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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SPRINT NEXTEL CORPORATION, et al.,

Plaintiffs,

v.

AARON SIMON WELCH,

Defendant.

Case No. 1:13-cv-01174-AWI-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT PLAINTIFFS’
MOTION FOR DEFAULT JUDGMENT BE
PARTIALLY GRANTED

ECF NO. 18

OBJECTIONS DUE WITHIN FOURTEEN
(14) DAYS

On October 30, 2013, Plaintiffs Sprint Nextel Corporation and Sprint Communications Company, L.P. (“Plaintiffs” or “Sprint”) filed a motion for default judgment. (ECF No. 18.) The motion was referred to the undersigned magistrate judge for findings and recommendations pursuant to 28 U.S.C. § 636(b).

The Court finds it appropriate for Plaintiff’s motions to be submitted upon the record and briefs on file without need for oral argument. See Local Rule 230(g). For the reasons set forth below, the Court recommends that Plaintiffs’ motion for default judgment be partially granted.

I.

BACKGROUND

Plaintiffs filed the complaint in this action on July 26, 2013. (ECF No. 1.) Plaintiffs’ complaint seeks damages and injunctive relief against Defendant Aaron Simon Welch d/b/a The

1 Cell Cycle (“Defendant”) for an alleged “Bulk Handset Trafficking Scheme.” Plaintiffs allege
2 that Defendant and other co-conspirators acquired subsidized phones from Sprint and resold
3 them to others. Specifically, Plaintiffs allege that Defendant purchases Sprint phones in bulk
4 quantities from “runners” and “credit mules” and instructed them on how to defraud Sprint to
5 acquire phones from Sprint in bulk quantities.

6 Plaintiffs allege that Defendant purchased phones from Sprint directly and resold them.
7 Additionally, Plaintiffs allege that Defendant published advertisements directed at third party co-
8 conspirators/prospective sellers about purchasing iPhones to sell to Defendant. These
9 advertisements also invited prospective sellers to contact Defendant about how to easily acquire
10 ten brand new iPhones to resell to Defendant.

11 Plaintiffs allege that Defendant instructs prospective sellers to open a new Sprint account
12 and activate ten phone lines, buying a brand new iPhone for each line. Defendant further
13 instructs the prospective seller to purchase insurance coverage on each iPhone. The prospective
14 seller then sells the initial ten iPhones to Defendant and files insurance claims on those ten
15 iPhones, by falsely claiming they were lost or stolen, to receive an additional ten iPhones. The
16 prospective seller sells those ten iPhones, makes another set of insurance claims to receive
17 another ten iPhones, ultimately selling a total of thirty iPhones to Defendant. The prospective
18 seller then cancels the ten phone lines, allows the accounts to lapse, or keeps the accounts open
19 until they are eligible to receive new phones.

20 Plaintiffs assert sixteen claims against Defendant for: 1) breach of contract, 2) unfair
21 competition (common law), 3) tortious interference with business relationships, 4) civil
22 conspiracy, 5) unjust enrichment, 6) conspiracy to induce breach of contract, 7) common law
23 fraud, 8) fraudulent misrepresentation, 9) trafficking in computer passwords (18 U.S.C. §
24 1030(a)(6)), 10) unauthorized access (18 U.S.C. § 1030(a)(5)(C)), 11) unauthorized access with
25 intent to defraud (18 U.S.C. § 1030(a)(4)), 12) federal trademark infringement (15 U.S.C. §
26 1114), 13) federal common law trademark infringement and false advertising (15 U.S.C. §
27 1125(a)(1)(A) and (B)), 14) contributory trademark infringement, 15) conversion, and 16) unfair
28 competition (Cal. Bus. & Prof. Code § 17200, et seq.)

1 The hearing on Plaintiffs' motion took place on December 4, 2013. After the hearing, the
2 Court asked Plaintiffs for additional briefing on issues relating to the motion and continued the
3 matter to January 8, 2014 for further hearing. Plaintiffs filed a supplemental brief on December
4 24, 2013. (ECF No. 25.)

5 II.

6 LEGAL STANDARDS FOR DEFAULT JUDGMENT

7 Entry of default judgment is governed by Federal Rule of Civil Procedure 55(b), which
8 states, in pertinent part:

9 (2) By the Court. In all other cases, the party must apply to the
10 court for a default judgment. A default judgment may be entered
11 against a minor or incompetent person only if represented by a
12 general guardian, conservator, or other like fiduciary who has
13 appeared. If the party against whom a default judgment is sought
14 has appeared personally or by a representative, that party or its
15 representative must be served with written notice of the application
16 at least 7 days before the hearing. The court may conduct hearings
17 or make referrals—preserving any federal statutory right to a jury
18 trial—when, to enter or effectuate judgment, it needs to:

- 19 (A) conduct an accounting;
- 20 (B) determine the amount of damages;
- 21 (C) establish the truth of any allegation by evidence; or
- 22 (D) investigate any other matter.

23 Upon entry of default, the complaint's factual allegations regarding liability are taken as
24 true. Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir. 1977); Microsoft Corp. v.
25 Nop, 549 F. Supp. 2d 1233, 1235 (E.D. Cal. 2008). However, the complaint's factual allegations
26 relating to the amount of damages are not taken as true. Geddes, 559 F.2d at 560. Accordingly,
27 the amount of damages must be proven at an evidentiary hearing or through other means.
28 Microsoft Corp., 549 F. Supp. 2d at 1236. Per Federal Rule of Civil Procedure 54(c), "[a]
default judgment must not differ in kind from, or exceed in amount, what is demanded in the
pleadings."

The Court's decision whether to enter a default judgment is discretionary. Eitel v.
McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). Factors that the Court may consider in exercising
that discretion include (1) the possibility of prejudice to the plaintiff, (2) the merits of the
plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake

1 in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default
2 was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil
3 Procedure favoring decisions on the merits. Id. at 1471-72. “The general rule of law is that upon
4 default the factual allegations of the complaint, except those relating to the amount of damages,
5 will be taken as true.” Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir. 1977)
6 (citations omitted).

7
8 **III.**
DISCUSSION

9 **A. Partial Default Judgment**

10 As an initial matter, the Court requested briefing on the issue of whether the Court has
11 authority to enter a partial default judgment as to liability and as to a permanent injunction while
12 leaving deferring on the issue of damages. The Ninth Circuit has impliedly endorsed the practice
13 of entering partial default judgment. See Dreith v. Nu Image, Inc., 648 F.3d 779, 781 (9th Cir.
14 2011) (“...the district court entered default judgment against them with respect only to liability,
15 but deferred ruling on damages pending further briefing and evidentiary submissions.”)
16 Accordingly, the Court finds it appropriate to enter partial default judgment on certain issues
17 while leaving open the question of damages.

18 **B. Applicability of the Eitel Factors**

19 In determining whether to exercise its discretion to enter default judgment, the Court
20 analyzes the seven Eitel factors.

21 1. Possibility of Prejudice to the Plaintiff

22 Potential prejudice to Plaintiffs favors granting a default judgment. If default judgment
23 were denied, Plaintiffs would likely be without other recourse for recovery. See Microsoft
24 Corp., 549 F. Supp. 2d at 1236-37; PepsiCo, Inc. v. California Security Cans, 238 F. Supp. 2d
25 1172, 1177 (C.D. Cal. 2002). Accordingly, this factor weighs in favor of entry of default
26 judgment.

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1 2. The Merits of Plaintiffs’ Substantive Claims and the Sufficiency of Plaintiffs’
2 Complaint

3 For the reasons set forth below, Plaintiffs’ claims have merit and the Complaint states
4 sufficient allegations supporting those claims.

5 a. *Breach of Contract Claim*

6 Plaintiffs’ first claim against Defendant is for breach of contract. The elements of a claim
7 for breach of contract are: (1) existence of the contract; (2) plaintiff’s performance or excuse for
8 nonperformance; (3) defendant’s breach; and (4) damages to plaintiff as a result of the breach.
9 CDF Firefighters v. Maldonado, 158 Cal. App. 4th 1226, 1239 (2008).

10 Plaintiffs allege that the Terms and Conditions included with Sprint phones constitute a
11 valid, binding contract between Sprint and Defendant. Plaintiffs further allege that Defendant
12 violated the terms of those contracts by failing to pay monthly service charges, failing to pay
13 early termination fees, failing to activate the phones on the Sprint network, reselling the phones,
14 and using the phones for purposes that could damage Sprint.

15 With respect to the phones allegedly purchased directly by Defendant from Sprint,
16 Plaintiffs state a cognizable claim for breach of contract. Plaintiffs allege that Defendant
17 breached the terms of the sales agreement by failing to pay monthly service charges, failing to
18 pay early termination fees, failing to activate the phones on the Sprint network, reselling the
19 phones and using the phones for purposes that could damage Sprint.

20 Since Plaintiffs allege sufficient facts to support a breach of contract cause of action, this
21 factor weighs in favor of entry of default judgment.

22 b. *Trademark Infringement, False Advertising and Unfair Competition Claims¹*

23 Plaintiffs assert a variety of trademark related claims. To establish a trademark
24 infringement claim under the Lanham Act, the plaintiff must establish that the defendant is using
25 a mark confusingly similar to plaintiff’s valid, protectable trademark. Brookfield

26 _____
27 ¹ In their brief in support of their motion for default judgment, Plaintiffs discuss their trademark claims, false
28 advertising claims and unfair competition claims (Counts 2, 12-14 and 16 in the complaint) collectively without
distinguishing between them. Cases also analyze trademark claims and unfair competition claims together. See,
e.g., Sebastian Intern., Inc. v. Longs Drug Stores Corp., 53 F.3d 1073, 1074 (9th Cir. 1995).

1 Communications, Inc. v. West Coast Entertainment Corp., 174 F.3d 1036, 1046 (9th Cir. 1999).

2 However, “the resale of genuine trademarked goods generally does not constitute
3 infringement.” SoftMan Products Co., LLC v. Adobe Systems, Inc., 171 F. Supp. 2d 1075, 1092
4 (C.D. Cal. 2001); see also NEC Electronics v. CAL Circuit Abco, 810 F.2d 1506, 1509 (9th Cir.
5 1987) (“Trademark law generally does not reach the sale of genuine goods bearing a true mark
6 even though such sale is without the mark owner’s consent.”). The “first sale” rule provides
7 limitations on a trademark owner’s ability to prohibit resale of trademarked products:

8 Since 1924, courts have recognized a basic limitation on the right
9 of a trademark owner under the Lanham Act to control the
10 distribution of its own products. Beginning with Prestonettes, Inc.
11 v. Coty, 264 U.S. 359, 44 S. Ct. 350, 68 L.Ed. 731 (1924), courts
12 have consistently held that, with certain well-defined exceptions,
13 the right of a producer to control distribution of its trademarked
14 product does not extend beyond the first sale of the product.
15 Resale by the first purchaser of the original article under the
16 producer’s trademark is neither trademark infringement nor unfair
17 competition.

14 Sebastian Intern., Inc. v. Longs Drug Stores Corp., 53 F.3d 1073, 1074 (9th Cir. 1995).

15 On the other hand, the “first sale” doctrine does not apply when “the reseller’s conduct
16 [goes] beyond the mere resale of the trademarked goods.” Id. at 1076. A reseller may be liable
17 for trademark infringement if “the reseller used the trademark in a manner likely to cause the
18 public to believe the reseller was part of the producer’s authorized sales force or one of its
19 franchisees.” Id. Other cases impose liability “when an alleged infringer sells trademarked
20 goods that are materially different than those sold by the trademark owner.” SoftMan Products
21 Co., LLC, 171 F. Supp. 2d at 1092.

22 Plaintiffs alleged sufficient facts to state cognizable trademark and unfair competition
23 claims because Plaintiffs allege that Defendant sold phones bearing the Sprint trademark that
24 were materially different from the same phones as they are sold by Sprint. Plaintiffs allege that
25 the phones sold by Defendant are “unlocked” to operate on competitors’ wireless networks.
26 Moreover, Plaintiffs allege that the process of unlocking and reselling the phones voids the
27 manufacturer’s warranty. Plaintiffs allege that Defendant caused consumer confusion by leading
28 purchasers to believe that they are purchasing genuine Sprint phones with all the attendant

1 benefits, when in actuality they are not. Accordingly, the Court finds that Plaintiffs' complaint
2 states cognizable trademark and unfair competition claims, which weighs in favor of entry of
3 default judgment on these claims.

4 c. *Unjust Enrichment Claim*

5 There is a split in authority among California courts over whether "unjust enrichment" is
6 regarded as a cause of action. See Levine v. Blue Shield of California, 189 Cal. App. 4th 1117,
7 1138 (2010) (discussing split in authority). Courts that recognize a cause of action for "unjust
8 enrichment" regard the cause of action as having two elements: (1) the receipt of a benefit and
9 (2) the unjust retention of the benefit at the expense of another. Peterson v. Cellco Partnership,
10 164 Cal. App. 4th 1583, 1593 (2008). Courts that do not recognize a separate cause of action for
11 "unjust enrichment" regard such claims as synonymous with the California cause of action for
12 restitution. Durell v. Sharp Healthcare, 183 Cal. App. 4th 1350, 1370 (2010). Under a cause of
13 action seeking restitution, restitution may be awarded if a benefit is received by a person under
14 circumstances such that it would be unjust for the person to retain it. Id.

15 With respect to the phones Defendant acquired directly from Sprint, Plaintiffs state a
16 cognizable claim for unjust enrichment/restitution. Plaintiffs allege that Defendant received a
17 benefit from Plaintiff in the form of a phone provided at subsidized prices under the expectation
18 that Defendant would maintain service with Sprint and pay monthly service charges. Plaintiffs
19 further allege that it would be unjust if Defendant could retain the subsidized phone without
20 paying the monthly service charges. Accordingly, the Court finds that Plaintiffs' complaint
21 states a cognizable unjust enrichment/restitution claim, which weighs in favor of entry of default
22 judgment.

23 d. *Civil Conspiracy*

24 Under California law, "[c]onspiracy is not a cause of action, but a legal doctrine that
25 imposes liability on persons who, although not actually committing a tort themselves, share with
26 the immediate tortfeasors a common plan or design in its perpetration." Applied Equipment
27 Corp. v. Litton Saudi Arabia Ltd., 7 Cal. 4th 503, 510-11 (1994). In other words, by alleging the
28 existence of a conspiracy, liability for the underlying tort can extend beyond the immediate

1 tortfeasors to the co-conspirators who may not otherwise be liable. However, “[s]tanding alone,
2 a conspiracy does no harm and engenders no tort liability. It must be activated by the
3 commission of an actual tort.” Id. at 511.

4 The elements of a civil conspiracy are: (1) the formation and operation of conspiracy, (2)
5 wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful
6 conduct. Id. at 511; Kidron v. Movie Acquisition Group, 40 Cal. App. 4th 1571, 1581 (1995).
7 Plaintiffs have alleged the elements of a civil conspiracy: Plaintiffs allege that Defendant
8 conspired with third parties to fraudulently obtain iPhones from Sprint. Accordingly, Defendant
9 is liable on the other claims asserted by Plaintiffs in their Complaint that were committed by co-
10 conspirators.

11 e. *Conspiracy to Induce Breach of Contract*²

12 Plaintiffs also allege that Defendant unlawfully induced third parties to breach their
13 contracts with Sprint. Under California law, the elements of tortious interference with contract
14 are: “(1) a valid contract between plaintiff and a third party, (2) defendant’s knowledge of this
15 contract, (3) defendant’s intentional acts designed to induce a breach or disruption of the
16 contractual relationship, (4) actual breach or disruption of the contractual relationship, and (5)
17 resulting damage.” Pacific Gas & Electric Co. v. Bear Stearns & Co., 50 Cal. 3d 1118, 1126
18 (1990).

19 Plaintiffs allege that third party co-conspirators entered into contracts with Sprint to
20 purchase phones, that Defendant was aware of these contracts, Defendant induced the third
21 parties to breach by reselling the phones and filing false insurance claims and Plaintiffs were
22 damaged as a result. Accordingly, Plaintiffs state a cognizable claim for tortious interference
23 with contract and this weighs in favor of entry of default judgment.

24 f. *Tortious Interference with Business Relationships and Prospective Advantage*

25 Plaintiffs assert a claim for tortious interference with business relationships. “The
26 elements of the tort of interference with a prospective business advantage are: (1) an economic

27
28 ² Although Plaintiffs titled their cause of action “Conspiracy to Induce Breach of Contract,” the actual claim appears to be for tortious interference with contract.

1 relationship between plaintiff and some third person containing the probability of future
2 economic benefit to the plaintiff, (2) knowledge by the defendant of the existence of the
3 relationship, (3) intentional acts on the part of defendant designed to disrupt the relationship, (4)
4 actual disruption of the relationship, and (5) damages to the plaintiff proximately caused by the
5 acts of defendant.” A-Mark Coin Co. v. General Mills, Inc., 148 Cal. App. 3d 312, 323 (1983).

6 Plaintiffs allege that an economic relationship exists between (1) Sprint and its authorized
7 retailers and dealers, as well as between (2) Sprint and its customers, with the probability of
8 future economic benefit to Plaintiffs in the form of sales and service contracts sold to customers.
9 Plaintiffs further allege that Defendant knew of these relationships and intentionally disrupted
10 them by purchasing phones in bulk, which resulted in stock shortages for popular phones that
11 caused potential customers to purchase phones and plans from Sprint’s competitors. Based on
12 these factual allegations, Plaintiffs state a cognizable claim for tortious interference with
13 business relationships and this weighs in favor of entry of default judgment.

14 g. *Fraud*

15 Plaintiffs assert a claim for fraud. “The elements of fraud ... are (a) misrepresentation
16 (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or scienter); (c)
17 intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.”
18 Lazar v. Superior Court, 12 Cal. 4th 631, 638 (1996) (internal quotations omitted).

19 Plaintiffs allege that Defendant, along with other co-conspirators, made
20 misrepresentations to Sprint when entering into purchase contracts. Plaintiffs allege that
21 Defendant and his co-conspirators represented that they would comply with the terms and
22 conditions of the contractual sales agreement knowing that they would not comply. Further,
23 Plaintiffs allege that Defendant and his co-conspirators made false representations to Sprint in
24 their insurance claims by claiming that phones were stolen when in fact they were sold. Based
25 on these factual allegations, Plaintiffs state a cognizable claim for fraud and this weighs in favor
26 of entry of default judgment.

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1 h. *Computer Fraud and Abuse Act*

2 Plaintiffs assert several claims under the Computer Fraud and Abuse Act. Counts nine
3 through eleven of the Complaint allege violations of 18 U.S.C. § 1030(a)(4), 1030(a)(5)(C), and
4 1030(a)(6). These statutes state:

5 (a) Whoever--

6 ...

7 (4) knowingly and with intent to defraud, accesses a protected
8 computer without authorization, or exceeds authorized access, and
9 by means of such conduct furthers the intended fraud and obtains
10 anything of value, unless the object of the fraud and the thing
11 obtained consists only of the use of the computer and the value of
12 such use is not more than \$5,000 in any 1-year period;

13 (5)

14 ...

15 (C) intentionally accesses a protected computer without
16 authorization, and as a result of such conduct, causes damage and
17 loss.

18 (6) knowingly and with intent to defraud traffics (as defined in
19 section 1029) in any password or similar information through
20 which a computer may be accessed without authorization, if—

21 (A) such trafficking affects interstate or foreign commerce; or

22 (B) such computer is used by or for the Government of the United
23 States;

24 Thus, Section 1030(a)(4) prohibits fraudulent access to a protected computer to obtain anything
25 of value, Section 1030(a)(5)(C) prohibits unauthorized access to a protected computer causing
26 damage and loss, and Section 1030(a)(6) prohibits the trafficking of passwords.

27 Plaintiff alleges that Defendant violated the Computer Fraud and Abuse Act by acquiring
28 phones through fraud and gained unauthorized access by 1) unlocking the phones and 2) turning
on the phones and thereby accessing Sprint's wireless service network and billing network.
Plaintiff further alleges that Defendant traffics in using the proprietary codes stored on the
phones which access Sprint's network and selling those codes along with the phones. Based
upon these factual allegations, Plaintiffs appear to state cognizable claims under the Computer
Fraud and Abuse Act and this weighs in favor of entry of default judgment.

3. The Sum of Money at Stake in the Action

Since Plaintiffs do not seek any sum of money at this time, this factor weighs in favor of
entry of default judgment.

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1 4. The Possibility of a Dispute Concerning Material Facts

2 In this case, Defendant has failed to appear and defend against Plaintiffs’ allegations.
3 Accordingly, no genuine dispute of material facts would preclude entry of default judgment. See
4 PepsiCo, Inc. v. California Security Cans, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). This
5 factor weighs in favor of entry of default judgment.

6 5. Whether Default was Due to Excusable Neglect

7 There is no indication that default was due to excusable neglect. Accordingly, this factor
8 weighs in favor of entry of default judgment.

9 6. The Policy Favoring Decisions on the Merits

10 The seventh Eitel factor always weighs against entry of default judgment. However, the
11 preference to decide cases on their merits does not preclude the Court from entering default
12 judgment. See PepsiCo, Inc., 238 F. Supp. 2d at 1177.

13 7. Entry of Default Judgment is Proper

14 For the reasons discussed above, six of the seven Eitel factors weigh in favor of entry of
15 default judgment. Accordingly, the Court finds that default judgment is appropriate.

16 **C. Relief Requested**

17 Plaintiffs request entry of default judgment only as to liability and as to their request for a
18 permanent injunction. Plaintiffs do not request entry of default judgment as to damages, and
19 instead request that they be given an opportunity to conduct discovery to ascertain their damages.

20 1. Default Judgment as to Liability

21 As discussed above, Plaintiff’s Complaint appears to state valid claims. See discussion,
22 supra Part III.B.2. Accordingly, the Court finds entry of default judgment as to liability
23 appropriate.

24 2. Default Judgment as to Plaintiffs’ Request for a Permanent Injunction

25 Plaintiffs request a permanent injunction. Plaintiff’s Complaint specifically requested
26 “permanent injunctive relief in favor of Plaintiffs and against Defendant enjoining Defendant
27 from engaging in the unlawful practices described in this Complaint.” The [Proposed] Default
28 Judgment and Permanent Injunction submitted by Plaintiffs along with their motion for default

1 judgment requested a permanent injunction enjoining Defendant from:

- 2 • purchasing, selling, reflashing, altering, advertising, soliciting and/or shipping, directly or
- 3 indirectly, any Sprint Products;
- 4 • unlocking any Sprint Phones;
- 5 • accessing, altering, erasing, tampering with, deleting or otherwise disabling the software
- 6 contained in any Sprint Phones;
- 7 • supplying Sprint Products to or facilitating or in any way assisting other persons or
- 8 entities who Defendant knows or should know are engaged in the purchase or sale of
- 9 Sprint Phones or hacking, altering, erasing, tampering with, deleting or otherwise
- 10 disabling the software installed in Sprint Phones;
- 11 • supplying Sprint Phones to or facilitating or in any way assisting other persons or entitles
- 12 who Defendant knows or should know are engaged in any of the acts prohibited under
- 13 this Permanent Injunction, including, without limitation, the buying and/or selling of
- 14 Sprint Phones; and
- 15 • knowingly using the Sprint Marks or any other trademark, service mark, trade name or
- 16 trade dress owned or used by Sprint now or in the future, or that is likely to cause
- 17 confusion with the Sprint Marks, without Sprint's prior written authorization.

18 A plaintiff seeking a permanent injunction must demonstrate that: (1) it has suffered an
19 irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate
20 to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff
21 and defendant, a remedy in equity is warranted; and (4) that the public interest would not be
22 disserved by a permanent injunction.³ eBay Inc. v. MercExchange, LLC, 547 US 388, 391
23 (2006).

24 ///

25
26 ³ Plaintiffs argue that they need not demonstrate irreparable harm in connection with its claims under the Computer
27 Fraud and Abuse Act because injunctive relief is authorized by statute upon demonstration of the violation of the
28 statute. Plaintiffs cite no authority in support of this proposition and nothing in the text of the statute suggests that
irreparable injury need not be shown. Moreover, courts have analyzed the irreparable injury requirement in the
context of injunctive relief requests under the CFAA. See, e.g., T-Mobile USA, Inc. v. Terry, 862 F. Supp. 2d 1121,
1133 (W.D. Wash. 2012).

1 As an initial matter, the Court notes that Plaintiffs have not submitted evidence that
2 supports their request for a permanent injunction. Plaintiffs have submitted argument, but no
3 declarations, documents, etc. that supports any of the four permanent injunction factors. “Upon
4 entry of default, the well-pleaded allegations of the complaint relating to a defendant’s *liability*
5 are taken as true, with the exception of the allegations as to the amount of damages.” PepsiCo,
6 Inc. v. California Security Cans, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002) (italics added).
7 Thus, plaintiffs must “prove-up” the amount of damages sought in the complaint. Geddes, 559
8 F.2d at 560. By analogy, plaintiffs must also “prove-up” their entitlement to other forms of
9 relief, such as a permanent injunction. See Gucci America, Inc. v. Tyrrell-Miller, 678 F. Supp.
10 2d 117, 120-21 (S.D.N.Y. 2008); Western Supreme Buddha Ass’n Inc. v. Oasis World Peace and
11 Health Foundation, No. 08-cv-1374 (TJM/DRH), 2010 WL 3488134, at *3 (N.D.N.Y. Aug. 30,
12 2010) (“A court may award an injunction, damages, and civil penalties on a default judgment.
13 On default, however, the court does not accept as true allegations in the complaint regarding the
14 relief sought by the plaintiff. Rather, the plaintiff is required to prove independently that it is
15 entitled to the relief it requests.”).

16 The Court finds permanent injunctive relief inappropriate due to the dearth of evidence in
17 the record supporting such relief. It is worth noting that even the allegations of Defendant’s
18 misconduct are vague, especially when considering the fact that Plaintiffs should have access to
19 records that would identify specific misconduct by Defendant. There are no concrete and
20 specific allegations of any purchases Defendant made from Sprint, insurance claims filed by
21 Defendant on Sprint phones, or purchases and insurance claims made by persons believed to
22 have conspired with Defendant. Although Plaintiffs argue that Defendant disrupted the supply of
23 phones to Sprint’s distributors, there are no allegations or evidence of any specific disruption or
24 shortage at any specific store or at any specific point in time. Nor are there any allegations or
25 evidence of a specific instance of a customer expressing confusion over a phone bearing Sprint’s
26 trademark. Accordingly, there is little evidence supporting the conclusion that Plaintiffs’
27 suffered irreparable injury, that remedies at law are inadequate, that the balance of hardships
28 weighs in Plaintiffs’ favor, or that the injunctive relief is in the public’s interest.

