

1 GIBSON, DUNN & CRUTCHER LLP
 CHRISTOPHER D. DUSSEAULT (SBN 177557)
 2 cdusseault@gibsondunn.com
 PERLETTE MICHÈLE JURA (SBN 242332)
 3 pjura@gibsondunn.com
 333 South Grand Avenue
 4 Los Angeles, CA 90071-3197
 Telephone: 213.229.7000
 5 Facsimile: 213.229.7520
 cdusseault@gibsondunn.com

6 Attorneys for Plaintiff
 7 CrossFit, Inc.

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

12 CROSSFIT, INC., a Delaware corporation,

13 Plaintiff,

14 v.

15 ANDRES DEL CUETO DAVALOS; ALFA
 16 EXTREME FITNESS S.A. DE C.V.; DOES 1-
 10, INCLUSIVE,

17 Defendants.

CASE NO. 5:14-cv-00725-BLF

Hon. Beth Labson Freeman

~~[PROPOSED]~~ **DEFAULT JUDGMENT**

19
 20 WHEREAS, this action having been commenced by Plaintiff CrossFit, Inc. (“Plaintiff” or
 21 “CrossFit”) on February 14, 2014 by the filing of the Summons and Complaint (ECF No. 1) against
 22 Defendant Andres Del Cueto Davalos (“Del Cueto”) and Alfa Extreme Fitness S.A. de C.V. (“Alfa
 23 Extreme Fitness”) (collectively, “Defendants”)¹ under the Lanham Act, 15 U.S.C. § 1051, *et seq.* (the
 24 “Lanham Act”) and the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), and
 25 California law, for preliminary and permanent equitable relief, monetary damages, forfeiture of
 26 _____

27 ¹ CrossFit voluntarily dismissed Defendant Alfa Extreme Fitness without prejudice, concurrently
 28 with the filing of its Motion for Entry of Default Judgment as to Defendant Del Cueto, and
 therefore pursued default judgment solely with respect to Defendant Del Cueto.

1 infringing domain names, costs, and attorney fees for Defendants' unauthorized use of Plaintiff's
2 federally registered trademark CROSSFIT name (the "CROSSFIT mark");

3 WHEREAS, Del Cueto was duly served with copies of the Summons and Complaint with
4 exhibits on January 28, 2016, as set forth in the Certificate of Service, filed on May 11, 2016 (ECF
5 No. 32);

6 WHEREAS, Del Cueto has not answered or otherwise responded to the Complaint and the
7 deadline for answering has expired;

8 WHEREAS, Del Cueto has failed to otherwise respond or oppose the relief requested therein;

9 WHEREAS, Plaintiff requested that the Clerk of Court enter default in this matter against Del
10 Cueto on September 20, 2016, on the ground that Del Cueto has failed to appear or otherwise respond
11 to Plaintiff's Complaint within the time prescribed by the Federal Rules of Civil Procedure;

12 WHEREAS, Del Cueto's default was noted by the Clerk's Certificate of Default, entered on
13 September 21, 2016 (ECF No. 39);

14 WHEREAS, Plaintiff filed a Motion for Entry of Default Judgment as to Defendant Andres
15 Del Cueto Davalos (the "Motion for Default Judgment") on December 22, 2016 in the above-
16 captioned matter;

17 WHEREAS, Plaintiff's Complaint made clear that Plaintiff would seek the relief provided
18 herein, including:

19 (a) permanent injunctive relief;

20 (b) forfeiture of infringing domain names;

21 (c) monetary damages, including statutory damages pursuant to the Lanham Act; and

22 (d) costs and attorney fees;

23 WHEREAS, Plaintiff gave notice of the Motion for Default Judgment and accompanying
24 papers and exhibits via email to Del Cueto and to Richard S. Mandaro Esq. of Amster, Rothstein &
25 Ebenstein LLP on December 22, 2016;

26 WHEREAS, Del Cueto has not opposed or otherwise objected to Plaintiff's Motion for
27 Default Judgment;

28 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED:

- 1 1. That Plaintiff's Motion is hereby GRANTED;
- 2 2. That judgment is hereby entered against Del Cueto and in favor of Plaintiff;
- 3 3. That Del Cueto and all persons acting in concert or participation with Del Cueto are
- 4 permanently enjoined from:

- 5 a. Using CROSSFIT, or any variant thereof, or any confusingly similar marks or
- 6 taglines, in connection with the advertising, offering, or promotion of any
- 7 product or service;
- 8 b. Engaging in any acts of infringement of the CROSSFIT mark;
- 9 c. Using CROSSFIT, or any variant thereof, or any confusingly similar marks or
- 10 taglines, as a trademark, trade name, service mark, tagline, domain name, or
- 11 for any other purpose; and
- 12 d. Committing any other acts calculated or likely to cause consumer confusion or
- 13 mistake in the mind of the public by causing consumers, purchasers or
- 14 investors to believe that the products or services promoted, offered, or
- 15 sponsored by Del Cueto come from CrossFit, or are sponsored or approved by,
- 16 or connected with, or warranted or guaranteed by CrossFit.

17 4. That Del Cueto and all persons acting in concert or participation with Del Cueto are to

18 cooperate in forfeiting and relinquishing all rights in, and transferring to Plaintiff, the following

19 domain names, as well as all other "Crossfit" domain names that Del Cueto may use or register,

20 including infringing variations thereof (collectively, the "Infringing Domain Names"):

- 21 a. www.crossfitalfa.com
- 22 b. www.crossfitbeta.com

23 5. That the domain registrar is authorized to transfer the Infringing Domain Names set

24 forth in paragraph 4 above to Plaintiff at Plaintiff's request if Del Cueto fails to do so within thirty (3)

25 days of entry of default judgment;

26 6. That Del Cueto shall pay Plaintiff \$200,000 in statutory damages (\$100,000 per

27 Infringing Domain Name), pursuant to 15 U.S.C. § 1117(d);

