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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NUCAL FOODS, INC.,

Plaintiff,

vs.

SHAWN KAYE,

Defendant.

No. 2:12-cv-2754 KJM AC

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /
Pending before the court is plaintiff's March 13, 2013 motion for default judgment against defendant Shawn Kaye.¹ The court has determined that the matter shall be submitted upon the record and briefs on file and accordingly, the date for hearing of this matter shall be vacated. Local Rule 230. On review of the motion, the documents in support, and good cause appearing therefor, THE COURT FINDS AS FOLLOWS:

ALLEGATIONS IN COMPLAINT

Plaintiff, a California agricultural cooperative association, and its predecessor members have been processing, marketing, and distributing conventional and specialty farm

¹ This matter is before the undersigned pursuant to Local Rule 302(c)(19).

1 fresh eggs produced by family-owned farms located in Northern California for over 50 years.
2 Compl. ¶ 8. At all relevant times, plaintiff has been and is engaged in the processing, interstate
3 distribution, and marketing of conventional and specialty eggs to retail and foodservice
4 customers under the trademark of “Cal Eggs,” which it has used continuously for over 17 years
5 Id. ¶¶ 9-10. Plaintiff’s “Cal Eggs” brand of eggs has been and continues to be extensively
6 advertised and sold throughout California and Nevada under the “Cal Eggs” trademark. Id. ¶ 13.
7 By virtue of its advertising and sales, together with consumer acceptance and recognition,
8 plaintiff’s mark identifies plaintiff’s “Cal Eggs” brand eggs only, and distinguishes them from
9 eggs processed and sold by others. Id. Plaintiff claims it is entitled to protection under
10 California common law.² Id.

11 At some point in either 2011 or 2012, when plaintiff attempted to register the “Cal
12 Eggs” domain name (www.caleggs.com), it learned that defendant owns the domain name,
13 having registered it on April 5, 2011. Compl. ¶ 15. On or about September 6, 2012, plaintiff
14 advised defendant by letter of plaintiff’s ownership of the “Cal Eggs” trademark and requested
15 that defendant immediately cease and desist further use of the domain name. Id. ¶ 18.
16 Defendant did not comply with plaintiff’s request. Id. Instead, defendant offered to sell the
17 domain name to plaintiff for \$500,000. Id. ¶ 19.

18 PROCEDURAL BACKGROUND

19 This action is proceeding on plaintiff’s original complaint, filed November 7,
20 2012, brought against defendant and Does 1 through 10 for violating the federal Anti-
21 Cybersquatting Consumer Protection Act (“ACPA”), 15 U.S.C. § 1125(d), and asserting state
22 law claims of unjust enrichment and declaratory relief.

23 The summons and complaint were served on defendant by mail on November 20,
24 2012 and by substituted service on November 19, 2012 (the documents were left with or in the

25 ² Plaintiff does not assert that it is the registered owner of the “Cal Eggs” mark under
26 federal law.

1 presence of “Debra Doe – Person in Charge of Office”) at the address listed on the domain
2 registration information for the owner of the www.caleggs.com domain name,: 11701 Moorpark
3 Street, Studio City, CA 91604. ECF No. 7; Scott Decl. ¶¶ 3-4; Fed. R. Civ. P. 4(e)(2); Pacific
4 Atlantic Trading Co. v. M/V Main Express, 758 F.2d 1325, 1331 (9th Cir. 1985) (default
5 judgment void without personal jurisdiction). Because defendant failed to file an answer or
6 otherwise appear in this action, the clerk entered default against him on January 11, 2013. ECF
7 No. 9.

8 Request for entry of default and the instant motion for default judgment and
9 supporting papers were served by mail on defendant at three different addresses identified by
10 plaintiff during the course of this litigation to be attributable to defendant. See ECF No. 15;
11 Scott Decl. ¶ 11. Defendant did not file an opposition to the motion for entry of default
12 judgment. Plaintiff seeks an entry of default judgment in the amount of \$1,000 for violation of
13 the ACPA, and \$14,050 for attorneys’ fees and costs.³

14 LEGAL STANDARD

15 Pursuant to Federal Rule of Civil Procedure 55, default may be entered against a
16 party against whom a judgment for affirmative relief is sought who fails to plead or otherwise
17 defend against the action. See Fed. R. Civ. P. 55(a). However, “[a] defendant’s default does not
18 automatically entitle the plaintiff to a court-ordered judgment.” PepsiCo, Inc. v. Cal. Sec. Cans,
19 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002) (citing Draper v. Coombs, 792 F.2d 915, 924-25
20 (9th Cir. 1986)); see Fed. R. Civ. P. 55(b) (governing the entry of default judgments). Instead,
21 the decision to grant or deny an application for default judgment lies within the district court’s
22 sound discretion. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). In making this
23 determination, the court may consider the following factors:

24 (1) the possibility of prejudice to the plaintiff; (2) the merits of

25 _____
26 ³ Plaintiff does not seek default judgment on its claims brought under state law (unjust
enrichment and declaratory relief).

1 plaintiff's substantive claim; (3) the sufficiency of the complaint;
2 (4) the sum of money at stake in the action; (5) the possibility of a
3 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.

4 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Default judgments are ordinarily
5 disfavored. Id. at 1472.

6 As a general rule, once default is entered, well-pleaded factual allegations in the
7 operative complaint are taken as true, except for those allegations relating to damages.
8 TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam) (citing
9 Geddes v. United Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)); see also Fair
10 Housing of Marin v. Combs, 285 F.3d 899, 906 (9th Cir. 2002). Although well-pleaded
11 allegations in the complaint are admitted by a defendant's failure to respond, "necessary facts
12 not contained in the pleadings, and claims which are legally insufficient, are not established by
13 default." Cripps v. Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992) (citing Danning
14 v. Lavine, 572 F.2d 1386, 1388 (9th Cir. 1978)); accord DIRECTV, Inc. v. Huynh, 503 F.3d 847,
15 854 (9th Cir. 2007) ("[A] defendant is not held to admit facts that are not well-pleaded or to
16 admit conclusions of law" (citation and quotation marks omitted).); Abney v. Alameida, 334 F.
17 Supp. 2d 1221, 1235 (S.D. Cal. 2004) ("[A] default judgment may not be entered on a legally
18 insufficient claim."). A party's default conclusively establishes that party's liability, although it
19 does not establish the amount of damages. Geddes, 559 F.2d at 560; cf. Adriana Int'l Corp. v.
20 Thoeren, 913 F.2d 1406, 1414 (9th Cir. 1990) (stating in the context of a default entered
21 pursuant to Federal Rule of Civil Procedure 37 that the default conclusively established the
22 liability of the defaulting party).

23 DISCUSSION

24 A. The Eitel Factors

25 1. Factor One: Possibility of Prejudice to Plaintiff

26 The first Eitel factor considers whether the plaintiff would suffer prejudice if

1 default judgment is not entered, and such potential prejudice to the plaintiff militates in favor of
2 granting a default judgment. See PepsiCo, Inc., 238 F. Supp. 2d at 1177. Here, plaintiff would
3 potentially face prejudice if the court did not enter a default judgment. Absent entry of a default
4 judgment, plaintiff would be without another recourse for recovery. Additionally, given
5 defendant's failure to participate in this litigation in any fashion, it is unlikely that defendant will
6 cease use of the "Cal Eggs" mark in the absence of an entry of default judgment. Accordingly,
7 the first Eitel factor favors the entry of default judgment.

8 2. Factors Two and Three: The Merits of Plaintiff's Substantive Claims and the
9 Sufficiency of the Complaint

10 The undersigned considers the merits of plaintiff's substantive claims and the
11 sufficiency of the complaint together because of the relatedness of the two inquiries. The
12 undersigned must consider whether the allegations in the complaint are sufficient to state a claim
13 that supports the relief sought. See Danning, 572 F.2d at 1388; PepsiCo, Inc., 238 F. Supp. 2d at
14 1175.

15 The Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), was
16 enacted in 1999 to protect consumers and to prevent misappropriation of trademarks by stopping
17 conduct known as "cybersquatting" or "cyberpiracy." See ACPA, Pub. L. No. 106-113, 113
18 Stat. 1501 (1999) (codified at 15 U.S.C. § 1125(d)); Sporty's Farm L.L.C. v. Sportsman's Mkt.,
19 Inc., 202 F.3d 489, 493 (2d Cir. 2000). The ACPA protects both federally-registered marks as
20 well as unregistered marks. DaimlerChrysler v. The Net Inc., 388 F.3d 201, 205 (6th Cir. 2004)
21 (citing Two Pesos Inc. v. Taco Cabana, Inc., 505 U.S. 763, 768 (1992)); see also 4 J. Thomas
22 McCarthy, McCarthy on Trademarks and Unfair Competition § 25:78 (4th ed. 2007).

23 In order to state a claim for cyberpiracy under the ACPA, a trademark owner must
24 show the defendant (1) registered, trafficked in, or used a domain name, (2) that is confusingly
25 similar to the plaintiff's trademark, and (3) had a bad faith intent to profit from that domain
26 name. 15 U.S.C. § 1125(d)(1)(A); Verizon Cal. Inc. v. Navigation Catalyst Sys., Inc., 568 F.

1 Supp. 2d 1088, 1094 (C.D. Cal. 2008). The ACPA, which amended the Lanham (Trademark)
2 Act, 15 U.S.C. § 1501 *et seq.*, states:

3 A person shall be liable in a civil action by the owner of a mark,
4 including a personal name which is protected as a mark under this
5 section, if, without regard to the goods or services of the parties,
6 that person—

7 (I) has a bad faith intent to profit from that mark, including
8 a personal name which is protected as a mark under this
9 section; and

10 (ii) registers, traffics in, or uses a domain name that—

11 (I) in the case of a mark that is distinctive at the
12 time of registration of the domain name, is identical
13 or confusingly similar to that mark;

14 15 U.S.C. 1125(d)(1)(A).

15 In determining whether there is a likelihood of confusion under the ACPA, courts
16 compare the plaintiff's mark with the name of the website. Coca-Cola Co. v. Purdy, 382 F.3d
17 774, 782 (8th Cir. 2004) (holding that there was a likelihood of confusion under the ACPA
18 where defendant had registered websites including www.my-washingtonpost.com,
19 www.mymcdonalds.com and www.drinkcoke.org); see also Louis Vuitton Malletier and Oakley,
20 Inc. v. Veit, 211 F. Supp. 2d 567 (E.D. Pa. 2002) (holding that plaintiff owning Louis Vuitton
21 mark was entitled to default judgment on ACPA claim based on defendant's use of domain name
22 www.LouisVuittonreplicas.com).

23 A court should not look beyond the domain name to consider the content of the
24 website. Purdy, 382 F.3d at 783. "The inquiry under the ACPA is thus narrower than the
25 traditional multifactor likelihood of confusion test for trademark infringement." Id.
26 Consequently, even if it might be evident from the content of the website that it is not sponsored
by or affiliated with the plaintiff, there may nonetheless be a violation of the ACPA. Id.; see
also People for Ethical Treatment of Animals v. Doughney, 263 F.3d 359 (4th Cir. 2001)
(holding that domain name www.peta.org violated the ACPA because it was identical to the
mark of the plaintiff, People for the Ethical Treatment of Animals, even though a visit to the site

1 itself revealed that it was a parody and that the initials “peta” stood for People Eating Tasty
2 Animals).

3 On the other hand, if the name of the domain at issue itself makes clear that it is
4 not affiliated with the plaintiff, there can be no likelihood of confusion. See, e.g., The Taubman
5 Co. v. Webfeats, 319 F.3d 770, 777 (6th Cir.2003) (holding that there was no likelihood of
6 confusion on part of plaintiff who owned Taubman mark where defendant operated website with
7 domain name www.taubmansucks.com); Bally Total Fitness Holding Corp. v. Faber, 29 F. Supp.
8 2d 1161 (C.D. Cal. 1998) (holding there was no likelihood of confusion on part of plaintiff
9 owning Bally mark where defendant operated website with domain name www.ballysucks.com).

10 Here, assuming the allegations in the complaint to be true, plaintiff meets the first
11 showing that it possessed a common law trademark for the mark “Cal Eggs,” and that defendant
12 registered the domain name www.caleggs.com. As to the second showing, the court concludes
13 that this domain name is confusingly similar to the “Cal Eggs” mark because it is identical to the
14 mark and it does not make clear that it is not affiliated with plaintiff. Finally, plaintiff alleges
15 that defendant, who has not created any website associated with the domain name, offered to sell
16 the domain name to plaintiff for \$500,000. Having met all of the requirements under the ACPA,
17 the court concludes that these two factors weigh in favor of entry of default judgment.

18 3. Factor Four: The Sum of Money at Stake in the Action

19 Under the fourth factor cited in Eitel, “the court must consider the amount of
20 money at stake in relation to the seriousness of Defendant’s conduct.” PepsiCo, Inc., 238 F.
21 Supp. 2d at 1177; see also Philip Morris USA, Inc. v. Castworld Prods., Inc., 219 F.R.D. 494,
22 500 (C.D. Cal. 2003).

23 Under the ACPA, plaintiff may elect as its measure of damages statutory damages
24 in the amount of not less than \$1,000 and not more than \$100,000 per domain name, as the court
25 considers just. 15 U.S.C. § 1117(d). In general, when a plaintiff seeks statutory damages, “the
26 court has wide discretion in determining the amount of statutory damages to be awarded,

1 constrained only by the specified maxima and minima.” Columbia Pictures Television, Inc. v.
2 Krypton Broad. of Birmingham, Inc., 259 F.3d 1186, 1194 (9th Cir. 2001); see also Harry and
3 David v. Pathak, 2010 WL 4955780, *5 (D. Or. 2010). The policy behind Section 1117 damages
4 is to “take all economic incentive out of trademark infringement.” Intel Corp. v. Terabyte Int’l,
5 Inc., 6 F.3d 614, 621 (9th Cir. 1993) (internal citation omitted).

6 Here, plaintiff seeks statutory damages of \$1,000 for the willful violation of 15
7 U.S.C. § 1125(d). This amount represents the minimum amount plaintiff would be permitted to
8 recover under the statute. Consequently, the factor does not weigh against plaintiff.

9 4. Factor Five: The Possibility of a Dispute Concerning Material Facts

10 The facts of this case are relatively straightforward, and plaintiff has provided the
11 court with well-pleaded allegations supporting its statutory claims and affidavits in support of its
12 allegations. Here, the court may assume the truth of well-pleaded facts in the complaint (except
13 as to damages) following the clerk’s entry of default and, thus, there is no likelihood that any
14 genuine issue of material fact exists.⁴ See, e.g., Elektra Entm’t Group Inc. v. Crawford, 226
15 F.R.D. 388, 393 (C.D. Cal. 2005) (“Because all allegations in a well-pleaded complaint are taken
16 as true after the court clerk enters default judgment, there is no likelihood that any genuine issue
17 of material fact exists.”); accord Philip Morris USA, Inc., 219 F.R.D. at 500; PepsiCo, Inc., 238
18 F. Supp. 2d at 1177.

19 5. Factor Six: Whether the Default Was Due to Excusable Neglect

20 Upon review of the record before the court, the undersigned finds that the default
21 was not the result of excusable neglect. See PepsiCo, Inc., 238 F. Supp. 2d at 1177. Plaintiff
22 served the defendant with the summons and complaint. Moreover, plaintiff served defendant by
23 mail at three different addresses attributable to defendant with notice of its application for default
24

25 ⁴ Defendant’s failure to file an answer in this case or a response to the instant default
26 application further supports the conclusion that the possibility of a dispute as to material facts is
minimal.

1 judgment. Despite ample notice of this lawsuit and plaintiff’s intention to seek a default
2 judgment, defendant has not appeared in this action to date. Thus, the record suggests that
3 defendant has chosen not to defend this action, and not that the default resulted from any
4 excusable neglect. Accordingly, this Eitel factor favors the entry of a default judgment.

5 6. Factor Seven: The Strong Policy Underlying the Federal Rules of Civil Procedure
6 Favoring Decisions on the Merits

7 “Cases should be decided upon their merits whenever reasonably possible.” Eitel,
8 782 F.2d at 1472. However, district courts have concluded with regularity that this policy,
9 standing alone, is not dispositive, especially where a defendant fails to appear or defend itself in
10 an action. PepsiCo, Inc., 238 F. Supp. 2d at 1177; see also Craigslist, Inc. v. Naturemarket, Inc.,
11 694 F. Supp. 2d 1039, 1061 (N.D. Cal. Mar. 5, 2010); ACS Recovery Servs., Inc. v. Kaplan,
12 2010 WL 144816, at *7 (N.D. Cal. Jan. 11, 2010) (unpublished); Hartung v. J.D. Byrider, Inc.,
13 2009 WL 1876690, at *5 (E.D. Cal. June 26, 2009) (unpublished). Accordingly, although the
14 undersigned is cognizant of the policy in favor of decisions on the merits—and consistent with
15 existing policy would prefer that this case be resolved on the merits—that policy does not, by
16 itself, preclude the entry of default judgment.

17 Upon consideration of the Eitel factors, the undersigned concludes that plaintiff is
18 entitled to the entry of default judgment against defendant and will make a recommendation to
19 that effect. What remains is the determination of the amount of damages to which plaintiff is
20 entitled.

21 B. Terms of Judgment

22 1. Statutory Damages

23 After determining that a party is entitled to entry of default judgment, the court
24 must determine the terms of the judgment to be entered. Considering plaintiff’s briefing and the
25 record in this case, including the affidavits and declarations submitted by plaintiff, the
26 undersigned concludes that plaintiff is entitled to an award of statutory damages in the amount of

1 \$1,000 as a result of defendant's cyberpiracy, and will recommend the same.

2 2. Injunctive Relief

3 Plaintiff seeks a permanent injunction prohibiting defendant from engaging in
4 further acts of trademark infringement and a permanent transfer of the domain name. The ACPA
5 authorizes courts to transfer domain names to the owner of the mark. 15 U.S.C. § 1125(d)(1)(c).
6 "Injunctive relief is the remedy of choice for trademark and unfair competition cases, since there
7 is no adequate remedy at law for the injury caused by defendants' continuing infringement."
8 Century 21 Real Estate Corp. v. Sandlin, 846 F.2d 1175 (9th Cir. 1988).

9 "According to well-established principles of equity, a plaintiff seeking a
10 permanent injunction must satisfy a four-factor test before a court may grant such relief. A
11 plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies
12 available at law, such as monetary damages, are inadequate to compensate for that injury; (3)
13 that, considering the balance of hardships between the plaintiff and defendant, a remedy in
14 equity is warranted; and (4) that the public interest would not be disserved by a permanent
15 injunction." eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006) (citations omitted).

16 A permanent injunction is appropriate here. First, plaintiff would suffer
17 irreparable injury if visitors to the www.caleggs.com website were directed to a website
18 unaffiliated with plaintiff. See Metro-Goldwyn Mayer Studios, Inc. v. Grokster, Ltd., 518 F.
19 Supp. 2d 1197, 1215 (C.D. Cal. 2007) ("Plaintiffs may establish an irreparable harm stemming
20 from the infringement (e.g., loss of market share, reputational harm)"). Second, monetary
21 damages are also inadequate on their own; defendant's conduct can be considered willful and he
22 has given no indication that he will not infringe in the future as he has chosen not to participate
23 in this litigation. See Adobe Sys. Inc. v. Brooks, 2009 WL 593343, at *3 (N.D. Cal. Mar. 5,
24 2009) ("[Defendant's] refusal to answer or appear in this litigation has given the court no
25 assurance that [Defendant's] infringing activity will cease and makes it difficult for [Plaintiff] to
26 prevent further infringement."). Third, the balance of harms clearly favors plaintiff, since

1 defendant would suffer none; being required to comply with the law is not a harm. See Triad
2 Sys. Corp. v. Southeastern Exp. Co., 64 F.3d 1330, 1338 (9th Cir. 1995) (“Where the only
3 hardship that the defendant will suffer is lost profits from an activity which has been shown
4 likely to be infringing, such an argument in defense ‘merits little equitable consideration [on an
5 appeal from a preliminary injunction].’ ”) (citation omitted). And fourth, the public interest is
6 served when trademark holders’ rights are protected against infringement. See Metro-Goldwyn
7 Mayer Studios, Inc. v. Grokster, Ltd., 518 F. Supp. 2d at 1222 (“[T]he public interest will be
8 served with a permanent injunction, since it will protect Plaintiffs’ copyrights against increased
9 infringement.”).

10 At the time plaintiff applied for injunctive relief, the domain name was registered
11 to defendant. As stated above, plaintiff has shown that the defendant created the website
12 www.caleggs.com in bad faith and willfully. Therefore, injunctive relief should be granted, and
13 the domain name www.caleggs.com should be transferred to plaintiff, as requested. Based on
14 evidence of defendant’s infringement, the court finds injunctive relief to be appropriate.

15 3. Attorneys’ Fees

16 Finally, plaintiff seeks an award of attorneys’ fees in the amount of \$14,050.
17 Under the Lanham Act, attorneys’ fees should only be granted in “exceptional” cases. The Ninth
18 Circuit has held that “exceptional” refers to those cases where the defendant’s behavior has been
19 malicious, fraudulent, deliberate, or willful. See Sealy, Inc. v. Easy Living, Inc., 743 F.2d 1378,
20 1384 (9th Cir. 1984); Playboy Enters., Inc. v. Baccarat Clothing Co., 692 F.2d 1272, 1276 (9th
21 Cir. 1982). Willful infringement occurs when the defendant knowingly and intentionally
22 infringes on a trademark. See Earthquake Sound Corp. v. Bumper Indus., 352 F.3d 1210, 1216-
23 17 (9th Cir. 2003). Willfulness can also be inferred from a defendant’s failure to defend. Philip
24 Morris USA, Inc. v. Castworld Prods., Inc., 219 F.R.D. 494, 500 (C.D. Cal. 2003). Here,
25 because the defendant’s conduct can be deemed willful and deceptive in light of his failure to
26 defend this action, in combination with his demand for payment, plaintiff is entitled to an award

1 of attorneys' fees.

2 The starting point for determining reasonable fees is the calculation of the
3 "lodestar," which is obtained by multiplying the number of hours reasonably expended on
4 litigation by a reasonable hourly rate. Jordan v. Multnomah Cnty., 815 F.2d 1258, 1262 (9th Cir.
5 1987) (citing Hensley v. Eckerhart, 461 U.S. 424, 103 (1983)). In determining a reasonable
6 number of hours, the court must review records to determine whether the hours claimed by the
7 applicant are adequately documented and whether any of the hours claimed by the applicant
8 were unnecessary, duplicative, or excessive. Chalmers v. City of Los Angeles, 796 F.2d 1205,
9 1210 (9th Cir. 1986), reh'g denied, amended on other grounds, 808 F.2d 1373 (9th Cir. 1987).
10 To determine a reasonable rate for each attorney, the court must look to the rate prevailing in the
11 community for similar work performed by attorneys of comparable skill, experience and
12 reputation. Id. at 1210-11.

13 Plaintiff's counsel, a litigator with 13 years of experience, claims that she worked
14 56.20 hours on this case at an hourly rate of \$250. Scott Decl. ¶¶ 14-15. This rate is less than
15 the \$445 per hour rate provided for in the Laffey Matrix, which is an inflation-adjusted grid of
16 hourly rates for lawyers of varying levels of experience in Washington, D.C. and used in the
17 District of Columbia. See Scott Decl., Ex. H; Laffey v. Northwest Airlines, Inc., 572 F. Supp.
18 354, 371-75 (D.D.C. 1983), aff'd in part, rev'd in part on other grounds, 746 F.2d 4 (D.C. Cir.
19 1984). The Laffey Matrix has also been used by district courts in California as a guide in
20 determining the reasonableness of attorneys' fees. See Rivera v. Rivera, 2011 WL 3667486
21 (N.D. Cal. Aug. 22, 2011) (awarding attorney \$230 per hour in a default judgment wage and
22 hour case based on Laffey Matrix); Theme Promotions, Inc. v. News America Marketing FSI,
23 Inc., 731 F. Supp. 2d 937 (N.D. Cal. 2010) (using Laffey Matrix to award fees in antitrust case).
24 But see Prison Legal News v. Schwarzenegger, 608 F.3d 446, 454 (9th Cir. 2010) ("[J]ust
25 because the Laffey matrix has been accepted in the District of Columbia does not mean that it is
26 a sound basis for determining rates elsewhere, let alone in a legal market 3,000 miles away.").

1 While the use of the Laffey Matrix is suspect in determining the reasonableness of
2 fees charged in a city nearly 3000 miles away from and less than half the size of the District of
3 Columbia, the court nonetheless finds the fees to be reasonable and in line with other cases
4 where attorneys' fees and costs were awarded for trademark infringement default judgments.
5 See Belks Media v. OnlineNIC, 2010 WL 7786122 (N.D. Cal. 2010) (awarding \$13,695.10 in
6 attorneys' fees and costs); Yahoo!, Inc. v. Net Games, Inc., 329 F. Supp. 2d 1179, 1188-93 (N.D.
7 Cal. 2004) (awarding \$16,964 in attorneys' fees and costs).

8 Accordingly, IT IS HEREBY ORDERED that the April 24, 2013 hearing on
9 plaintiff's motion for default judgment is vacated; and

10 IT IS HEREBY RECOMMENDED that:

- 11 1. Plaintiff's application for default judgment be granted;
- 12 2. The court enter judgment against defendant on plaintiff's claims brought
13 pursuant to the Anti Cyber-Squatting Protecting Action, 15 U.S.C. § 1125(d);
- 14 3. The court award statutory damages in an amount of \$1,000;
- 15 4. Plaintiff be granted attorneys' fees in the amount of \$14,050;
- 16 5. Defendant be directed to relinquish all rights to the "Cal Eggs" domain
17 name, known as www.caleggs.com, within 30 days of entry of default judgment;
- 18 6. Defendant be directed to turn over to plaintiff all rights to the "Cal Eggs"
19 domain name, known as www.caleggs.com, within 30 days of entry of default judgment;
- 20 7. The domain registrar be authorized to transfer the "Cal Eggs" domain
21 name, known as www.caleggs.com, to plaintiff at plaintiff's request if defendant fails to do so
22 within 30 days of entry of default judgment; and
- 23 8. This case be closed.

24 These findings and recommendations are submitted to the United States District
25 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
26 days after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. Such a document should be captioned
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
3 within the specified time may waive the right to appeal the District Court’s order. Turner v.
4 Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir.
5 1991).

6 DATED: April 16, 2013.

7
8 
9 ALLISON CLAIRE
10 UNITED STATES MAGISTRATE JUDGE

11 /mb;nuca2754.mdj
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