20 litigation even though no party has filed an answer or a claim.” *United States v.*
21 *Approximately \$194,752 in U.S. Currency*, 2011 WL 3652509, at *3 (N.D. Cal.)
22

23 ¹⁰ Because Plaintiffs do not seek monetary damages, Plaintiffs do not seek
24 entry of default judgment with respect to their false marking claim. Motion
8:27-28.

25 ¹¹ *Id.* at 1:15-19.

26 ¹² *Cf.* Default by Clerk as to Norco Wholesale Electric Supply, Inc.; Corona
27 Wholesale Electric, Inc.; and Reynaldo Mejia (entered on January 21, 2022)
[ECF No. 20], *with* Motion (filed on March 10, 2022).

28 ¹³ *See* Decl. of Kyle W. Kellar (the “Kellar Declaration”) [ECF No. 24-2]
¶¶ 2-4.

1 Aug. 19, 2011). Therefore, this factor weighs in favor of the entry of a default
2 judgment. *See Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998, 1007 (C.D. Cal.
3 2014) (finding that the plaintiff would suffer prejudice absent the entry of a
4 default judgment because of the defendant’s unwillingness to cooperate and
5 defend against the claim).

6 **2. Substantive Merits of Plaintiffs’ Claims**

7 The second and third *Eitel* factors concern the merits of Plaintiffs’
8 substantive claims and the sufficiency of their pleadings, respectively. *Eitel*, 782
9 F.2d at 1471–72. “The Ninth Circuit has suggested that these two factors
10 require that a plaintiff ‘state a claim on which the [plaintiff] may recover.’”
11 *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002)
12 (internal citation omitted). Here, the six claims for relief on which Plaintiffs
13 seek default judgment are sufficiently stated and meritorious. The second and
14 third *Eitel* factors thus favor the entry of a default judgment with respect to
15 Plaintiffs’ claims.

16 **a. Patent Infringement (35 U.S.C. § 271)**

17 “To state a claim of patent infringement, a plaintiff must allege at the very
18 least ownership of the allegedly infringed patent and infringement of the patent
19 by the defendant, *e.g.*, by selling the allegedly infringing product.” *Tech.*
20 *Licensing Co. v. Noah Co. LLC*, 2012 WL 3860758, at *3 (N.D. Cal. Sept. 5,
21 2012). Here, the Complaint alleges that Vernica “is the sole inventor and owner
22 of the ’461 Patent” and that Westgate is the exclusive licensee of the ’461 Patent
23 with the right to enforce the ’461 Patent.¹⁴ The Complaint also alleges that
24 “Defendants, either jointly or separately, have previously and are currently
25 making, using, offering for sale, and/or selling in interstate commerce grounding
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28 ¹⁴ Complaint ¶¶ 20.

1 clamps that infringe the '461 Patent.”¹⁵ Defendants offered for sale or sold the
2 Accused Product on Amazon.com under the name “CLAMP GROUNDING
3 1/2 to 3/4 in SCR” and with ASIN number B07RGMBCRM.”¹⁶ Plaintiffs have,
4 therefore, successfully stated a claim for relief for patent infringement upon
5 which they can recover.

6 **b. Trademark Infringement (15 U.S.C. § 1114) and False**
7 **Designation of Origin (15 U.S.C. § 1125(a))**

8 To state a claim for trademark infringement or false designation of origin,
9 Plaintiffs must establish that Vernica owns a “valid, protectable mark” and that
10 Defendants are using a “confusingly similar mark.” *See Grocery Outlet, Inc. v.*
11 *Albertson’s, Inc.*, 497 F.3d 949, 951 (9th Cir. 2007) (per curiam) (citing 15 U.S.C.
12 § 1114(1)); *see also Brookfield Commc’ns, Inc. v. W. Coast Entm’t Corp.*, 174 F.3d
13 1036, 1046 (9th Cir. 1999); *AK Futures LLC v. Smoke Tokes, LLC*, 2021 WL
14 5359019, at *3 (C.D. Cal. Nov. 17, 2021) (false designation of origin claim
15 analyzed using same elements as trademark infringement claim). “The core
16 element of trademark infringement is the likelihood of confusion, i.e., whether
17 the similarity of the marks is likely to confuse customers about the source of the
18 products.” *Freecycle Network, Inc. v. Oey*, 505 F.3d 898, 902 (9th Cir. 2007)
19 (quotations omitted).

20 Plaintiffs have made such a showing. First, they have shown that Vernica
21 owns a valid, protectable mark—the WESTGATE Mark. *See Brookfield*, 174
22 F.3d at 1047 (holding that registration of a mark in the principal register of the
23 USPTO is *prima facie* evidence of the validity of the registered mark and of
24 plaintiff’s exclusive right to use the mark on the goods and services specified in
25 the registration).

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¹⁵ *Id.* at ¶ 24.

28 ¹⁶ *Id.*

1 Second, Plaintiffs have shown that Defendants’ use is likely to cause
2 customer confusion— “a fairly straightforward demonstration given Plaintiffs’
3 evidence of Defendants’ alleged counterfeiting.” *See Seiko Epson Corp. v.*
4 *Nelson*, 2021 WL 5033486, at *3 (C.D. Cal. Mar. 31, 2021). In counterfeiting
5 cases, the Court assumes a likelihood of confusion when the offending mark is
6 counterfeit or virtually identical to a protected mark and is used on an identical
7 product or service. *See Louis Vuitton Malletier, S.A. v. Akanoc Sols., Inc.*, 658
8 F.3d 936, 945 (9th Cir. 2011); *Brookfield*, 174 F.3d at 1056 (“In light of the
9 virtual identity of marks, if they were used with identical products or services
10 likelihood of confusion would follow as a matter of course.”). Here, the mark on
11 the Accused Product is virtually identical to the WESTGATE Mark protected
12 mark.¹⁷

13 Plaintiffs have thus demonstrated that Defendants have sold and
14 marketed, through Amazon, grounding clamps falsely bearing the
15 WESTGATE Mark. Therefore, Plaintiffs have successfully stated claims for
16 relief for trademark infringement and false designation of origin upon which they
17 can recover.

18 **c. Unfair Competition (Cal. Bus. & Prof. Code § 17200)**

19 State law claims of unfair competition and claims under
20 Cal. Bus. & Prof. Code § 17200 are “substantially congruent” to claims made
21 under the Lanham Act. *Cleary v. News Corp.*, 30 F.3d 1255, 1262–63 (9th Cir.
22 1994). Because the Court has concluded that Plaintiffs have sufficiently stated
23 claims under the Lanham Act (as discussed above), the Court also determines
24 that Plaintiffs have stated a claim for relief for unfair business practices under
25 Cal. Bus. & Prof. Code § 17200 upon which they can recover. *See AK Futures*
26 *LLC v. Smoke Tokes, LLC*, 2021 WL 5359019, at *4 (C.D. Cal. Nov. 17, 2021)

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¹⁷ *See* Motion 2:1-5.

1 (“Because the Court concluded that AK Futures sufficiently stated claims under
2 the Lanham Act, the Court also determines that AK Futures stated claims for
3 unfair business practices under California Business and Professions Code
4 § 17200.”).

5 **d. False Advertising (Cal. Bus. & Prof. Code § 17500)**

6 To state a claim for false advertising under Cal. Bus. & Prof. Code
7 § 17500, Plaintiffs must show that Defendants “made a statement, in connection
8 with the sale of personal property, which is untrue or misleading, and which is
9 known, or which by the exercise of reasonable care should be known, to be
10 untrue or misleading.” *PepsiCo*, 238 F. Supp. 3d at 1176. Here, Plaintiffs allege
11 that Defendants used the WESTGATE Mark in connection with the sale of
12 grounding clamps without Westgate’s consent.¹⁸ *See id.* Therefore, Plaintiffs
13 have successfully stated a claim for relief for false advertising upon which they
14 can recover. *See id.*

15 **e. Common Law Trademark Infringement and Unfair**
16 **Competition**

17 Lastly, Plaintiffs assert a claim for relief for common law trademark
18 infringement and unfair competition. The Ninth Circuit “has consistently held
19 that . . . actions pursuant to [the California Unfair Competition Law] are
20 ‘substantially congruent’ to claims under the Lanham Act.” *Cleary*, 30 F.3d at
21 1262–63. Thus, “[b]y sufficiently alleging its claims under the Lanham Act,
22 [Plaintiffs have] also adequately alleged facts in support of [their] claims under
23 common law trademark infringement and unfair competition.” *See Entrepreneur*
24 *Media, Inc. v. Dye*, 2018 WL 6118443, at *7 (C.D. Cal. Sept. 11, 2018). Plaintiffs
25 have, therefore, successfully stated a claim for relief for common law trademark
26 infringement and unfair competition upon which they can recover.

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28 ¹⁸ Complaint ¶¶ 24 & 33-36.

1 **3. Sum of Money at Stake**

2 The fourth *Eitel* factor examines the amount of money at stake in the
3 action relative to the gravity of the defendant’s conduct. *PepsiCo*, 238
4 F. Supp. 2d at 1176. “Default judgement is disfavored where the sum of money
5 at stake is too large or unreasonable in relation to defendant’s conduct.” *Seiko*
6 *Epson Corp. v. Benedychuk*, 2021 WL 2786663, at *4 (C.D. Cal. Jan. 27, 2021)
7 (quotations and citation omitted). Here, Plaintiffs do not seek monetary
8 damages.¹⁹ Therefore, this factor weighs in favor of the entry of a default
9 judgment. *See PepsiCo*, 238 F. Supp. 2d at 1176.

10 **4. Possibility of Dispute Concerning Material Facts**

11 Upon entry of default, all well-pleaded factual allegations are deemed
12 true, except those pertaining to damages. *See TeleVideo*, 826 F.2d at 917; *Elektra*
13 *Entm’t Group Inc. v. Crawford*, 226 F.R.D. 388, 393 (C.D. Cal. Feb. 11, 2005)
14 (“Because all allegations in a well-pleaded complaint are taken as true after the
15 court clerk enters default judgment, there is no likelihood that any genuine issue
16 of material fact exists.”). Because Defendants have neither appeared in this
17 action nor asserted any defenses, it is unlikely that disputes regarding material
18 facts will arise. Accordingly, this factor favors the entry of a default judgment.

19 **5. Whether Default Was Due to Excusable Neglect**

20 Under the sixth factor, a court must consider whether a defendant’s
21 default may have been due to excusable neglect. *See Eitel*, 782 F.2d at 1472.
22 This factor favors the entry of a default judgment when the defendant has been
23 properly served or when the plaintiff demonstrates that the defendant is aware
24 of the action. *See Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072,
25 1082 (C.D. Cal. 2012). Here, Plaintiffs properly served Defendants with the
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28 ¹⁹ Motion 8:27-28.

1 Summons and Complaint.²⁰ Defendants have had ample time to appear in this
2 action, but they have failed to do so.

3 The Court concludes that Defendants' defaults were not the product of
4 excusable neglect. This factor thus favors the entry of a default judgment.

5 **6. Policy Favoring Decision on the Merits**

6 Generally, default judgments are disfavored because “[c]ases should be
7 decided upon their merits whenever reasonably possible.” *Eitel*, 782 F.2d at
8 1472 (citing *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir.
9 1985)). However, when a defendant fails to appear and respond, default
10 judgment is appropriate. *See Wecosign*, 845 F. Supp. 2d at 1083. Here,
11 Defendants' failures to appear or defend against Plaintiffs' claims make a
12 decision on the merits impracticable. Therefore, this factor favors entering
13 default judgment.

14 In sum, the *Eitel* factors favor granting default judgment against
15 Defendants. Accordingly, the Court **GRANTS** the Motion with respect to the
16 entry of default judgment in Plaintiffs' favor.

17 **C. Requested Relief**

18 Under Rule 54(c), a default judgment “must not differ in kind from, or
19 exceed in amount, what is demanded in the pleadings.” Fed. R. Civ. P. 54(c). A
20 plaintiff must “prove up” the amount of damages. *Aifang v. Velocity VIII, L.P.*,
21 2016 WL 5420641, at *7 (C.D. Cal. Sept. 26, 2016). Here, Plaintiffs seek a
22 permanent injunction against Defendants and an award of attorneys' fees and
23 costs.²¹ The requested relief does not differ in kind from, or exceed in amount,
24 what is demanded in the Complaint.²²

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27 ²⁰ *See, e.g.*, Proofs of Service [ECF No. 11-13].

²¹ Motion 13:1-7; *see generally* Proposed Order [ECF No. 24-4].

28 ²² *See* Complaint 16:1-26.

1 **1. Permanent Injunction**

2 Plaintiffs seek a permanent injunction that prohibits Defendants from
3 further selling the Accused Product and infringing the '461 Patent.²³

4 “A plaintiff is entitled to a permanent injunction against a defendant
5 when it can demonstrate: (1) that it has suffered an irreparable injury; (2) that
6 remedies available at law, such as monetary damages, are inadequate to
7 compensate for that injury; (3) that, considering the balance of the hardships
8 between the plaintiff and defendant, a remedy in equity is warranted; and
9 (4) that the public interest would not be disserved by a permanent injunction.”
10 *Benedychuk*, 2021 WL 2786663, at *6 (citing *eBay Inc. v. MercExchange, L.L.C.*,
11 547 U.S. 388, 391 (2006)). “The Court’s ‘decision to grant or deny permanent
12 injunctive relief is an act of equitable discretion by the district court.’” *Id.*
13 (quoting *eBay*, 547 U.S. at 391).

14 This Court concludes that Plaintiffs’ claims merit injunctive relief. First,
15 Plaintiffs allege that Westgate has suffered the irreparable harms of “lost sales”
16 and damage to its goodwill.²⁴ *See Abbott Labs. v. Sandoz, Inc.*, 544 F.3d 1341,
17 1361–62 (Fed. Cir. 2008) (loss of revenue is an irreparable harm). Although the
18 extent of Plaintiffs’ lost sales is unclear,²⁵ Plaintiffs have suffered irreparable
19 harm because Defendants admit by their default that they have willfully
20 infringed the '461 Patent and the WESTGATE Mark. *See AK Futures*, 2021
21 WL 5359019, at *4 (“Defendant admits by its default that it continues to
22 willfully infringe on plaintiff’s copyrighted property, causing plaintiff ongoing
23 and irreparable harm.” (brackets omitted)). Moreover, although Plaintiffs are
24 not presently aware of Defendants’ continued sale of the Accused Product or
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26 ²³ See Proposed Order 1:10-24.

27 ²⁴ Complaint ¶¶ 72 & 73; Motion 16:15-17:3.

28 ²⁵ See Complaint, Exs. C & D [ECF No. 1-1] (showing Amazon.com reviews of Defendants’ counterfeit products, indicating sales).

1 use of the WESTGATE Mark,²⁶ it is not “absolutely clear” that Defendants’
2 wrongful acts have permanently ceased. *See PepsiCo*, 238 F. Supp. 2d at 1177–78
3 (“[I]n the absence of opposition by the non-appearing defendant, it cannot be
4 said that it is ‘absolutely clear’ that Defendant’s allegedly wrongful behavior has
5 ceased and will not begin again.”).

6 Second, monetary damages will not sufficiently compensate Plaintiffs for
7 their injury caused by Defendants’ infringing sales because Defendants’ failure
8 to appear and participate in this litigation “has given the court no assurance that
9 Defendant’s infringing activity will cease.” *See Benedychuk*, 2021 WL 2786663,
10 at *4 (quoting *Jackson v. Sturkie*, 255 F. Supp. 1096, 1103 (N.D. Cal. 2003)
11 (quotations omitted) (granting permanent injunction in default judgement
12 copyright case)).

13 Third, the balance of the hardships largely favors Plaintiffs. Because
14 Defendants “admit to willfully infringing” the ’461 Patent and the
15 WESTGATE Mark through the entry of default, an injunction will prevent
16 Defendants only “from doing what they are already prohibited from doing.” *See*
17 *id.* If Defendants continue their infringing activities, however, the injunction
18 will provide substantial protection for Plaintiffs. *See id.*

19 Fourth, a permanent injunction would not disserve the public interest; it
20 would instead protect the ’461 Patent and the WESTGATE Mark. “The
21 purpose of protecting trademarks,” after all, “is to avoid consumer confusion
22 and to ensure that a producer reaps the rewards of having developed desirable
23 products.” *Id.* (citing *Qualitex Co. v. Jacobson Products Co.*, 514 U.S. 159, 164
24 (1995)). Similarly, the “right to exclude others from making, using, offering for
25 sale, or selling” a patented invention is the very right ensured by a patent. *See*
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27 ²⁶ Motion 16 n.5 (“Defendant did not voluntarily cease its infringing
28 activities. It was only after Plaintiffs moved Amazon.com to remove
Defendants’ infringing listing that the infringements ceased.”).

1 35 U.S.C. § 153. A permanent injunction prohibiting Defendants from
2 infringing the '461 Patent and the WESTGATE Mark would uphold those goals.

3 Accordingly, the Court **GRANTS** the Motion with respect to Plaintiffs'
4 request for a permanent injunction.

5 2. Attorneys' Fees and Costs

6 Plaintiffs seek attorneys' fees and costs in the amount of \$22,939 under
7 the U.S. Patent Act and the Lanham Act.²⁷ In both patent and trademark
8 infringement actions, "[t]he court in exceptional cases may award reasonable
9 attorney fees to the prevailing party." *See* 15 U.S.C. § 1117(a); 35 U.S.C. § 285.
10 "Exceptional" cases are those "where the acts of infringement can be
11 characterized as malicious, fraudulent, deliberate, or willful." *Rio Properties, Inc.*
12 *v. Rio Intern. Interlink*, 284 F.3d 1007, 1023 (9th Cir. 2002). In determining
13 whether an award of attorneys' fees is appropriate in both patent and trademark
14 infringement cases, "the Court must consider several 'nonexclusive factors,'
15 such as (1) frivolousness; (2) motivation; (3) objective unreasonableness (both in
16 the factual and in the legal components of the case); and (4) the need in
17 particular circumstances to advance considerations of compensation and
18 deterrence." *Talent Mobile Development, Inc. v. Headios Group*, 382 F. Supp. 3d
19 953, 959 (C.D. Cal. 2019) (citing *Sun-Earth, Inc. v. Sun Earth Solar Power Co.*,
20 839 F.3d 1179, 1181 (9th Cir. 2016)).

21 First, this Court finds that Plaintiffs are entitled to reasonable attorneys'
22 fees. By granting Plaintiffs' instant Motion for default judgment, the Court has
23 determined that—as alleged in the Complaint—Defendants' infringement of
24 the '461 Patent was "willful" and "exceptional" and that Defendants'
25 infringement of the WESTGATE Mark was "deliberate" and "fraudulent."²⁸

27 ²⁷ *Id.* at 13:5-7 & 18:23-19:28.

28 ²⁸ *See* Complaint ¶¶ 44-46, 58, & 79.

1 The entry of default judgment thus sufficiently establishes Plaintiffs'
2 entitlement to attorneys' fees. *See Rio Properties*, 284 F.3d at 1023 ("In this
3 case, by entry of default judgment, the district court determined, as alleged in
4 RIO's complaint, that RII's acts were committed knowingly, maliciously, and
5 oppressively, and with an intent to . . . injure RIO." (quotations and citation
6 omitted)); *see also Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702
7 (9th Cir. 2008) ("[A]ll factual allegations in the complaint are deemed true,
8 including the allegation of Poof's willful infringement of Andrew's trademarks.
9 This default sufficiently establishes Andrew's entitlement to attorneys' fees
10 under the Lanham Act.").

11 Second, this Court determines that Plaintiffs' request for attorneys' fees
12 and costs in the amount of \$22,939 is reasonable. District courts generally
13 calculate awards for attorneys' fees using the "lodestar" method. *Camacho v.*
14 *Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). Under the lodestar
15 method, a court considers the work completed by the attorneys and multiplies
16 "the number of hours reasonably expended on the litigation by the reasonable
17 hourly rate." *Gracie v. Gracie*, 217 F.3d 1060, 1070 (9th Cir. 2000) (citations
18 omitted). The reasonable hourly rate for an attorney is determined by the
19 "prevailing market rate of the relevant community"—that is, the forum in
20 which the district court sits. *Carson v. Billings Police Dep't*, 470 F. 3d 889, 891
21 (9th Cir. 2006). The moving party has the burden to produce evidence that the
22 rates and hours worked are reasonable. *See Intel Corp. v. Terabyte Int'l*, 6 F.3d
23 614, 623 (9th Cir. 1993). Although the lodestar figure is—in most cases—
24 "presumptively a reasonable fee award," the court "may, if circumstances
25 warrant, adjust the lodestar to account for other factors which are not subsumed
26 within it." *Camacho*, 523 F.3d at 978 (citations omitted). For example, hours
27 may be reduced by the court "where documentation of the hours is inadequate;
28 if the case was overstaffed and hours are duplicated; [or] if the hours expended

1 are deemed excessive or otherwise unnecessary.” *Chalmers v. City of Los*
2 *Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986).

3 Plaintiffs seek an award of \$22,057 in attorneys’ fees for 42 hours of work
4 at the following hourly rates: 6.6 hours worked at \$710 per hour for attorney
5 Constantine Marantidis; 2.8 hours worked at \$650 per hour for attorney G.
6 Warren Bleeker; and 32.6 hours worked at \$460 per hour for attorney Kyle W.
7 Keller.²⁹ Plaintiffs also request \$882 in costs, representing the fees to serve
8 Defendants.³⁰ The Court finds that those hourly rates are reasonable³¹ and that
9 the lodestar does not include fees for any hours that are excessive, redundant, or
10 otherwise unnecessary. *See Halsey v. Colonial Asset Mgmt.*, 2014 WL 12601015,
11 at *5 (C.D. Cal. July 17, 2014). The Court, therefore, concludes that the
12 lodestar amount of \$22,057 is reasonable. In addition, the Court finds that
13 Plaintiffs’ costs were reasonably incurred and likewise grants the requested \$882
14 in costs. *See id.* at *6.

15 Accordingly, the Court **GRANTS** the Motion with respect to the
16 requested amount of attorneys’ fees and costs.

17 **IV. CONCLUSION**

18 For the foregoing reasons, the Court hereby **ORDERS** as follows:

- 19 1. Plaintiffs’ Motion for Default Judgment is **GRANTED**.
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26 ²⁹ *See* Motion, Ex. E [ECF No. 24-3].

27 ³⁰ Kellar Declaration ¶ 19.

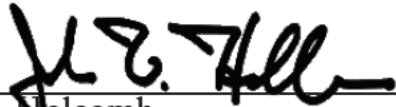
28 ³¹ *See id.* at ¶¶ 13-21.

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2. Plaintiffs are **DIRECTED** forthwith to lodge a Proposed Judgment (and to email a Word version of that document to JWH_Chambers@cacd.uscourts.gov) for the Court's consideration.

IT IS SO ORDERED.

Dated: August 3, 2022



John W. Polcomb
UNITED STATES DISTRICT JUDGE