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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ADAM WEITSMAN; UPSTATE SHREDDING, LLC, a New York limited liability company; WEITSMAN SHREDDING, LLC, a New York limited liability company; and WEITSMAN RECYCLING, LLC, a New York limited liability company,

Plaintiffs,

v.

ROBERT ARTHUR LEVESQUE, III,

Defendant.

Case No.: 19-CV-461 JLS (AHG)

ORDER (1) GRANTING IN PART PLAINTIFFS’ REQUEST FOR DAMAGES; AND (2) GRANTING IN PART PLAINTIFFS’ REQUEST FOR A PERMANENT INJUNCTION

(ECF Nos. 98, 99, 103, 104, 108)

Presently before the Court are Plaintiffs Adam Weitsman; Upstate Shredding, LLC; Weitsman Shredding, LLC; and Weitsman Recycling, LLC’s (collectively, “Plaintiffs”) Third Supplemental Brief in Support of Motion for Default Judgment and Injunction (“3d Supp. Br.,” ECF No. 98), Amended Third Supplemental Brief in Support of Motion for Default Judgment and Injunction (“Am. 3d Supp. Br.,” ECF No. 99), Fourth Supplemental Brief in Support of Motion for Permanent Injunction (“4th Supp. Br.,” ECF No. 103), Fifth Supplemental Brief in Support of Motion for Permanent Injunction (“5th Supp. Br.,” ECF No. 104), and Sixth Supplemental Brief in Support of Motion for Permanent Injunction

1 (“6th Supp. Br.,” ECF No. 108). Also before the Court is Plaintiffs’ Notice of Lodging
2 (“Not. of Lodging,” ECF No. 94), attached to which is Plaintiffs’ Proposed Order Granting
3 Permanent Injunction (“Proposed Order,” ECF No. 94-1).

4 The Court initially vacated the hearing on this matter and took it under submission
5 without oral argument pursuant to Civil Local Rule 7.1(d)(1). See ECF No. 101. However,
6 after Plaintiffs requested a status conference in their Fifth Supplemental Brief, the Court
7 held a hearing on November 5, 2020,¹ after which the Court again took this matter under
8 submission. See ECF No. 106. Having carefully reviewed Plaintiffs’ pleadings, briefs,
9 supporting evidence, and the law; considered the Parties’ arguments during the November
10 5, 2020 hearing; and weighed the relevant factors, the Court **GRANTS IN PART**
11 Plaintiffs’ damages requests and **GRANTS IN PART** Plaintiffs’ request for permanent
12 injunctive relief, as follows.

13 **BACKGROUND**

14 The Parties are familiar with the relevant allegations, evidence, and procedural
15 history of this case. For the sake of brevity, the Court incorporates the thorough
16 Background section contained in its February 14, 2020 Order, see ECF No. 97 at 2–7, and
17 sets forth below only the new evidence and developments in the case.

18 On June 7, 2019, Plaintiffs requested that the Clerk of the Court enter default as to
19 Defendant, see ECF No. 86, and the Clerk entered default on June 7, 2019, see ECF No.
20 87. On July 8, 2019, Plaintiffs filed a motion for default judgment. See ECF No. 89

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23 ¹ The Court notes that Defendant appeared at the November 5, 2020 hearing. See ECF No. 106. During
24 the hearing, Plaintiffs’ counsel questioned whether Defendant had a right to participate in the hearing.
25 The Court believes Defendant did have the right to appear at and participate in a hearing concerning the
26 issue of damages after entry of default judgment. See, e.g., *Rubicon Glob. Ventures, Inc. v. Chongqing*
27 *Zongshen Grp. Imp./Exp. Corp.*, 226 F. Supp. 3d 1141, 1147 (D. Or. 2016) (citing B. Finberg, Annotation,
28 *Defaulting Defendant’s Right to Notice and Hearing as to Determination of Amount of Damages*, 15
A.L.R.3d 586 (1967); *Henry v. Sneiders*, 490 F.2d 315, 318 (9th Cir. 1974); *Oire Or. C, LLC v. Yaldo*,
No. CV 08-724-ST, 2008 WL 5071709, at *1 (D. Or. Nov. 25, 2008)). At any rate, Defendant offered no
evidence on the issue of damages and spoke only to liability, which has already been determined.
Accordingly, whether or not Defendant had participated in the November 5, 2020 hearing, the Court’s
disposition of this matter would have been the same.

1 (“Default Mot.”). Plaintiffs filed supplemental briefs on August 22, 2019, and January 13,
2 2020. See ECF Nos. 90, 95. Defendant did not oppose the Default Motion.

3 On February 14, 2020, this Court issued its Order (1) Granting in Part and Denying
4 in Part Plaintiffs’ Motion for Default Judgment, (2) Denying Without Prejudice Plaintiffs’
5 Request for a Permanent Injunction, and (3) Denying as Moot Plaintiffs’ Request for an
6 In-Person Status Conference. See ECF No. 97. The Court determined it had jurisdiction
7 over this matter, see *id.* at 8–11, and, after weighing the factors set forth in *Eitel v. McCool*,
8 782 F.2d 1470, 1471–72 (9th Cir. 1986), the Court granted Plaintiffs’ request for default
9 judgment as to their first cause of action for defamation and defamation per se but denied
10 Plaintiffs’ motion as to their remaining causes of action, see ECF No. 97 at 11–20.

11 As part of their Default Motion, Plaintiffs sought a permanent injunction
12 “prohibiting Defendant from publishing any more False Statements and compelling him to
13 remove all existing False Statements.”² Default Mot. at 13 (citing ECF No. 85 (“FAC”) at
14 Prayer ¶ A). Plaintiffs’ First Amended Complaint (“FAC”) also sought general, special,
15 and punitive damages, see FAC at Prayer ¶¶ C–E, but Plaintiffs indicated their intention to
16 brief that issue separately. See Default Mot. at 1, 9–10, 11, 17. The Court concluded that
17 it could not determine on the record as it existed, without Plaintiffs having quantified their
18 damages, whether those damages would provide an adequate remedy at law. ECF No. 97
19 at 22. Further, the Court indicated it had concerns about the constitutionality of a
20 permanent injunction restraining future speech. *Id.* Accordingly, the Court denied without
21 prejudice Plaintiffs’ requested injunction and set a briefing schedule for a supplemental
22 motion concerning Plaintiffs’ requests for damages and injunctive relief. *Id.* at 23.

23 In accordance with the Court’s February 14, 2020 Order, Plaintiffs filed their Third
24 Supplemental Brief on February 27, 2020. See ECF No. 98. On February 28, 2020, they
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27 ² Plaintiffs’ First Amended Complaint defines “False Statements” as “all of the false and defamatory
28 statements quoted or otherwise described above.” ECF No. 85 ¶ 30. This Order further addresses and
defines the “False Statements” *infra* at 29–30.

1 filed an Amended Third Supplemental Brief. See ECF No. 99.³ In the Amended Third
2 Supplemental Brief, Plaintiffs seek (1) a permanent injunction, (2) general/presumed
3 damages in the amount of \$800,000; and (3) punitive damages in the amount of \$200,000.
4 Id. at 2. Plaintiffs submit three declarations to support these requests.

5 The Declaration of Adam Weitsman (ECF No. 99-1, “Weitsman Decl.”) avers that
6 all of the False Statements published by Defendant are false and defamatory. Id. ¶ 5.
7 Defendant has directed these False Statements to local and national news and media
8 agencies, the New York State Police, the Federal Bureau of Investigations, NBC, the Crime
9 Watch Daily, industry groups, and Mr. Weitsman’s competitors via “tagging.” Id. ¶ 6.
10 “[L]ikely several hundred thousands and potentially millions” of people have seen
11 Defendant’s publicly viewable False Statements over the past four years. Id.

12 “The scrap metal industry generally relies approximately 90% on reputation and the
13 remaining 10% on price.” Id. ¶ 9. But many scrap metal vendors have stopped doing
14 business with Plaintiffs since Defendant began publishing the False Statements, despite not
15 making any complaints about service or price-related issues. Id. ¶ 12. And while Mr.
16 Weitsman formerly received “numerous industry awards in the past,” he has not since
17 Defendant began publishing the defamatory statements. Id. ¶ 11. At least three of
18 Plaintiffs’ largest competitors are aware of the False Statements, and one of Plaintiffs’ main
19 competitors printed the False Statements out and distributed them to Plaintiffs’ customers.
20 Id. ¶ 8. In light of the foregoing, Mr. Weitsman believes people within his industry, both
21 locally and nationally, “believe some or all of the false statements.” Id. ¶ 13.

22 Mr. Weitsman and his family genuinely fear for their lives in light of Defendant’s
23 acts, which include posting pictures of Mr. Weitsman’s wife and minor children and
24 making public threats. Id. ¶ 14. They have cut down on their family vacations due to
25 “Defendant’s defamation campaign.” Id. ¶ 17. Mr. Weitsman also has become less social
26

27 ³ It appears that the two briefs are substantively identical, but the Amended Third Supplemental Brief
28 contains tables of contents and authorities. Compare ECF No. 98 with ECF No. 99. Accordingly, the
Court will cite to the Amended Third Supplemental Brief throughout this Order.

1 as a result, and for more than a year he completely disengaged from social media and
2 stopped going out socially in public. Id. ¶¶ 15, 17. Mr. Weitsman “ha[s] suffered and will
3 continue to suffer public humiliation, extreme emotional distress, anxiety, depression,
4 stomachaches, headaches, muscle pain, lack of sleep, lack of desire to eat, emotional pain
5 and suffering, anguish, and loss of self-esteem.” Id. ¶ 15. He has seen medical
6 professionals for both “physical ailments and stress caused by Defendant’s years of daily
7 torment online,” and he has incurred expenses as a result. Id. ¶ 21. For more than three
8 years, Mr. Weitsman “ha[s] spent the first 5 hours of every day stressing about Defendant’s
9 False Statements, who is seeing them, and the damage it was causing [his] reputation.” Id.
10 ¶ 16. This negative state of mind has impacted his home and marital life. Id. ¶ 18.

11 Despite a temporary order of protection, felony complaint, and arrest warrant,
12 Defendant has not stopped publishing the False Statements. Id. ¶ 23. Mr. Weitsman has
13 communicated with Facebook, and it is his understanding that Facebook will not take any
14 action to remove Defendant’s False Statements without a permanent injunction. Id. ¶ 24.
15 Plaintiffs “have also incurred significant costs for public relations management, Internet
16 search engine optimization costs, and increased pay to employees at [Weitsman Shredding,
17 LLC], in order to identify, defend, and mitigate/defend against Defendant’s defamation
18 campaign of 3.5 years.” Id. ¶ 22.

19 The Declaration of Stephen J. Donnelly (ECF No. 99-2, “Donnelly Decl.”) details
20 some of those public relations expenses. Mr. Donnelly is the president and owner of
21 Dynamic Innovation Group, LLC (“Dynamic”), a public relations company. Id. ¶ 4.
22 Plaintiffs’ professional relationship with Dynamic started in 2002 but changed significantly
23 in 2016 as a result of Defendant’s conduct. Id. ¶ 5. Mr. Donnelly has “never seen anything
24 like Defendant’s infatuation and attacks on Plaintiffs” in his sixteen years in the public
25 relations industry. Id. ¶ 6. Mr. Donnelly’s company monitors Defendant’s defamatory
26 posts daily, reporting them and contacting websites as needed to assist with Plaintiffs’
27 public relations needs. Id. ¶ 7. When Dynamic first began addressing these issues for
28 Plaintiffs, Defendant’s “posts were increasingly visible on the Google Search Results

1 Page,” but Dynamic was “relatively successful” in mitigating that harm. *Id.* ¶ 9; see also
2 *id.* Exs. 1 & 2.

3 But, the harm extends beyond Plaintiffs’ online presence. *Id.* ¶ 8. Mr. Donnelly has
4 had to engage in “additional face-to-face, grassroots, local, ‘offline’ approaches” to put the
5 False Statements to rest. *Id.* From June 1, 2018 through February 1, 2020, Plaintiffs have
6 paid Dynamic \$128,000 for public relations services solely devoted to addressing
7 Defendant’s False Statements. *Id.* ¶ 10; see also *id.* Ex. 3. Given the volume of work,
8 Dynamic could easily have charged double its monthly fees, but gave deference to its
9 “lengthy and friendly relationship” with Plaintiffs. *Id.* ¶ 10. And, from August 1, 2019 to
10 the present, Dynamic has offered Plaintiffs a “courtesy discount” of \$500 per month. *Id.*

11 At Dynamic’s recommendation, Plaintiffs hired an additional public relations firm,
12 Rosanne Sall Advertising, Inc. (“RSA”), for three months to assist with both the volume
13 of defamatory posts and addressing different contacts at various Internet and media
14 companies. *Id.* ¶ 11. Dynamic also recommended a specialty search engine optimization
15 (“SEO”) firm, Tarakeet, LLC (“Tarakeet”), to help combat the reputational damage
16 resulting from Defendant’s defamatory posts, which Plaintiffs hired for one year. *Id.* ¶ 12.
17 Mr. Donnelly does not know how many more years Plaintiffs will require his public
18 relations services or the services of SEOs to reverse the damage caused by Defendant’s
19 defamation, but he estimates that two years after Defendant “ceases his defamatory conduct
20 is a reasonable estimate.” *Id.* ¶ 13.

21 The Declaration of Catherine Johnson (ECF No. 99-3, “Johnson Decl.”) details some
22 further expenses Plaintiffs have incurred due to Defendant’s False Statements. Ms.
23 Johnson works in accounts payable at Weitsman Recycling, LLC, “handl[ing] payment for
24 all of the Upstate Shredding branded companies.” *Id.* ¶¶ 2, 5. Since July 2017, Ms.
25 Johnson has assisted with reviewing and compiling all social media postings by Defendant
26 about Plaintiffs and communicating with law enforcement about them. *Id.* ¶ 6. Because
27 this additional work is not within the scope of Ms. Johnson’s accounts payable
28 responsibilities, Weitsman Shredding, LLC, has incurred overtime expense for Ms.

1 Johnson’s time spent on this task. *Id.* ¶¶ 8, 9. Based on her time entries and payroll records,
2 Ms. Johnson conservatively estimates that Plaintiffs have incurred \$19,797.30 in overtime
3 expenses for this monitoring work. *Id.* ¶ 9; see also *id.* Ex. 1. Ms. Johnson also provides
4 invoices indicating that Plaintiffs have paid \$4,500 to RSA and \$175,000 to Tarakeet for
5 their public relations and SEO services, respectively. *Id.* ¶¶ 10–12; see also *id.* Exs. 2 &
6 3.

7 Based on Ms. Johnson’s monitoring of Defendant, she believes he “is enrolled in a
8 bachelor’s degree program for digital media at Platt’s College in San Diego, California,”
9 and is actively seeking employment but unemployed. *Id.* ¶ 15. She has noticed the effect
10 Defendant’s False Statements have had on Mr. Weitsman, who has “become withdrawn at
11 the office,” “exhibit[s] an increase in stress levels at the office,” and has “slowly turned
12 away from visiting potential customers and vendors, due to the embarrassment” he has
13 experienced. *Id.* ¶ 13. Ms. Johnson lives about 45 minutes away from Owego in
14 Binghamton, New York, but on several occasions, when wearing a “Weitsman” or “Upstate
15 Shredding” shirt, she has been approached by strangers asking if Mr. Weitsman really
16 killed a woman or sells drugs. *Id.* ¶ 14.

17 On May 21, 2020, Plaintiffs filed a Fourth Supplemental Brief. See ECF No. 103.
18 The Fourth Supplemental Brief is accompanied by the Declaration of Catherine Johnson
19 in Support of Fourth Supplemental Brief in Support of Motion for Permanent Injunction
20 (ECF No. 103-1, “Supp. Johnson Decl.”). Ms. Johnson attaches as exhibits five recent
21 defamatory posts she discovered during her regular monitoring of Defendant’s False
22 Statements. See *id.* ¶ 3. Plaintiffs claim that these threats and defamatory communications
23 to law enforcement personnel demonstrate the urgency and necessity of granting permanent
24 injunctive relief. See 4th Supp. Br. at 2, 4.

25 The first post reads: “Hey Weitsman, you know, they say never to take delight in the
26 suffering of one’s enemies. But what we are about to do to you, I’m going to savor every
27 single moment of it.” 4th Supp. Br. at 2 (emphasis omitted); Supp. Johnson Decl. Ex. 1.

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1 The second post, from May 10, 2020, reads:

2 Currently planning to travel to New York where I will be filming
3 one of Adam Weitsman’s human trafficking victims. It is with
4 full certainty that I will be traveling back to New York and
5 should be there on June 5th. I will begin to prepare myself,
6 mentally, physically and financially. “WITH GREAT HOPE” I
7 intend to film as many people as possible that are willing to be
8 filmed, those that are willing to come forward. This will be a
9 documentary that focuses predominantly on Adam Weitsman
10 and the mob that supports him in drug/steroids/human
11 trafficking. Anyone that has spoken to me before has an
12 opportunity to be filmed, if they so choose. There will be many
13 revelations, some of which, even I am shocked having listened.
14 Truly mind blowing things. Things that even seem relatable to
15 Jeffery Epstein.

16 4th Supp. Br. at 3 (emphasis omitted); Supp. Johnson Decl. Ex. 2.

17 The third post, from May 2, 2020, notes that Defendant posted a statement to the
18 Spencer Police Department’s Facebook page, which Spencer Police Chief Monteiro
19 deleted. Supp. Johnson Decl. Ex. 3. In the post, Defendant claims that “Monteiro tried to
20 intimidate me,” and told him “to stop talking about Adam Weitsman’s involvement in drug/
21 steroid /child trafficking” and “that he and his friends would have [Defendant] arrested for
22 harassment.” Id. Defendant states that “Spencer Police Department receives a lot of cash,
23 directly from Weitsman. None of the donations have been reported.” Id. He speculates
24 “that Spencer Police Department are more actively in charge of protecting Weitsman’s
25 drug trafficking.” Id. He also notes, “I see that Spencer Police Chief Monteiro was unable
26 to delete my review of his ‘Police’ Department. It is relatively identical to the comment I
27 left on his post, in which he speaks about receiving donations from Drug Dealer/ Steroid
28 Dealer/ Child Pornographer Adam Weitsman.” Id.

The fourth post, dated May 4, 2020, indicates that Defendant “[s]poke to Investigator
Parker” in the Owego Police Department about “his employee[’s] involvement in
protecting local drug/ steroid/ child trafficking.” Suppl. Johnson Decl. Ex. 4.

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1 Finally, the fifth post, from the same day, indicates that Defendant “just got off the
2 phone with the Mayor of Spencer.” Supp. Johnson Decl. Ex. 5. Defendant claims that the
3 former Owego Police Chief, Karen Vinti, after retiring from the police force and going to
4 work as Mr. Weitsman’s Chief of Security, “was using her Police connections and her role
5 as the former Police Chief to silence me about her employer’s (Adam Weitsman)
6 involvement in drug/ steroids/ human trafficking.” Id.

7 On October 23, 2020, Plaintiffs filed their Fifth Supplemental Brief. See ECF No.
8 104. The Fifth Supplemental Brief requests: (1) that certain amounts previously submitted
9 in support of Plaintiffs’ request for general damages be awarded as “actual damages,” (2)
10 that the Court award double the previously requested general damages, (3) that the Court
11 award double the previously requested punitive damages, and (4) that the Court schedule
12 a conference “at the earliest date available, so that Plaintiffs can emphasize the seriousness
13 of the relief requested.” Id. at 2.

14 In the Fifth Supplemental Brief, Plaintiffs assert that Defendant “has doubled-down
15 on his defamation campaign,” id., “ha[ving] published more than 30 statements on his
16 public Facebook profile that repeat statements this Court has adjudicated as defamatory”
17 since June 2020, id. at 3. The Declaration of Catherine Johnson in Support of Fifth
18 Supplemental Brief in Support of Motion for Permanent Injunction (ECF No. 104-1, “2d
19 Supp. Johnson Decl.”) is accompanied by six exhibits detailing Defendant’s defamatory
20 activity since June 2020.

21 On June 6, 2020, Defendant posted on Facebook that “Adam Weitsman has been the
22 main drug supplier/ human trafficker for over two decades.” 2d Supp. Johnson Decl. Ex.
23 1 at 1. On June 21, 2020, Defendant posted on Facebook that “Drug Trafficker Adam
24 Weitsman . . . and all the other local business owners use the area’s black people as his
25 nickel and dime drug dealers.” Id. at 2. In July 2020, Defendant “published six videos and
26 numerous posts that accuse Plaintiffs of being responsible for the disappearance and death
27 of Michele Harris, and being a trafficker of children and drugs.” 5th Supp. Br. at 3 (citing
28 2d Supp. Johnson Decl. Ex. 2).

1 Defendant's August 2020 Facebook posts are largely devoted to statements about
2 Mr. Weitsman's alleged trafficking in children. On August 1, 2020, Defendant posted that
3 "I'm the only one that ever spoke out against Adam Weitsman's drug/ steroids/ bank fraud/
4 human/ child trafficking enterprise." 2d Supp. Johnson Decl. Ex. 3 at 2. An August 2,
5 2020 post referred to Mr. Weitsman as "the main child trafficker." Id. at 3. An August 11,
6 2020 post stated: "Adam Weitsman is involved in human trafficking." Id. at 4. An August
7 12, 2020 post claimed "that Johnson City is giving Child Trafficker Adam Weitsman
8 special tax privileges." Id. at 5. An August 16, 2020 post reiterated that Weitsman is
9 "heavily involved in the human trafficking element" and noted that this is a "[v]ery prolific
10 type of story among the #TeamWeitsman mob." Id. at 6. An August 27, 2020 post, which
11 included a video, stated: "I'd like to know why the #Skaneateles School District is allowing
12 drug/ human trafficker Adam Weitsman and his friends access to children. Why exactly
13 are convicted felons/ rapists allowed to mentor kids at the high school? Why is Weitsman
14 allowed to hangout with kids at the elementary school?" Id. at 8. On August 28, 2020,
15 Defendant posted that "one would be vvvverrrryyy surprised to learn where Weitsman has
16 his child trafficking operations and whom are involved in it." Id. at 9. The same day,
17 Defendant published a second post stating: "It is an absolute shame that New Yorkers allow
18 Adam Weitsman to systematically abuse children for the sake of profit and his own sexual
19 gratification." Id. at 10.

20 On September 1, 2020, Defendant published a Facebook post claiming:

21 In one of those, oh so cringeworthy moments in internet history.
22 Weitsman uses his personal assistant to establish a relationship
23 with Adam Wurth, a guy who says that Weitsman had a role in
24 child sex abuse against him. This is EXACTLY what Weitsman
25 does. He uses the public, the media, law enforcement like Karen
26 McBride Vinti, his employees, his friends as his little intelligence
27 agents. They all provide him with information. Because again,
28 Weitsman is exactly like Weinstein and Epstein. Exact same
playbook.

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1 2d Supp. Johnson Decl. Ex. 3 at 2. On September 7, 2020, Defendant posted that “Adam
2 Weitsman is associated/ good friends with celebrities that align themselves with his own
3 criminal operations....WHICH AGAIN is major drug/ steroids/ bank fraud/ human and
4 child trafficking.” Id. at 3. On September 12, 2020, Defendant stated: “I don’t care if
5 Michele’s own family have forgotten about her I’m going to continue to speak the
6 truth about her murder and the disposal of her body at Upstate Shredding.” Id. at 4. This
7 post was accompanied by a link to a YouTube video entitled “Stand Back Remix/ Tribute/
8 Weitsman vs. Levesque 2019.” Id. On September 13, 2020, Defendant stated that Mr.
9 Weitsman “has instead always relied upon illegal crimes like drug trafficking . . . to keep
10 his schemes going.” Id. at 5. The same day, Defendant published a post stating: “Weitsman
11 thinks that I don’t know about his private air strip(s). Remember what I said, Weitsman’s
12 jet is what imports and exports drugs/ steroids etc.” Id. at 6. On September 14, 2020,
13 Defendant posted about Mr. Weitsman’s alleged child trafficking again, stating:
14 “Weitsman’s human trafficking operations were QUITE organized and large. One would
15 be shocked at the PA to NYC pipeline alone..... which actually goes through the Southern
16 Tier of New York, with very little fanfare.” Id. at 7.

17 On October 15, 2020, Defendant posted that “[I]ittle does the public and the Federal
18 Government know that Weitsman conceals much larger Bank Fraud/ Trafficking
19 schemes.” 2d Supp. Johnson Decl. Ex. 5 at 2. In a separate post on the same day,
20 Defendant stated: “Weitsman’s companies never made money, simply a front based upon
21 acquiring Bank loans and to launder drug/ steroids/ human trafficking money.” Id. at 3.
22 An October 17, 2020 post reiterated that Mr. Weitsman “is involved with major child
23 abuse.” Id. at 4.

24 The Fifth Supplemental Brief is also accompanied by the Declaration of Adam
25 Weitsman in Support of Fifth Supplemental Brief in Support of Motion for Permanent
26 Injunction (“Supp. Weitsman Decl.,” ECF No. 104-8). Mr. Weitsman avers:

27 As a result of Defendant’s continued publication of the False
28 Statements since the filing of the February 27, 2020 damages

1 supplement through the date of this supplement: (1) USS
2 continues to spend twenty-five hundred (\$2500.00) dollars per
3 month on public relations to address and/or resolve the False
4 Statements to address the impact of Defendant’s defamation
5 campaign of four-years; (2) I continue to receive phone calls and
6 text[] messages from personal friends and third parties asking
7 about False Statements, and inquiries from them about why the
8 Defendant is contacting them about the False Statements; (3)
9 metal and recycling business insiders continue to read the False
10 Statements, which Defendant continues to post online, and they
11 continue to contact me and other representatives at USS to
12 inquire about the False Statements; (4) certain metal and
13 recycling business contacts, including vendors, continue to
14 refrain from and/or decreased their business with USS; (5) I
15 continue to suffer from social anxiety, and because of my
16 increased stress levels and anguish caused by Defendant’s non-
17 stop publication of False Statements, my wife has also been in
18 distress, and my family continues to live in fear for our safety
19 because of Defendant’s unstable and bizarre behavior; (6) I have
20 suffered, and will continue to suffer, public humiliation, extreme
21 emotional distress, anxiety, depression, stomachaches,
22 headaches, muscle pain, lack of sleep, lack of a desire to eat,
23 emotional pain and suffering, anguish, and loss of self-esteem;
24 and (7) I am currently in the Maldives on vacation with my
25 family and friends, and the Defendant is publishing the False
26 Statements on Facebook and Instagram, targeting my family and
27 friends while we are here, by publicly asking my friends (on
28 social media) why they are filming “the major drug/ human
trafficker Adam Weitsman. How much is he paying yall?”
Consequently, I have not been able to escape the Defendant’s
defamation campaign, even while traveling overseas.

22 Id. ¶ 6 (emphasis in original).⁴ Mr. Weitsman “continue[s] to spend at least 5 hours of
23 every day stressing about Defendant’s False Statements, who is seeing them, and the
24 damage it continues to cause my reputation.” Id. ¶ 7.

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28 ⁴ The post referenced in Mr. Weitsman’s Supplemental Declaration is attached as an exhibit to Ms. Johnson’s Second Supplemental Declaration. See 2d Supp. Johnson Decl. Ex. 6 at 5–6.

1 The Court held a hearing on Plaintiffs’ Supplemental Briefs on November 5, 2020.
2 See ECF No. 106. Defendant appeared at the hearing but spoke briefly only to the issue of
3 liability and presented no evidence relevant to the damages issues presently before this
4 Court.

5 On November 16, 2020, Plaintiffs filed a Sixth Supplemental Brief. See generally
6 ECF No. 108. Plaintiffs note:

7 In the short time since the November 5 hearing, Defendant . . .
8 has resorted to a new level of aggression in his defamation
9 campaign, by directly messaging Adam Weitsman’s employees,
10 friends, and others with a link to a new video (created by
11 Defendant) accusing Mr. Weitsman of rape, child sex trafficking,
and related crimes.

12 6th Supp. Br. at 2.

13 The Sixth Supplemental Brief is supported by the Declaration of Catherine Johnson
14 in Support of Sixth Supplemental Brief in Support of Motion for Permanent Injunction
15 (ECF No. 108-1, “3d Supp. Johnson Decl.”). Ms. Johnson indicates that, on November 9,
16 2020, Defendant posted the following to his Facebook page:

17 If today is the last day that I am able to legally remain on the
18 internet. If this was my last post, what would I say? Well none
19 other than that I just found out who(m) are involved with Adam
20 Weitsman in MAJOR CHILD TRAFFICKING. Finally... after
21 all this time, after all these years. I finally found out whom are
involved with ADAM WEITSMAN of UPSTATE
SHREDDING in organized child trafficking.

22 Id. ¶ 4. On November 12, 2020, Defendant published a publicly available YouTube video
23 titled “Child Trafficking Ring Exposed: La Familia Motorcycle Gang, Bradford County,
24 Adam Weitsman.” See id. ¶ 5. Ms. Johnson provides screenshots of the video, showing
25 that the video had over 8,950 views within twenty-four hours of publication and 16,459
26 views with 74 comments as of the filing of the Sixth Supplemental Brief four days later.
27 See id. ¶¶ 6–7; see also id. Ex. 1. Plaintiffs also submit a transcript of the video prepared
28 by a Certified Reporter. See id. Ex. 2. The video contains many statements alleging that

1 Mr. Weitsman is involved in child, human, and/or drug trafficking, see *id.* at 3, 4, 7, 10,
2 12, 13, 14; and contends that Mr. Weitsman has raped a child, see *id.* at 3.

3 The Sixth Supplemental Brief is also accompanied by the Declaration of Adam
4 Weitsman in Support of Sixth Supplemental Brief in Support of Motion for Permanent
5 Injunction (“2d Supp. Weitsman Decl.,” ECF No. 108-4). Mr. Weitsman declares that “[he
6 has] received 100s of text messages just like the few exemplars attached to this motion,
7 since November 12th, 2020, when the video was first published,” *id.* ¶ 7, and he notes that
8 “[t]his Video has been the most humiliating and damaging publication to me, to date,” *id.*
9 ¶ 8. Mr. Weitsman attaches screenshots of fourteen messages he received from various
10 people alerting him to the presence of the video and/or expressing their concern or support.
11 See *id.* Ex. 3. Mr. Weitsman avers that, after the video was published, he “was unable to
12 sleep at all, all weekend, and ha[d] no choice but to continue to address the allegation of
13 child sex trafficking with [his] employees.” *Id.* ¶ 9. Mr. Weitsman says he is “drowning
14 in the torrential downpour of mental anguish associated with Defendant Levesque’s
15 defamation campaign.” *Id.* ¶ 13. In light of the November 12, 2020 video, “Plaintiffs[]
16 reiterate to the Court their request for additional damages, including appropriate punitive
17 damages, requested in their fifth supplemental motion.” 6th Supp. Br. at 5.

18 Defendant has filed no oppositions to Plaintiffs’ Supplemental Briefs. See generally
19 Docket.

20 **MONETARY DAMAGES**

21 Upon entry of default judgment, the well-pleaded factual allegations of the
22 complaint are taken as true, except those relating to damages. See *Au Bon Pain Corp. v.*
23 *Arctect, Inc.*, 653 F.2d 61, 65 (2d Cir. 1981) (citations omitted); see also *TeleVideo Sys.,*
24 *Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987). To prove damages, a plaintiff
25 may submit declarations or documentary evidence, or the Court may hold an evidentiary
26 hearing. See *Tamarin v. Adam Caterers, Inc.*, 13 F.3d 51, 54 (2d Cir. 1993) (citations
27 omitted); see also *Taylor Made Golf Co. v. Carsten Sports*, 175 F.R.D. 658, 661 (S.D. Cal.
28 1997) (“In assessing damages, the court must review facts of record, requesting more

1 information if necessary, to establish the amount to which plaintiff is lawfully entitled upon
2 judgment by default.”).

3 Under New York law,⁵ “[d]efamation is the injury to one’s reputation either by
4 written expression, which is libel, or by oral expression, which is slander.” *Idema v.*
5 *Wager*, 120 F. Supp. 2d 361, 365 (S.D.N.Y. 2000), *aff’d*, 29 F. App’x 676 (2d Cir. 2002)
6 (citing *Morrison v. Nat’l Broad. Co.*, 19 N.Y.2d 453, 458 (N.Y. 1967)). “Generally, in a
7 defamation action, the prevailing party may seek compensatory damages and punitive
8 damages.” *Robertson v. Doe*, No. 05CIV7046LAPRLE, 2009 WL 10676484, at *4
9 (S.D.N.Y. Dec. 17, 2009), report and recommendation adopted, No. 05 CIV. 7046(LAP),
10 2010 WL 11527317 (S.D.N.Y. May 11, 2010), *aff’d sub nom. Robertson v. Dowbenko*, 443
11 F. App’x 659 (2d Cir. 2011) [hereinafter “Robertson I”] (citing *Gertz v. Robert Welch, Inc.*,
12 418 U.S. 323, 350 (1974); *Smith v. Wade*, 461 U.S. 30, 50 (1983); *Matherson v. Marchello*,
13 473 N.Y.S.2d 998, 1002 (N.Y. App. Div. 1984)).

14 Plaintiffs request both compensatory and punitive damages. See generally Am. 3d
15 Supp. Br.; 5th Supp. Br. The Court will address each request in turn.

16 **I. Compensatory Damages**

17 Initially, Plaintiffs requested general/presumed damages of “not less than \$800,000”
18 to compensate them “for their loss of reputation and the humiliation and mental suffering
19 caused by the defamation and harassment over a period of three-and-a-half years.” Am.
20 3d Supp. Br. at 9. However, in their Fifth Supplemental Brief, Plaintiffs revised their
21 request, seeking instead (1) “an award of actual damages as itemized in Plaintiffs’ Third
22

23 ⁵ Although this action was transferred to this District from New York, the Court continues to apply New
24 York substantive law to Plaintiffs’ state law claims, including Plaintiffs’ damages requests. See, e.g.,
25 *Ravelo Monegro v. Rosa*, 211 F.3d 509, 513 (9th Cir. 2000) (citing *Ferens v. John Deere Co.*, 494 U.S.
26 516, 524–25 (1990); *Van Dusen v. Barrack*, 376 U.S. 612, 636–37 (1964)); *Patterson v. Balsamico*, 440
27 F.3d 104, 119 (2d Cir. 2006) (“A federal court, in reviewing the amount of damages awarded on a state
28 law claim, must apply New York law.”) (citations omitted). Plaintiffs’ Supplemental Briefs only assess
the issue of compensatory and punitive damages under New York law. See generally ECF Nos. 98, 99.
Nor did any Party assert during the November 5, 2020 hearing a belief that any other law should apply to
the compensatory or punitive damages issues before the Court. Accordingly, the Court only assesses
Plaintiffs’ compensatory and punitive damages requests under New York law.

1 Supplemental [Doc. 98 at 14—17],” and (2) “increased general/presumed damages in the
2 total amount of \$1,600,000,” for a total of nearly \$2 million in compensatory damages. 5th
3 Supp. Br. at 2.

4 **A. Legal Standard**

5 “The plaintiff in a defamation action may be entitled to two types of compensatory
6 damages: ‘(1) general damages, which the law presumes to be the natural, proximate and
7 necessary result of the publication; and (2) special damages, which are not presumed to be
8 necessary and inevitable of publication . . . [and] must be shown by allegation and proof.’”
9 *Robertson v. Doe*, No. 05 CIV. 7046(LAP), 2010 WL 11527317, at *2 (S.D.N.Y. May 11,
10 2010), *aff’d sub nom. Robertson v. Dowbenko*, 443 F. App’x 659 (2d Cir. 2011)
11 [hereinafter “*Robertson II*”] (quoting *Schneider v. Green*, No. 88 CIV. 2931 (MJL), 1990
12 WL 151142, at *18 (S.D.N.Y. Oct 1, 1990)). “Under New York law, when, as alleged
13 here, a statement is libelous per se, a presumption of actual damage to reputation arises
14 from the statement itself, thereby entitling the plaintiff to recover general damages.”
15 *Anglo-Iberia Underwriting Mgmt. Co. v. Lodderhose*, 282 F. Supp. 2d 126, 132 (S.D.N.Y.
16 2003), as amended (Oct. 8, 2003) (citing *Hinsdale v. Orange Cnty. Publ’ns, Inc.*, 217
17 N.E.2d 650, 652 (N.Y. 1966)).

18 “However, although the existence of compensatory damages is presumed, the
19 quantum of such damages is not.” *Gatz v. Otis Ford, Inc.*, 711 N.Y.S.2d 467, 468 (N.Y.
20 App. Div. 2000) (citations omitted). “The amount of general damages in a defamation
21 action must be supported by competent evidence concerning the injury, but there is no need
22 to produce evidence which assigns an actual dollar value to the injury.” *Technovate LLC*
23 *v. Fanelli*, 20 N.Y.S.3d 295, at *6 (N.Y. Civ. Ct. 2015) (citing *Wolf St. Supermarkets v.*
24 *McPartland*, 108 A.D.2d 25 (N.Y. App. Div. 1985)). “In determining the appropriate
25 amount of general damages in a defamation claim, the court generally defers to the victim’s
26 pleaded amount because ‘[b]y the very nature of harm resulting from defamatory
27 publications, it is frequently not susceptible of objective proof.’” *Robertson I*, 2009 WL
28 10676484, at *4 (quoting *Carey v. Piphus*, 435 U.S. 247, 263 (1978) (citing 1 F. Harper &

1 F. James, Law of Torts § 5.30, at 468 (1956))). The defendant’s ability to pay is not a
2 relevant consideration in assessing compensatory damages. See *Rupert v. Sellers*, 368
3 N.Y.S.2d 904, 909 (N.Y. App. Div. 1975) (“It is clear that with respect to compensatory
4 damages the wealth of either party has no bearing in law.”).

5 Statements falling into any of the four following categories constitute defamation
6 per se of an individual plaintiff, and therefore do not require proof of damages: “(1)
7 statements charging the plaintiff with a serious crime; (2) statements that tend to injure the
8 plaintiff in her trade, business or profession; (3) statements that impute to the plaintiff a
9 ‘loathsome disease’; and (4) statements that impute unchastity to a woman.” *Nolan v. New*
10 *York*, 158 A.D.3d 186, 195 (N.Y. App. Div. 2018) (citations omitted). “Likewise, with
11 regard to business entities, ‘statements which impugn the basic integrity, creditworthiness,
12 or competence of the business, are defamatory per se, and thus, special damages need not
13 be pleaded.’” *Prince v. Fox Television Stations, Inc.*, 33 Misc. 3d 1225(A), 939 N.Y.S.2d
14 743 (Sup. Ct. 2011) (quoting *Ruder & Finn Inc. v. Seaboard Surety Co.*, 439 N.Y.S.2d 858,
15 862 (1981)) (citing *Drug Research Corp. v. Curtis Publ’g Co.*, 199 N.Y.S.2d 33, 37
16 (1960)), *aff’d in relevant part as modified*, 93 A.D.3d 614 (2012).

17 **B. Analysis**

18 Plaintiffs first request their “actual damages.” 5th Supp. Br. at 2. Per Plaintiffs’
19 evidence, through February 2020, Plaintiffs have paid \$128,000 to Dynamic, a public
20 relations company, for reputation management and social media monitoring, see *Donnelly*
21 *Decl.* ¶¶ 4–5, 10, Ex. 3; \$19,797.30 in overtime to Ms. Johnson, an employee tasked with
22 compiling and reviewing Defendant’s defamatory posts, see *Johnson Decl.* ¶¶ 2, 6, 9, Ex.
23 1; \$4,500 to RSA, a public relations company, for monitoring and addressing the
24 defamatory posts, see *Johnson Decl.* ¶¶ 10–12, Ex. 2; see also *Donnelly Decl.* ¶ 11; and
25 \$175,000 to Tarakeet, a specialty search engine optimization firm, to combat reputational
26 damage, see *Johnson Decl.* ¶¶ 10–12, Ex. 2; see also *Donnelly Decl.* ¶ 12. Thus, in total,
27 as of February 1, 2020, Plaintiffs had expended \$327,297.30 combatting Defendant’s
28 defamatory statements. Since then, Plaintiffs have continued to pay \$2,500 per month to

1 Dynamic for public relations services required as a result of Defendant’s defamation. See
2 Supp. Weitsman Decl. ¶ 6. The last invoice to Plaintiffs noted in Dynamic’s records was
3 for February 1, 2020, see Donnelly Decl. ¶ 10; id. Ex. 3; therefore, the Court concludes
4 that Plaintiffs have paid Dynamic for services related to the defamation for an additional
5 nine months, totaling \$22,500, since February 1, 2020. Accordingly, Plaintiffs’ “actual
6 damages” to date total at least \$349,797.30. The Court concludes that Plaintiffs have
7 adequately proven that they have incurred damages in this amount and awards Plaintiffs
8 this sum.

9 As to Plaintiffs’ request for \$1,600,000 in general damages, although damages for
10 loss of reputation, humiliation, and mental suffering are not quantifiable, Plaintiffs have
11 submitted declarations, invoices, and time records to establish the significant injury they
12 have incurred as a result of Defendant’s defamatory statements over the past four years.
13 The evidence noted above indicates that Plaintiffs have incurred hundreds of thousands of
14 dollars in expenses combatting the reputational damage caused by Defendant’s defamatory
15 statements, from which the Court can and does infer that the reputational harm to Plaintiffs
16 has been great. Further, Mr. Donnelly estimates it will take roughly two years after
17 Defendant is enjoined for the injury to cease, see Donnelly Decl. ¶ 13, making hundreds of
18 thousands of dollars more in such expenditures likely. Plaintiffs also submit declarations
19 detailing more anecdotally the reputational and business injuries they have incurred, as
20 well as the impacts on Mr. Weitsman and his family. See generally Weitsman Decl.;
21 Donnelly Decl.; Johnson Decl.; Supp. Weitsman Decl.; 2d Supp. Weitsman Decl.; see also
22 supra at 4–6, 7, 11–12, 14.

23 This Court previously determined, in its February 14, 2020 Order, that Plaintiffs had
24 adequately pleaded a claim for defamation per se and were entitled to default judgment on
25 that claim. See ECF No. 97 at 12–16. Thus, the Court concludes that Plaintiffs are entitled
26 to general damages for Defendant’s per se defamatory statements, to the extent they have
27 provided competent evidence to show injury from Defendant’s defamatory statements.
28 And, having reviewed the evidence submitted by Plaintiffs, the Court is convinced that

1 Plaintiffs have suffered actual and substantial injury as a result of Defendant’s defamation.
2 Defendant has been making defamatory statements about Plaintiffs for more than four
3 years. One readily can infer from the fact that Plaintiffs have expended more than \$300,000
4 on public relations and search engine optimization services solely to address Defendant’s
5 statements that Plaintiffs’ business reputation has been injured, substantially, as a result of
6 the defamation. That many scrap metal vendors have stopped doing business with
7 Plaintiffs since the defamation started, without complaining of service or pricing issues,
8 further supports this inference, see Weitsman Decl. ¶ 12, particularly given the extent to
9 which business in Plaintiffs’ industry depends upon reputation, see id. ¶ 9. Accordingly,
10 the Court finds that Plaintiffs have provided adequate evidence of an actual injury from
11 Defendant’s sustained Internet defamation campaign to merit an award of general damages.

12 The Court was inclined to find the \$800,000 originally requested by Plaintiffs for
13 compensatory damages reasonable; however, the Court has some concerns about Plaintiffs’
14 belated request to double that quantum of damages and separately award “actual damages,”
15 resulting in a total award of nearly \$2 million. Nonetheless, the Court does believe some
16 upward adjustment of the originally requested \$800,000 in compensatory damages is
17 appropriate given both the sustained nature of Defendants’ defamation campaign, see, e.g.,
18 *Bouveng v. NYG Capital LLC*, 175 F. Supp. 3d 280, 336–44 (S.D.N.Y. 2016) (upholding
19 jury award of \$1.5 million in compensatory damages on defamation claim where
20 “[d]efendants engaged in a daily campaign of Internet-based defamation against [p]laintiff
21 that lasted for approximately ten months” and the articles in question “are replete with
22 egregiously defamatory statements about [p]laintiff”), as well as the length of time
23 Plaintiffs’ request has been pending before this Court. Having given due consideration to
24 the evidence before it, as well as the factors Plaintiffs urged the Court to weigh, see *Am.*
25 *3d Supp. Br.* at 9–18, the Court finds that an award of \$600,000 in general damages, in
26 addition to an award of Plaintiffs’ actual damages, is appropriate to compensate Plaintiffs
27 for the substantial harm, both emotional and reputational, they have incurred as a result of
28 Defendant’s defamation.

1 Accordingly, the Court **GRANTS IN PART** Plaintiffs’ request for compensatory
 2 damages. The Court will award Plaintiffs \$349,797.30 in actual damages and \$600,000 in
 3 general damages, for a total award of \$949,797.30 in compensatory damages.

4 **II. Punitive Damages**

5 Plaintiffs also request punitive damages. Originally, Plaintiffs sought punitive
 6 damages in the amount of \$200,000, Am. 3d Supp. Br. at 20, but Plaintiffs’ Fifth
 7 Supplemental Brief requested that the Court award double that figure—\$400,000—instead,
 8 see 5th Supp. Br. at 2.

9 Under New York law, to merit an award of punitive damages for defamation, a non-
 10 public figure plaintiff⁶ must establish, by a preponderance of the credible evidence,
 11 common law malice, which is “hatred, ill will, spite or wanton, reckless, or willful
 12 disregard of the rights of another or the injurious effects of the defendant’s conduct upon
 13 another.” *Zaidi v. United Bank Ltd.*, 747 N.Y.S.2d 268, 276, 277–78 (N.Y. Sup. Ct. 2002)
 14 (citations omitted). Punitive damages are awarded at the discretion of the trier of fact and
 15 serve the dual purpose of deterring the libelor as well as serving as a warning to others.
 16 *Wachs v. Winter*, 569 F. Supp. 1438, 1444 (E.D.N.Y. 1983) (citations omitted); see also
 17 *Rombom v. Weberman*, No. 1378/00, 2002 WL 1461890, at *9 (N.Y. Sup. Ct. June 13,
 18 2002) (“[W]hether to award punitive damages in a particular case, as well as the amount
 19 of such damages, if any, are primarily questions which reside in the sound discretion of the
 20 original trier of the facts.”) (quoting *Nardelli v. Stamberg*, 377 N.E.2d 975 (N.Y. 1978)),
 21 *aff’d*, 766 N.Y.S.2d 88 (N.Y. App. Div. 2003). Because “the quantum of damages . . .

22
 23
 24 ⁶ On the record before it, the Court sees no reason to consider Plaintiffs anything other than private figures.
 25 “There is no proof that [P]laintiff[s] ha[ve] achieved general fame or notoriety or ‘assumed [a] role[] of
 26 especial prominence in the affairs of society.’” *Sovik v. Healing Network*, 665 N.Y.S.2d 997, 1000 (1997),
 27 amended on reargument, 679 N.Y.S.2d 858 (N.Y. App. Div. 1998) (third and fourth alterations in original)
 28 (quoting *Gertz*, 418 U.S. at 345). Nor are there indications that Plaintiffs “voluntarily injected
 [themselves] into the vortex of [the] particular public controversy [at issue] in order to influence its
 outcome” such that they are “limited purpose public figures.” *Id.* (second and third alterations in original)
 (citations omitted). Any notoriety Plaintiffs have acquired appears to be the result of Defendant’s
 defamation rather than any acts affirmatively undertaken by Plaintiffs.

1 [must] be established by proof[. . .] Plaintiff cannot rely on the well-pleaded allegations
2 of its complaint to support a prayer for punitive damages.” Robertson II, 2010 WL
3 11527317, at *6 (citations and internal quotation marks omitted) (first alteration in
4 original).

5 In New York, “[t]he law as to whether punitive damages can be awarded in cases
6 decided by default judgment is somewhat murky.” Robertson I, 2009 WL 10676484, at
7 *11. For instance, in *Dubai Bank, Ltd., New York Branch v. Joshi*, the magistrate judge
8 recommended against awarding punitive damages on a claim of defamation won on default,
9 reasoning:

10 at some point the realities of this being an award of damages
11 based on a default judgment must be realized. On the one hand,
12 plaintiff should not be penalized because he has won a judgment
13 by default rather than by a trial on the merits. The court is not
14 free to speculate on whether the claim really has merit, but should
15 treat the default judgment as if there has been a decision on the
16 merits. On the other hand, the court recognizes that punitive
damages are to be awarded only in cases of malicious actions in
gross disregard of a plaintiff's rights.

17 No. 85 CIV. 5005 (MJL), 1989 WL 168088, at *5 (S.D.N.Y. Aug. 29, 1989); see also
18 *Wachs*, 569 F. Supp. at 1444–45 (noting that, “[s]ince defendant has never appeared in this
19 action, it is difficult to make a determination as to whether or not he acted in good faith or
20 with malice,” and concluding, “[s]ince there is very little objective evidence that defendant
21 acted either in bad faith or with malice toward plaintiff, the undersigned recommends that
22 plaintiff not be awarded punitive damages”) (citations omitted); Robertson II, 2010 WL
23 11527317, at *5–7 (denying punitive damages on default because, “[w]here, as here, ‘there
24 has been no trial of the facts,’ there is generally ‘no basis for determining how egregious
25 or opprobrious [the defendant’s] conduct has been,’” and the plaintiff failed to offer
26 adequate evidence of ill will) (citation omitted).

27 However, at least one New York court has awarded punitive damages on default
28 judgment on a claim for libel. See *Xiaokang Xu v. Xiaoling Shirley He*, 48 N.Y.S.3d 530,

1 533–34 (2017) (approving punitive damages award of \$5,000 where “defendant has
2 repeatedly harassed plaintiff and his family, attempted to discredit him and damage his
3 reputation, brought numerous suits against plaintiff and his agents, employers and
4 associates and continues to attempt to relitigate issues long since determined”).

5 During the November 5, 2020 hearing, Plaintiffs’ counsel conceded that a request
6 for punitive damages on a default judgment is somewhat unusual. Yet, taking into
7 consideration the evidence submitted by Plaintiffs in support of their Supplemental Briefs,
8 the Court is convinced that it is more likely than not that Defendant defamed Plaintiffs out
9 of common law malice, and accordingly the Court finds that an award of punitive damages
10 is warranted here. It is reasonable to infer from the evidence before the Court that
11 Defendant’s defamatory statements stem from being terminated twice from his
12 employment at a company affiliated with Plaintiffs, given that the posts started shortly after
13 Defendant’s termination. Moreover, the sustained and voluminous nature of the
14 defamatory campaign and Defendant’s escalation to outright threats, despite this litigation,
15 strongly indicates that Defendant bears significant ill will toward Plaintiffs that is unlikely
16 to stop without some further deterrent.

17 Indeed, Defendant mocked Plaintiffs after they sent their demand letter, see FAC
18 Ex. D, indicating a willful disregard of the injurious effects of his conduct upon Plaintiffs.
19 See, e.g., *Daniels v. Kostreva*, No. 15 CV 3141 (ARR)(LB), 2017 WL 823583, at *12–14
20 (E.D.N.Y. Jan. 12, 2017) (recommending punitive damages of \$35,000 on default
21 judgment for libel where publication of “damaging and spiteful accusations” online
22 continued over several months, including “information from the emails plaintiff sent to her
23 trying to resolve the matter,” as these facts supported “the intentional and malicious nature
24 of defendant’s conduct”), report and recommendation adopted, No. 15CV3141ARRLB,
25 2017 WL 519227 (E.D.N.Y. Feb. 8, 2017). That Defendant has himself posted on social
26 media about defamation, and still continued to defame Plaintiffs, further supports the
27 inference that Defendant is motivated by a strong hatred and a willful disregard of
28 Plaintiffs’ rights. See FAC Exs. B, C. And Defendant’s recent posts recognizing that he

1 may soon be enjoined but continuing to repeat statements that have been deemed
2 defamatory further supports this inference. See 3d Supp. Johnson Decl. ¶ 4; id. Ex. 2 at 2.

3 Thus, in light of the truly egregious nature of Defendant’s actions, the Court finds
4 some award of punitive damages merited despite the procedural posture of this case.
5 However, the Court is disinclined to grant \$400,000 in punitive damages, particularly given
6 Plaintiffs’ own statements that they believe Defendant to be an unemployed student
7 working toward a bachelor’s degree. Am. 3d Supp. Br. at 19; Johnson Decl. ¶ 15. In light
8 of Defendant’s presumed circumstances, a lesser amount seems adequate to punish and
9 deter. See *Micari v. Mann*, 481 N.Y.S.2d 967, 970 (N.Y. Sup. Ct. 1984) (noting factfinder
10 “is entitled to consider [the defendant’s financial] condition after an award has been made
11 for compensatory damages”) (citations omitted).

12 Accordingly, this Court, in its discretion and after having reviewed all of the
13 evidence before it, finds an award of \$50,000 in punitive damages appropriate.

14 **PERMANENT INJUNCTION**

15 Finally, Plaintiffs request a permanent injunction. See Am. 3d Supp. Br. at 2–7, 18–
16 19; see also Proposed Order. Plaintiffs’ Proposed Order would permanently bar
17 “Defendant and all those acting under his direction or control” “from publishing or causing
18 the publishing, via internet or any other medium, any of the following false and defamatory
19 statements, whether directly or indirectly, about any of the Plaintiffs,” and specifies fifteen
20 statements Defendant has made about Plaintiffs, which Plaintiffs label the “False
21 Statements.” Proposed Order at 5–6. The Proposed Order requires Plaintiff to remove the
22 False Statements “from all websites, search engines, forums, blogs, lists, social media
23 websites, and/or other forums of mass communication (collectively ‘Forums’)” within ten
24 days of the date of the order. Id. at 5–6. The Proposed Order also requires Defendant,
25 within ten days, to “immediately remove from all Forums any references, including any
26 partial references, to a False Statement,” as well as “any images or photos of Weistman
27 and/or his family.” Id. at 6–7. The Proposed Order also enjoins Defendant “from posting
28 on any Forum, or encouraging or soliciting others to post on any Forum, any False

1 Statement, or variation thereof, about any Plaintiff and/or any business entity related
 2 thereto,” or “any images or photos of Weitsman and/or his family.” Id. at 8. The Proposed
 3 Order further provides:

4 To the extent Defendant is unwilling or unable to remove the
 5 False Statements within 10 days from the date of this Order,
 6 Twitter.com, Facebook.com, Instagram.com, YouTube.com,
 7 and/or any other social media platform or Forum should
 8 permanently suspend the use of Defendants’ account(s) in
 9 accordance with its internal rules and policies. . . . To the extent
 10 any Forum is unwilling or unable to permanently suspend the use
 of Defendant’s account(s), the Forum shall turn over ownership
 of the account(s) to Plaintiffs’ counsel in order for Plaintiffs to
 effectuate the relief granted under this Order[.]

11 Id. at 8–9. The Proposed Order indicates that it shall apply “to any and all other Internet
 12 URLs which now or hereinafter display, contain, or otherwise publish the same or similar
 13 statements decreed and declared herein by this Court to be false and defamatory,”
 14 specifically “any and all URLs in which the False Statements are now located at or are to
 15 be located at on a subsequent date.” Id. at 9. Finally, the Proposed Order requests that
 16 “Google, Yahoo!, Bing, Facebook, Instagram, Twitter, YouTube, and other websites with
 17 the same or similar defamatory content about Plaintiffs remove all associated webpages
 18 and URLs from their respective search indexes and websites.” Id. at 9–10.

19 **I. Legal Standard**

20 Under New York law,⁷

21
 22 ⁷ Plaintiffs’ Supplemental Briefs largely rely on New York case law to support their request for an
 23 injunction. See Am. 3d Supp. Br. at 3–7. However, during the November 5, 2020 hearing, Plaintiffs’
 24 counsel asserted that they believe there is a basis for applying either California law or New York law to
 25 their request for injunctive relief. “A permanent injunction, as a method to enforce substantive law rights,
 26 ‘is an integral component of the [underlying] substantive law right.’” *United Nat. Maint., Inc. v. San*
 27 *Diego Convention Ctr. Corp.*, No. 07CV2172 AJB, 2012 WL 3861946, at *4 (S.D. Cal. Sept. 5, 2012)
 28 (quoting *Sullivan v. Vallejo City Unified Sch. Dist.*, 731 F. Supp. 947, 956 (E.D. Cal. 1990)) (alteration in
 original). “Thus, in the Ninth Circuit, the availability of injunctive relief is a substantive issue and is
 therefore governed by state law.” Id. (citing *Sims Snowboards, Inc. v. Kelly*, 863 F.2d 643, 647 (9th Cir.
 1988); *Fansler Found. v. Am. Realty Investors, Inc.*, No. CV–F–04–5285 LJO DLB, 2007 WL 1302742,
 *2 (E.D. Cal. May 2, 2007); *Sullivan*, 731 F. Supp. at 956). Accordingly, New York law applies in
 determining whether injunctive relief is appropriate. Regardless, the same general standard applies under

1 a plaintiff seeking a permanent injunction must . . . demonstrate:
 2 (1) that it has suffered an irreparable injury; (2) that remedies
 3 available at law, such as monetary damages, are inadequate to
 4 compensate for that injury; (3) that, considering the balance of
 5 hardships between the plaintiff and defendant, a remedy in equity
 is warranted; and (4) that the public interest would not be
 disserved by a permanent injunction.

6 Granite Music Corp. v. Ctr. St. Smoke House, Inc., 786 F. Supp. 2d 716, 729 (W.D.N.Y.
 7 2011) (quoting eBay Inc. v. MercExchange, LLC, 547 U.S. 388, 391 (2006)); accord
 8 Kaupp v. Church, No. 10 Civ. 7559(JFK), 2011 WL 4357492, at *4 (S.D.N.Y. Sept. 19,
 9 2011) (citing Salinger v. Colting, 607 F.3d 68, 77 (2d Cir. 2010)).

10 “[A]bsent extraordinary circumstances, injunctions should not ordinarily issue in
 11 defamation cases . . . because ordinarily libels may be remedied by damages.” Metro.
 12 Opera Ass’n v. Local 100, Hotel Emps. & Rest. Emps. Int’l Union, 239 F.3d 172, 177 (2d
 13 Cir. 2001) (citing Crosby v. Bradstreet Co., 312 F.2d 483, 485 (2d Cir. 1963)). Further,
 14 injunctive relief in defamation cases is disfavored because a permanent injunction
 15 constitutes a prior restraint on expression, raising a “heavy presumption” of infringing the
 16 defendant’s rights under the First Amendment. See *id.* at 176–77. The granting of a
 17 mandatory injunction, as Plaintiffs seek here, is also “an extraordinary and drastic remedy.”
 18 *Rombom v. Weberman*, No. 1378/00, 2002 WL 1461890, at *12–13 (N.Y. Sup. Ct. June
 19 13, 2002) (citing *Times Square Stores Corp. v. Bernice Realty Co.*, 107 A.D.2d 677, 682
 20 (N.Y. App. Div. 1985)), *aff’d*, 766 N.Y.S.2d 88 (N.Y. App. Div. 2003).

21 ///

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23 _____
 24 California law. See, e.g., *Balboa Island Vill. Inn, Inc. v. Lemen*, 40 Cal. 4th 1141, 1148 (2007), as modified
 25 (Apr. 26, 2007) (“[A]n injunction issued following a trial that determined that the defendant defamed the
 26 plaintiff that does no more than prohibit the defendant from repeating the defamation, is not a prior
 27 restraint and does not offend the First Amendment.”); *id.* at 1162 (“[T]he injunction must be reversed in
 28 part because it is overly broad, but a properly limited injunction prohibiting defendant from repeating
 statements about plaintiff that were determined at trial to be defamatory would not violate defendant’s
 right to free speech.”). Therefore, the Court finds that its decision concerning Plaintiffs’ request for
 injunctive relief would have been the same had the Court applied California substantive law.

1 II. Analysis

2 Plaintiffs assert that they are entitled to permanent injunctive relief because prior
3 restraint is not an issue on the facts before the Court. Am. 3d Supp. Br. at 3–4 (citing
4 NitGen Co. v. SecuGen Corp., C 04-02912 JW (RS), 2004 WL 2303929 (N.D. Cal. Oct.
5 12, 2004); New.Net, Inc. v. Lavasoft, 356 F. Supp. 2d 1071, 1084 (C.D. Cal. 2003);
6 Hammes Co. Healthcare, LLC v. Tri-City Healthcare Dist., No. 09-CV-2324 JLS CAB,
7 2011 WL 6182423, at *17 (S.D. Cal. Dec. 13, 2011); Lothschuetz v. Carpenter, 898 F.2d
8 1200, 1208–09 (6th Cir. 1990)). Plaintiffs also argue that the factors to be considered in
9 assessing whether to grant injunctive relief favor the granting of a permanent injunction.
10 See *id.* at 5–7.

11 In arguing that prior restraint is not an issue, Plaintiffs rely heavily on Lothschuetz,
12 *supra*, a Sixth Circuit opinion. See Am. 3d Supp. Br. at 4. Plaintiffs cite no New York
13 cases to support their argument. See *id.* at 3–4. However, based on this Court’s own review
14 of relevant authorities—some of which are cited by Plaintiffs elsewhere in their briefs—it
15 does appear that New York courts have approved permanent injunctions against future
16 libelous statements where the libel is “part of ‘a sustained campaign,’” Eugene Volokh,
17 *Anti-Libel Injunctions*, 168 U. Pa. L. Rev. 73, 141 (2019) (citations omitted), and where
18 the libelous statements injure a business interest or other property right. See, e.g., *Rombom*,
19 2002 WL 1461890, at *13 (approving modified permanent injunction where “the
20 statements made by defendants were calculated, in large part, to injure plaintiff’s business,
21 justifying the issuance of a mandatory injunction.”); *Trojan Elec. & Mach. Co. v.*
22 *Heusinger*, 557 N.Y.S.2d 756, 757–59 (N.Y. App. Div. 1990) (approving preliminary
23 injunction against libel, reasoning: “While equity will not intervene to restrain the
24 publication of words on a mere showing of falsity, it may intervene where restraint
25 becomes essential to the preservation of a business or other property rights threatened by
26 tortious conduct in which the words are merely an instrument of and incidental to the
27 conduct”) (citations omitted); *Bingham v. Struve*, 591 N.Y.S.2d 156, 158 (N.Y. App. Div.
28 1992) (approving preliminary injunction against allegedly defamatory speech that was

1 “capable of injuring plaintiff-husband’s standing and reputation in all aspects of his
2 personal and professional life, and of inflicting serious psychological and emotional
3 damage to both plaintiffs, as well as to their family members”); *Ansonia Assocs. Ltd. P ’ship*
4 *v. Ansonia Tenants ’ Coal., Inc.*, 677 N.Y.S.2d 575, 576 (N.Y. App. Div. 1998) (affirming
5 preliminary injunction where “defendants’ conduct was not protected speech but merely
6 an instrument of and incidental to wrongful conduct . . . , calculated to injure plaintiff’s
7 business”) (citation omitted); *Dennis v. Napoli*, 49 N.Y.S.3d 652, 654 (N.Y. App. Div.
8 2017) (upholding preliminary injunction where the defendant’s “unsolicited
9 communications to plaintiff’s professional colleagues, friends, and family about plaintiff’s
10 alleged sexual proclivities . . . cause injury to [the plaintiff’s] reputation, jeopardize her
11 employment, and otherwise unnecessarily intrude upon her right to privacy”); cf. *LoPresti*
12 *v. Florio*, 899 N.Y.S.2d 10, 11 (N.Y. App. Div. 2010) (finding request for injunctive relief
13 “was properly dismissed because there was no evidence of a sustained campaign to
14 interfere with plaintiff’s business that would justify a prior restraint on speech”).

15 The Court previously found that Plaintiffs were entitled to default judgment on their
16 claim for defamation and defamation per se, see ECF No. 97 at 14–16; accordingly, the
17 Court has found that the statements alleged to be false in the FAC are defamatory. Further,
18 it is clear from the evidence submitted by Plaintiffs that Defendant’s False Statements have
19 injured, and will continue to injure, Plaintiffs’ business interests. See, e.g., *Weitsman Decl.*
20 ¶¶ 11–12, 20; *Donnelly Decl.* ¶¶ 6–10; *id.* Exs. 1–3; *Johnson Decl.* ¶¶ 6–13; *id.* Exs. 1–3;
21 *Supp. Weitsman Decl.* ¶¶ 6, 8. Moreover, Defendant has been making these statements for
22 more than four years, since October 2016, despite the initiation of this litigation and the
23 issuance of an arrest warrant. See *Am. 3d Supp. Br.* at 5. Accordingly, it is clear that the
24 False Statements are part of a sustained campaign to injure Plaintiffs’ interests, including
25 their business interests. Therefore, the Court agrees with Plaintiffs that, on the facts of this
26 case, a permanent injunction would not be an impermissible prior restraint on First
27 Amendment-protected speech.

28 ///

1 The Court further agrees that the balance of the equities supports the issuance of an
2 injunction. The evidence establishes that Plaintiffs have suffered significant harm, not
3 readily assigned a monetary value, in losing business and goodwill as a result of
4 Defendant’s statements. See, e.g., Weitsman Decl. ¶¶ 11–12. The evidence also shows
5 that Mr. Weitsman and his family have suffered non-monetary harm as a result of
6 Defendant’s actions. See id. ¶¶ 14–18, 21; see also Supp. Weitsman Decl. ¶¶ 6–8; 2d Supp.
7 Weitsman Decl. ¶¶ 8–10, 13. It also is clear that Plaintiffs will continue to suffer this injury
8 to their business, and that Mr. Weitsman and his family will continue to be harmed in non-
9 compensable ways, unless and until this Court orders Defendant to stop, rendering
10 monetary damages alone inadequate. This degree of harm far outweighs the hardships
11 Defendant will suffer by imposition of a narrowly tailored injunction against speech
12 already found to be defamatory. Further, the public interest would not be disserved by a
13 narrowly tailored injunction in these circumstances. Accordingly, the Court agrees that
14 Plaintiffs have made the necessary showing of entitlement to a permanent injunction. See,
15 e.g., Rombom, 2002 WL 1461890, at *12 (granting modified permanent injunction in
16 defamation case given that “[p]laintiffs have made the requisite showing for a permanent
17 injunction”).

18 However, the Court finds that a number of modifications to Plaintiffs’ Proposed
19 Order are necessary in order for the requested relief to comply with the First Amendment.
20 See *Carroll v. President & Comm’rs of Princess Anne*, 393 U.S. 175, 183–84 (1968) (“An
21 order issued in the area of First Amendment rights must be couched in the narrowest terms
22 that will accomplish the pin-pointed objective permitted by constitutional mandate and the
23 essential needs of the public order. . . . In other words, the order must be tailored as
24 precisely as possible to the exact needs of the case.”) (citation omitted).

25 First, Plaintiffs’ Proposed Order applies to “Defendant and all those acting under his
26 direction or control, including without limitation his past, current and future agents,
27 servants, employees, and assignees, as well as all other persons in active concert or
28 participation with Defendant who receive notice of this Order.” Proposed Order at 5.

1 “There is no evidence in the record, however, to support a finding that anyone other than
2 [Defendant] defamed [Plaintiffs], or that it is likely that [Defendant] will induce others to
3 do so in the future. Therefore, the injunction, to be valid, must be limited to prohibiting
4 [Defendant] personally from repeating h[is] defamatory statements.” Balboa Island Vill.
5 Inn, 40 Cal. 4th at 1160.

6 Second, the Proposed Order prohibits not only the publication of the False
7 Statements themselves, but also any “variation thereof.” See Proposed Order at 8; see also
8 id. at 5 & n.1 (noting that “this restriction includes the publication of any implications,
9 videos, audio commentary, images or pictures that depict or convey the message associated
10 with any False Statement”); see also id. at 7 (requiring removal of “any references,
11 including any partial references, to a False Statement”); see also id. (requiring removal of
12 “any same or similar false and misleading statements, comments, information, or
13 references relative to Plaintiff”). As this Court has already granted Plaintiffs’ request for
14 a default judgment on their claim for defamation and defamation per se, and therefore
15 found the statements alleged in the FAC libelous, the Court finds it proper to enjoin
16 Plaintiff from publishing the libelous statements. Such statements are not protected by the
17 First Amendment, and accordingly an injunction against their repetition would not be a
18 prior restraint. See *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245–46 (2002) (“The
19 freedom of speech has its limits; it does not embrace certain categories of speech, including
20 defamation”) (citation omitted).

21 However, not all of the statements identified in the Proposed Order as False
22 Statements are alleged in the FAC.⁸ Based on the Court’s careful review of the FAC and
23 its exhibits, the Court believes the following statements from the Proposed Order have been
24 determined to be libelous and properly may be enjoined:

25
26 ⁸ Granted, as the YouTube videos cited in the FAC are no longer available, the Court recognizes that it is
27 possible that some of these statements are contained therein. If Plaintiffs submit evidence that some of
28 the statements rejected by the Court appear in the YouTube videos, thus showing Defendant was on notice
from the allegations of the FAC that these statements are allegedly defamatory, the Court, of course, will
entertain a motion to amend the injunction.

- 1 1. Plaintiff is a “murderer”;
- 2 2. Plaintiff conspired, assisted, helped, or aided in the murder of
- 3 Michele Harris;
- 4 3. Plaintiff assisted, helped, or aided Calvin Harris or any other
- 5 person in disposing of Michele Harris’s body;
- 6 4. Plaintiff was paid money by Calvin Harris or other person in
- 7 connection with murder or disappearance of Michele Harris;
- 8 5. Plaintiff assisted, helped or aided Calvin Harris or any other
- 9 person from being found guilty, convicted, arrested, detained,
- 10 liable, responsible, and/or suspected of murdering Michele
- 11 Harris;
- 12 6. Plaintiff’s equipment was used to dispose of Michele Harris’
- 13 body;
- 14 7. Plaintiff was involved in the disappearance of Michele Harris;
- 15 8. Plaintiff sold or sells illegal drugs;
- 16 9. Plaintiff is or has been involved with Joaquín “El Chapo”
- 17 Guzmán;
- 18 10. Plaintiff engaged or engages in money laundering;
- 19 . . .
- 20 15. Plaintiff has raped one or more people . . .

21 Proposed Order at 5–6. Accordingly, the following statements, which do not appear in the
 22 FAC, were not adjudged libelous in the Court’s February 14, 2020 Order:

- 23 11. Plaintiff bribes or have bribed one or more government
- 24 officials;
- 25 12. Plaintiff is or has been involved with covering up the death
- 26 of Michael Burke;
- 27 13. Plaintiff has employed or does employ mostly pedophiles;
- 28 14. Plaintiff fooled the Environmental Protection Agency
- (“EPA”) by removing two feet of contaminated soil at the
- Jamestown Yard

29 Proposed Order at 6. Accordingly, to enjoin these statements might well be an
 30 unconstitutional prior restraint, and the Court therefore declines to extend the injunction to
 31 these statements.

32 Moreover, the Court is concerned that enjoining variations of, depictions of, or
 33 statements that “convey the message” of the False Statements, or statements that
 34 “partial[ly] refer[.]” to the False Statements, is a slippery slope that would potentially result

1 in an unconstitutional prior restraint. For example, Plaintiffs provide the exemplary
2 statement: ““Did the #VicePresident of @UpstateShred admit that he is tracking my IP
3 address? #Binghamton @nyspolice @WBNG12News #CrimeNews #CalHarris.” Id. at 7
4 n.2. However, none of the False Statements allege that Plaintiffs track Defendant’s Internet
5 Protocol address. Thus, the Court does not agree with Plaintiffs that this statement falls
6 within the scope of the properly enjoined statements. And, while the Court is disturbed by
7 Defendant’s posting of “images or photos of Weitsman and/or his family, including his
8 wife and their minor child,” id. at 8, the Court does not believe the posting of personal
9 images alone falls within the scope of the False Statements such that this act is properly
10 subject to the requested injunctive relief. See, e.g., *Brummer v. Wey*, 89 N.Y.S.3d 11, 14
11 (N.Y. App. Div. 2018) (refusing to enjoin speech that, “as offensive as it is, cannot
12 reasonably be construed as truly threatening or inciting violence against plaintiff”). With
13 a heavy heart, the Court must conclude that it cannot extend the injunction to statements
14 other than the False Statements themselves.

15 Third, the Court has concerns about expanding the injunction beyond the parties to
16 this action. Plaintiffs’ Proposed Order extends not just to statements about “any Plaintiff,”
17 but also to statements concerning “any business entity related thereto.” See Proposed Order
18 at 8. But Plaintiffs have not supported this request with evidence that Defendant has made,
19 or has threatened to make, similar statements about any other entities affiliated with
20 Plaintiffs. Accordingly, the Court declines to phrase the injunction to extend to statements
21 about any related business entities beyond the named Plaintiffs.

22 Relatedly, the Court has concerns about ordering third parties, including Twitter,
23 Facebook, Instagram, and YouTube, to take action against Defendant should he fail to
24 remove the material in accordance with the injunction. See Proposed Order at 8–9; see
25 also id. at 9–10 (providing that the Court requests that “Google, Yahoo!, Bing, Facebook,
26 Instagram, Twitter, YouTube, and other websites with the same or similar defamatory
27 content about Plaintiffs remove all associated webpages and URLs from their respective
28 search indexes and websites”). Plaintiffs can request that these third parties voluntarily

1 remove the material in question and/or suspend Defendant’s accounts, see, e.g., Not. of
2 Lodgment at 2, and, should Defendant fail to comply with the terms of the injunction, they
3 can return to this Court and seek to hold Defendant in contempt or sanction him. However,
4 the Court will not compel third parties who have not appeared in this matter to act. Any
5 mandatory injunction is extraordinary, see, e.g., Times Square Stores Corp., 484 N.Y.S.2d
6 at 596 (noting that, in New York, “a mandatory injunction compelling a party to
7 affirmatively act [is] an ‘extraordinary’ and ‘drastic’ remedy”) (citation omitted), and
8 Plaintiffs have cited no authority indicating that such a remedy is appropriate as to parties
9 who are not alleged to have committed any wrongful acts themselves and who have not
10 had an opportunity to oppose the requested relief. During the November 5, 2020 hearing,
11 Plaintiffs’ counsel indicated that the Communications Decency Act of 1996 (“CDA”) may
12 support this request. However, the Court finds that the CDA, in fact, cuts against ordering
13 a third party who has not appeared in the action to remove defamatory speech. See, e.g.,
14 Hassell v. Bird, 5 Cal. 5th 522, 541 (2018) (“Even though plaintiffs did not name Yelp as
15 a defendant, their action ultimately treats it as ‘the publisher or speaker of . . . information
16 provided by another information content provider.’ With the removal order, plaintiffs seek
17 to overrule Yelp’s decision to publish the three challenged reviews. Where, as here, an
18 Internet intermediary’s relevant conduct in a defamation case goes no further than the mere
19 act of publication—including a refusal to depublish upon demand, after a subsequent
20 finding that the published content is libelous—section 230 prohibits this kind of directive.”)
21 (citing 47 U.S.C. § 230(c)(1); Barrett v. Rosenthal, 40 Cal. 4th 33, 48, 53 (2006); Zeran v.
22 Am. Online, Inc., 129 F.3d 327, 330 (4th Cir. 1997); Medytox Sols., Inc. v.
23 Investorshub.com, Inc., 152 So. 3d 727, 731 (Fla. Dist. Ct. App. 2014)), cert. denied sub
24 nom. Hassell v. Yelp, Inc., 139 S. Ct. 940, 203 L. Ed. 2d 131 (2019). The Court fervently
25 hopes that the third parties in question will voluntarily remove the posts in question given
26 the Court’s determination that the posts are defamatory and the Court’s injunction against
27 Defendant’s making or continuing to make the statements in question, but the Court cannot
28 order the third parties to do so.

1 Finally, the Court is concerned that the Proposed Order requires Defendant to take
2 actions beyond his control. For example, the definition of “Forums” in the Proposed Order
3 seems overbroad. While Defendant presumably can easily delete his own posts made on
4 his own social media accounts, it is not clear to the Court that Defendant has the ability to
5 remove the False Statements from, for example, “search engines.” See Proposed Order at
6 6. Moreover, “Forums” includes “lists,” and it is unclear what, precisely, that term
7 encompasses. Further, it is not clear what Defendant may have “caused to be published”
8 (particularly given that, as noted supra at 28–29, there are no allegations that Defendant
9 has engaged or induced others to defame Plaintiffs), or whether Defendant has control over
10 the removal of such content. See Proposed Order at 7. Accordingly, the Court will revise
11 the Proposed Order to only require Defendant to remove those libelous statements he has
12 published himself and which are within his own control.

13 In light of the foregoing, the Court **GRANTS IN PART** Plaintiffs’ request for
14 permanent injunctive relief, as set forth below.

15 **CONCLUSION**

16 In light of the foregoing, the Court **GRANTS IN PART** Plaintiffs’ request for
17 monetary damages. Specifically, the Court **GRANTS** Plaintiffs’ request for “actual”
18 damages in the amount of \$349,797.30; **GRANTS IN PART** Plaintiffs’ request for general
19 damages, awarding them the revised sum of \$600,000; and **GRANTS IN PART** Plaintiffs’
20 request for punitive damages, awarding them the reduced amount of \$50,000, for a total
21 damages award of \$999,797.30.

22 The Court also **GRANTS IN PART** Plaintiffs’ request for permanent injunctive
23 relief, as follows:

24 1. Defendant **SHALL** be permanently restrained and enjoined from libelously
25 publishing, via the Internet or any other medium, any of the following false and defamatory
26 statements (the “False Statements”): (1) that any Plaintiff is a “murderer”; (2) that any
27 Plaintiff conspired, assisted, helped, or aided in the murder of Michele Harris; (3) that any
28 Plaintiff assisted, helped, or aided Calvin Harris or any other person in disposing of

1 Michele Harris’s body; (4) that any Plaintiff was paid money by Calvin Harris or any other
2 person in connection with the murder or disappearance of Michele Harris; (5) that any
3 Plaintiff assisted, helped, or aided Calvin Harris or any other person from being found
4 guilty, convicted, arrested, detained, liable, responsible, and/or suspected of murdering
5 Michele Harris; (6) that Plaintiffs’ equipment was used to dispose of Michele Harris’ body;
6 (7) that any Plaintiff was involved in the disappearance of Michele Harris; (8) that any
7 Plaintiff sold or sells illegal drugs; (9) that any Plaintiff is or has been involved with
8 Joaquín “El Chapo” Guzmán; (10) that any Plaintiff engaged or engages in money
9 laundering; and (11) that any Plaintiff has raped one or more people.

10 2. Within fourteen (14) days of the date of the electronic docketing of this Order,
11 Defendant **SHALL** remove from all websites, forums, blogs, social media websites, and/or
12 other forums of mass communication any and all False Statements pertaining to any
13 Plaintiff that Defendant has published.

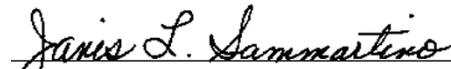
14 3. In the event Defendant fails to comply with this Order, he **MAY** be subject to
15 contempt and/or sanctions.

16 4. The Court **RETAINS** jurisdiction to enforce this judgment.

17 Given that this Order disposes of all remaining issues in this matter, the Clerk of the
18 Court **SHALL ENTER JUDGMENT** in favor of Plaintiffs and **CLOSE** the file.

19 **IT IS SO ORDERED.**

20 Dated: November 20, 2020


21 Hon. Janis L. Sammartino
22 United States District Judge
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