

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 12-2484-GW(SHx) Date March 11, 2013

Title Manwin Licensing International Sarl v. Nicholas Bulgin

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Javier Gonzalez

Anne Kielwasser

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Emily F. Evitt

None Present

**PROCEEDINGS: PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AGAINST  
NICHOLAS BULGIN (filed 01/11/13)**

Court hears argument. The Tentative circulated and attached hereto, is adopted as the Court's final ruling. Plaintiffs' motion is **GRANTED**. Plaintiff will file a proposed judgment forthwith.

Initials of Preparer JG

: 04

**Manwin Licensing Int'l Sarl v. Nicholas Bulgin et al.**, Case No. CV-12-2484-GW (SHx)  
Tentative Ruling on Plaintiff's Motion for Default Judgment

**1. Background**

Plaintiff Manwin Licensing International Sarl ("Plaintiff" or "Manwin") filed suit against Nicholas Bulgin ("Bulgin"), James Martin, and several unnamed individuals (collectively "Defendants"), alleging violations of the Anticybersquatting Consumer Protection Act ("ACPA"), 15 U.S.C. § 1125(d), and asserting state law claims for defamation, intentional interference with prospective advantage, and unfair competition. *See generally* First Amended Complaint ("FAC") (Docket No. 14). Defendants allegedly "engaged in a ruthless and unrelenting campaign of unlawful and harassing conduct against [Plaintiff] and its trademarks" for the "express purpose of coercing [Plaintiff] to pay substantial sums to Defendants to stop their unlawful conduct and to purchase a number of unlawfully acquired, infringing domain names." FAC ¶ 16. Defendant Bulgin is a resident of Hampton, Georgia. Mayer Decl. ¶ 3 (Docket No. 28-1).

Plaintiff is a Luxembourg company "that is one entity in a group of companies collectively referred to as 'Manwin' [.]". Salerno Decl. ¶ 2 (Docket No. 30-1). Plaintiff owns, acquires and licenses adult-oriented trademarks and website domain names. *Id.* Plaintiff is the corporate entity that holds the trademarks and domain names; it does not itself "exploit" these trademarks and domain names. *Id.* ¶ 3. Rather, Plaintiff's trademarks and domain names are licensed to - *and then* used and exploited by - "Manwin companies" based around the world, including Los Angeles. *Id.* ¶¶ 3-4.

Manwin USA, Inc., Manwin D.P. Corp., and Playboy Plus Entertainment, Inc., are the three Manwin companies primarily responsible for conducting Manwin's U.S. operations. *Id.* ¶ 4. All three companies operate out of Burbank, California. *Id.* Manwin's Burbank office is "the hub of Manwin's United States operations, and many of Manwin's U.S. business deals are conducted from that office." *Id.* Manwin's California entities provide Manwin access to Los Angeles, a worldwide center of the adult-entertainment industry where many of the most important producers and distributors of adult content are located. *Id.* ¶ 6. Manwin does business with adult content producers in Los Angeles, and works with a number of internet advertisers, companies, and performers located in L.A. *Id.* Manwin's U.S. operations generate "tens of millions of dollars spent and invested each year in the Los Angeles area." *Id.*

Beginning in the second half of 2011, Defendant Nicholas Bulgin allegedly began to harass and defame Manwin with the alleged goal of extorting Plaintiff. Bulgin purportedly registered or acquired Manwin domain names containing Manwin's trademarks, including "manwin.net" "manwin.co" "manwinsucks.com" and "manwin.us." FAC ¶ 17. After Plaintiff refused to purchase "manwin.net" for \$100,000, Bulgin allegedly told Plaintiff to "kiss [his] rear" and threatened to sell the domain name to another cybsersquatter to "get massive traffic and blow you off the #1 spot in search engines." FAC ¶ 18. Bulgin then allegedly mounted a coordinated campaign intended to force Manwin to purchase the infringing domain names by

using pseudonyms to write e-mails to Plaintiff, its business partners, and the U.S. Patent and Trademark Office. *See, e.g.* FAC ¶¶ 18-22. Bulgin also allegedly created a website called “manwinsucks.com,” in which he purportedly defamed the owner of Manwin. Mayer Decl. ¶ 11; Gignac Decl. ¶ 9 (Docket No. 28-2). To this day, Bulgin allegedly “continues to defame Manwin” via Blogspot and Twitter. Mayer OSC Decl. ¶ 2 (Docket No. 30-2).

Also in 2011, Manwin and Playboy Entertainment Industries (“PEI”), an adult-content producer and the Beverly Hills-based licensor for Manwin’s Playboy Plus Entertainment, were engaged in negotiations “whereby Manwin acquired the Playboy Plus assets.” Salerno Decl. ¶ 8. This deal was publicly reported and ultimately closed on November 1, 2011. *Id.* While the deal was pending, Bulgin allegedly used the fake name “Jim Jagen” to contact PEI and accuse Manwin of using “stolen property.” *Id.*, Ex. 1. Bulgin wrote, “[a]s for your joint venture with Manwin, I suggest you seriously look at who you do business with because it can do great harm to your own company name. Manwin do not seem like people [sic] who care much for the law or about how things should be done.” *Id.* Later, Bulgin copied PEI on an e-mail to Manwin’s legal department, in which he accused Manwin of “illegally profiting using websites that does not [sic] provide legal content,” and threatened to “shut [Manwin’s] sites down one by one.” *Id.*

In addition, after learning that Plaintiff was engaged in unrelated litigation against ICM (a separate entity in control of the “.xxx” registry) in the Central District of California, Bulgin allegedly “exhorted members of the public to register infringing Manwin-related domain names and then re-direct those domains to ICM.” FAC ¶ 22; Salerno Decl. ¶ 9. Manwin’s Los Angeles-based counsel sent a cease-and-desist letter to Bulgin on January 11, 2012. Mayer Decl. ¶ 23. Plaintiff’s original Complaint against Manwin was filed in this district on March 22, 2012. Docket No. 1.

Defendants have not appeared in this action, and the Court Clerk entered default as to Bulgin on October 2, 2012. Docket No. 24. Plaintiff filed a motion for default on January 11, 2013.<sup>1</sup> *See generally* Default Mot. (Docket No. 28). The Court issued an order to show cause regarding personal jurisdiction over Bulgin on February 12, 2013, and Plaintiff submitted additional briefing as to personal jurisdiction on February 25, 2013. *See generally* OSC Brief (Docket No. 30). Presently before the Court is Plaintiff’s motion for default judgment.

## **II. Jurisdiction**

When entry of judgment is sought against a party who has failed to plead or otherwise defend, a district court has an affirmative duty to look into its jurisdiction over both the subject matter and the parties. *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). The Court must thus determine: (1) whether it has subject matter jurisdiction over this action; (2) whether personal jurisdiction exists over Bulgin; and (3) whether Plaintiff effected proper service of process.<sup>2</sup>

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<sup>1</sup> The Court also entered default as to defendant James Martin on October 24, 2012. Docket No. 27. Plaintiff, however, is only seeking a default judgment against Bulgin. *See generally* Docket No. 28.

<sup>2</sup> On entry of a default, well-pled allegations in the complaint regarding liability are generally deemed true. *See Geddes v. United Fin. Corp.*, 559 F.2d 557, 560 (9th Cir. 1977). The Court need not make detailed findings of fact in the event of a default. *See Adriana Int’l Corp. v. Thoeren*, 913 F.2d 1406, 1414 (9th Cir. 1990).

**a. Subject Matter Jurisdiction**

District courts have original jurisdiction to hear civil cases arising under the Constitution, laws or treaties of the United States. 28 U.S.C. § 1331. As indicated above, Plaintiff has asserted claims under the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d). Accordingly, the Court may properly exercise jurisdiction over this matter pursuant to 28 U.S.C. § 1331. Furthermore, because Plaintiff's state law claims for defamation, intentional interference with prospective business advantage, and unfair competition "are so related to [the] claims" within the Court's original jurisdiction, the Court may also properly exercise supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

**b. Personal Jurisdiction**

Plaintiff argues that because "the effects of Bulgin's cybersquatting and defamation were felt in this judicial district," and because Bulgin "targeted Manwin's business, business partners, and the adult entertainment industry in Los Angeles, personal jurisdiction is proper." OSC Brief at 2. For the reasons set forth below, the Court agrees.<sup>3</sup>

"[A] court may exercise personal jurisdiction over a defendant consistent with due process only if he or she has 'certain minimum contacts' with the relevant forum 'such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1205 (9th Cir. 2006) (en banc) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Where no federal statute authorizes personal jurisdiction, the Court applies the law of the state in which the court sits. *Panavision Int'l, L.P. v. Toepfen*, 141 F.3d 1316, 1320 (9th Cir. 1998). California's long-arm statute, Cal. Code Civ. P. § 410.10, extends to the limits of the federal constitution, so the Court need only analyze jurisdiction under federal due process standards. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800-01 (9th Cir. 2004).

"Unless a defendant's contacts with a forum are so substantial, continuous, and systematic that the defendant can be deemed to be 'present' in that forum for all purposes, a forum may exercise only 'specific' jurisdiction - that is, jurisdiction based on the relationship between the defendant's forum contacts and the plaintiff's claim." *Yahoo!*, 433 F.3d at 1205. The Ninth Circuit has established a three-prong test for analyzing a claim of specific jurisdiction:

- (1) The non-resident defendant must purposefully direct activities or consummate some transaction with the forum or resident thereof; or perform some act which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice.

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<sup>3</sup> Manwin Licensing is a Luxembourg company. However, "[i]n judging minimum contacts, a court properly focuses on the relationship among the defendant, the forum, and the litigation." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (U.S. 1984); *Incorp Servs. Inc. v. Incsmart Biz Inc.*, No. 11-CV-4660-EJD-PSG, 2012 U.S. Dist. LEXIS 120751, \* 27 (N.D. Cal. Aug. 24, 2012) ("Keeton...held that a district court may have jurisdiction irrespective of where the plaintiff and defendant reside.")

*Schwarzenegger*, 374 F.3d at 802. Plaintiff bears the burden of satisfying the first two prongs; if it does, Defendants then bear the burden of presenting a “compelling case that the exercise of jurisdiction would not be reasonable.” *Marvix Photo, Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011). There is no requirement that the defendant have any physical contacts with the forum. *See Schwarzenegger*, 374 F.3d at 803. “In the Internet context, the Ninth Circuit has found personal jurisdiction where the defendant deliberately registered the domain name for the purposes of extortion and with the effect of injuring the plaintiff in the forum state.” *Nissan Motor Co., Ltd. v. Nissan Computer Corp.*, 89 F. Supp. 2d 1154, 1160 (C.D. Cal. 2000) (citing *Panavision*, 141 F.3d at 1322).

### 1. Purposeful Direction

The purposeful direction prong “requires that the defendant purposefully direct its activities toward the forum, or purposefully avail itself of the privilege of conducting activities within the forum state.” *MGM Studios Inc. v. Grokster, Ltd.*, 243 F. Supp. 2d 1073, 1082 (C.D. Cal. 2003). “Even where a defendant does not directly contact the forum state, purposeful availment may be demonstrated where the effects of a defendant’s conduct are felt in the forum state.” *Grokster*, 243 F. Supp. 2d at 1088; *see also Panavision*, 141 F.3d at 1320. In intentional tort cases, courts apply the “effects test” to analyze whether a defendant’s tortious behavior was purposefully directed toward the forum state. *Calder v. Jones*, 465 U.S. 783, 789 (1984); *Yahoo!*, 433 F.3d at 1206. Under the effects test, personal jurisdiction over a non-resident defendant is appropriate where the defendant engages in (1) intentional actions; (2) expressly aimed at the forum state; (3) causing harm which the defendant knows is likely to be suffered in the forum state, and which is in fact suffered in the forum state. *Yahoo!*, 433 F.3d at 1206-07.<sup>4</sup>

Here, the Complaint alleges that Bulgin committed a variety of intentional acts, including the registration of a number of domain names that purportedly infringed Plaintiff’s trademarks, and the creation of false personas through which he offered to sell these domain names to Plaintiff. *See, e.g.*, FAC ¶¶ 17-18. Bulgin then threatened to harm Plaintiff when his offers were rejected, and defamed Manwin for the alleged purpose of undermining its business. *Id.* ¶¶ 18, 21. These are just a few of the intentional acts alleged in the FAC, all of which satisfy the first prong of the “effects test.”

Second, in the context of online torts, express aiming requires “something more” than merely “registering someone else’s trademark as a domain name and posting a web site on the Internet[.]” *Panavision*, 141 F.3d at 1322, *accord Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1129 (9th Cir. 2010). In this case, Bulgin not only registered Manwin’s trademarks as his own domain names, he attempted to extort Manwin to pay him for the web addresses. FAC ¶ 18; Gignac Decl. ¶¶ 6-7. Bulgin also allegedly sent defamatory e-mails to PEI, one of Plaintiff’s business partners based in Beverly Hills, in an attempt to derail ongoing negotiations between the two companies in 2011. Salerno Decl. ¶ 8, Exs. 1, 2. Moreover, Bulgin allegedly attempted to interfere with Plaintiff’s pending litigation against ICM in the Central

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<sup>4</sup> Plaintiff correctly points out that while the Ninth Circuit has also applied a “sliding scale” test to measure online jurisdictional contacts, the effects test is more appropriate for intentional tort cases involving transitory conduct such as defamation or infringement of intellectual property. *Grokster*, 243 F. Supp. 2d 1087-88.



District of California by encouraging members of the public to register Plaintiff's trademarks and then re-direct those domains to ICM. FAC ¶ 22. These allegations indicate that Bulgin was engaged in "something more" than merely registering Manwin's trademarks online. *Panavision*, 141 F.3d at 1322 (defendant's "scheme to register Panavision's trademarks as his domain names for the purpose of extorting money from Panavision" was "something more" to demonstrate that the defendant directed his activity toward the forum state); *Nissan Motor Co.*, 89 F. Supp. 2d at 1160 (defendant's "intentional exploitation of consumer confusion supplies the 'something more'" required for express aiming).

Likewise, Bulgin's alleged interference with Plaintiff's pending litigation in Los Angeles, as well as his attempts to undermine Plaintiff's business dealings with Playboy in Beverly Hills, satisfy the requirement that Bulgin cause harm which he knew was likely to be suffered in the forum state. FAC ¶ 22; *see Yahoo!*, 433 F.3d at 1206-07. Before this suit commenced, Bulgin also corresponded and spoke with Plaintiff's counsel (based in Los Angeles) about the nature of this Action. Mayer OSC Decl. ¶ 3. Moreover, as Plaintiff correctly points out, "the 'brunt' of the harm need not be suffered in the forum state. If a jurisdictionally sufficient amount of harm is suffered in the forum state, it does not matter that even more harm might have been suffered [elsewhere]." *Yahoo!*, 433 F.3d at 1207. Therefore, even if Bulgin knew that Manwin Licensing was based in Luxembourg and thus assumed Plaintiff was being harmed overseas, the harm allegedly suffered in California was nonetheless reasonably foreseeable. *Id.*

## ~~2. Claims Arise out of Bulgin's Forum-Related Activities~~

~~A plaintiff establishes that its claims arise from the defendant's forum-related activities "if the plaintiff] would not have been injured 'but for' the defendant's activities" in the forum. *Nissan Motor Co.*, 89 F. Supp. 2d at 1160. The Ninth Circuit has previously held that a defendant's registration of "trademarks as his own domain names on the Internet" had the "effect of injuring [plaintiff] in California." *Panavision*, 141 F.3d at 1322. In *Panavision*, the Ninth Circuit concluded that "but for" the defendant's registration of the domain name, the plaintiff's injury would not have occurred and thus "[plaintiff's] claims arise out of [defendant's] California-related activities." *Panavision*, 141 F.3d at 1322.~~

Here, Bulgin's alleged registration of Manwin's trademarks as his own domain names was similarly a "but for" cause of the harm suffered by Plaintiff in California, as were Bulgin's defamatory emails "to one of Manwin's most important business partners, PEI, which is based in Beverly Hills, California[.]" FAC ¶ 18; Salerno Decl. ¶ 8, Exs. 1, 2.

## 3. Reasonableness

Where a plaintiff satisfies the "purposeful direction" and "arising from" requirements, defendant then bears the burden of presenting a "compelling case that the exercise of jurisdiction would not be reasonable." *Marvix Photo, Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011); *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1487 (9th Cir. 1993) ("[W]here a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable" (citing *Burger King Corp v Rudzewicz*,

471 U.S. 462, 476-77 (1985)). The reasonableness component is designed to ensure that jurisdiction over a person is not exercised absent “fair warning that a particular activity may subject [that] person to the jurisdiction of a foreign sovereign.” *Shaffer v. Heitner*, 433 U.S. 186, 218, (1977) (Stevens, J., concurring) (quoted in *Burger King Corp.*, 471 U.S. at 472).

Here, despite communicating with Plaintiff’s counsel both before and after the commencement of this suit, Defendant Bulgin has not formally responded to any of the documents filed in this Action. He thus fails to present a compelling case as to why the exercise of jurisdiction would be unreasonable. *Levi Strauss & Co. v. Toyo Enter. Co., Ltd.*, 665 F. Supp. 2d 1084, 1094 (N.D. Cal. 2009) (“[B]ecause Defendants have not appeared, they have not raised any challenge to the reasonableness of the Court’s exercise of jurisdiction over them . . . [b]ased on the current record, the undersigned does not see any compelling reason why the Court should decline to exercise jurisdiction over Defendants.”). While Bulgin has failed to appear or present any arguments as to why jurisdiction would be improper, the Court has nevertheless considered the seven factors used in evaluating reasonableness, and agrees with Plaintiff that they weigh in favor of exercising jurisdiction over Bulgin.<sup>5</sup> *Panavision*, 141 F.3d at 1323-24.

### c. Service of Process

Regardless of the method of service employed, a summons and a complaint must be served together. Fed. R. Civ. P. 4(c)(1); *West Coast Theater Corp. v. City of Portland*, 897 F.2d 1519, 1521 (9th Cir. 1990). An individual may be served by delivering a copy of the summons and complaint to the defendant personally. Fed. R. Civ. P. 4(e)(2).

Here, Plaintiff learned through a private investigator that Nicholas Bulgin “is an individual residing in Hampton, Georgia.” Mayer Decl. ¶ 3. Defendant Bulgin was hand-served with a copy of the summons and original Complaint at a residence in Hampton, Georgia on March 29, 2012. Docket No. 10. On July 11, 2012, Bulgin was again hand-served with a copy of the summons and the FAC at the same address in Hampton, Georgia. Docket No. 18. Shortly after the FAC was filed, Plaintiff’s counsel received a phone call from a man purporting to be Bulgin stating that he “was done trying to work with [Plaintiff’s attorney]” and would not attempt to discuss settlement or respond to the Complaint. Docket 28-1 at 7.

The facts above satisfy the Court that the Bulgin was properly served and had “notice of the pendency of a legal action, in a manner and at a time that afford[ed] defendant a fair opportunity to answer the complaint and present defenses and objections.” *Henderson v. United States*, 517 U.S. 654, 671-72 (1996).

Having addressed these preliminary issues, the Court turns to the merits of Plaintiff’s motion for default judgment.

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<sup>5</sup> The seven factors used in evaluating reasonableness are: “(1) the extent of a defendant’s purposeful interjection; (2) the burden on the defendant in defending the forum; (3) the extent of conflict with the sovereignty of the defendant’s state; (4) the forum state’s interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff’s interest in convenient and effective relief; and (7) the existence of an alternative forum.” *Panavision*, 141 F.3d at 1323. The Court agrees with Plaintiff’s explanation as to why these factors, overall, favor the exercise of jurisdiction. See OSC Brief at 15-18.

### **III. Default Judgment**

In its motion for default judgment, Plaintiff seeks: (1) a permanent injunction ordering that Bulgin “and all persons acting under his direction or control” cease and desist from using Manwin’s trademarks and disseminating statements falsely accusing Manwin, its owner, or its employees of criminal conduct; (2) monetary damages in the sum of \$400,000; (3) Attorneys’ fees in the amount of \$11,600; (4) an order requiring “Google, Blogspot, Twitter,” and any other service provider to immediately remove a variety of allegedly infringing domain names; and (5) an order requiring “GoDaddy or any other appropriate domain name registrar to transfer to Manwin or confirm the prior transfer to Manwin” of a variety of domain names containing the word “Manwin.” Default Mot. at 1-2.

Federal Rule of Civil Procedure 55(b)(2) permits a court, following default by a defendant, to enter default judgment in a case. The court has discretion in determining whether to grant or deny a motion for default judgment. *Draper v. Coombs*, 792 F.2d 915, 924-25 (9th Cir. 1986); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092-93 (9th Cir. 1980). The Ninth Circuit has enumerated the following factors to assist courts in determining when entry of default judgment is appropriate:

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

*Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

Upon entry of default, all factual allegations within the complaint are accepted as true, except those allegations relating to the amount of damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). Where a default judgment is granted, the scope of relief is limited by Federal Rule of Civil Procedure 54(c): “A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings.” While default judgments are generally disfavored and any doubts about the propriety of a default are usually resolved against the party seeking a default, *see Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir. 1995), at least one court has noted that, in applying the discretionary standard and factors set forth in *Eitel*, “default judgments are more often granted than denied.” *PepsiCo v. Triunfo-Mex, Inc.*, 189 F.R.D. 431, 432 (C.D. Cal. 1999); *see also* Schwarzer, Tashima, et al., *California Practice Guide: Federal Civil Procedure Before Trial* (2011) § 6:102, at 6-26.1

#### ***a. Plaintiff has Met the Procedural Requirements for Default Judgment***

Under Local Rule 55-1, a party requesting a default judgment must make a showing as to the following: (1) when and against what party the default was entered; (2) as to which pleading the default was entered; (3) whether the defaulting party is an infant or incompetent person; (4) that the Servicemembers Civil Relief Act does not apply; and (5) that notice has been served on the defaulting party, if required by Fed. R. Civ. P. 55(b)(2). *See* C.D. Cal. L.R. 55-1; *see also*



*Phillip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003).

As noted above, Plaintiff served Defendant with the summons and the FAC on July 11, 2012, and default was entered on the FAC on October 2, 2012. *See* Docket Nos. 22-24. Defendant Nicholas Bulgin is neither an infant or incompetent person, nor does the Service-members Civil Relief Act apply. Mayer Decl. ¶16. Defendant has not appeared in the action, meaning that he was not entitled to notice under Fed. R. Civ. P. 55(b)(2), but Bulgin was nevertheless given notice of Plaintiff's motion. *See* Docket No. 28-4 (attached Proof of Service).

***b. The Allegations of the FAC Establish Liability on Manwin's Claims***

As mentioned above, upon entry of default, the facts alleged in the FAC are taken as true. *Heidenthal*, 826 F.2d at 917-18. Here, the FAC pleads facts sufficient to establish that Bulgin is liable for violation of the ACPA, defamation, and unfair competition.<sup>6</sup>

The ACPA authorizes trademark owners to bring a civil suit against any person who: "(i) has a bad faith intent to profit from that mark . . . (ii) registers, traffics in, or uses a domain name that . . . is identical or confusingly similar to or [in certain cases] dilutive of that mark[.]" *Verizon Cal. Inc. v. Navigation Catalyst Sys., Inc.*, 568 F. Supp. 2d 1088, 1094 (C.D. Cal. 2008) (quoting 15 U.S.C. § 1125(d)(1)(A)).<sup>7</sup> Here, the FAC identifies four separate domain names used by Bulgin (FAC ¶ 17) and alleges that Defendant "registered, trafficked in, and/or used [these] infringing Manwin Domains and Blogspot page, which are identical or confusingly similar to the Manwin marks." FAC ¶ 30. The FAC also sufficiently pleads "bad faith": Bulgin has no trademark or intellectual property rights in the Manwin marks, Bulgin has not made any *bona fide* noncommercial or fair use of the Manwin marks, Bulgin attempted to extort payment from Plaintiff for the sale of the Manwin domains, Bulgin registered the domain names using a privacy service and operated them using a pseudonym, and Bulgin intended to divert traffic from the official Manwin websites, or otherwise attract users looking for information concerning Manwin. FAC ¶¶ 28, 30; Gignac Decl. ¶ 3. *See Verizon California*, 568 F. Supp. 2d at 1096 (discussing

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<sup>6</sup> The FAC also included a claim for intentional interference with prospective business advantage. Docket No. 14 at 13. In the motion for default judgment, however, Plaintiff does not reference the intentional interference claim. Docket No. 28.

<sup>7</sup> Congress passed the ACPA in 1999 as an amendment to the Lanham Act. The statute is designed to reach activities that might otherwise fall outside the scope of the Lanham Act, *i.e.*, the bad faith registration of domain names with intent to profit from the goodwill associated with the trademarks of another, or "cybersquatting." *See* S.Rep. No. 106-140, at 4 (1999); *see also Porsche Cars N. Am., Inc. v. Porsche.Net*, 302 F.3d 248, 260-61 (4th Cir. 2002) ("We may and do conclude that the enactment of the ACPA eliminated any need to force trademark-dilution law beyond its traditional bounds in order to fill a past hole, now otherwise plugged, in protection of trademark rights. As the Second Circuit remarked, the ACPA 'was adopted specifically to provide courts with a preferable alternative to stretching federal dilution law when dealing with cybersquatting,'" (quoting *Sporty's Farm L.L.C. v. Sportsman's Mkt., Inc.*, 202 F.3d 489, 497 (2d Cir. 2000))). Congress has enumerated nine nonexclusive factors for the courts to consider in determining whether bad faith exists. *See* 15 U.S.C. § 1125(d)(1)(B)(i). The Court, however, need not "march through the nine factors seriatim because the ACPA itself notes that the use of the listed criteria is permissive." *Lahoti v. Vericheck, Inc.* 586 F. 3d 1190, 1203 (9th Cir. 2009). Rather, the Court must look at the individual circumstances of the case, including whether the infringing activity was willful. *Id.*

non-exclusive factors used to analyze bad faith under 15 U.S.C. § 1125 (d)(1)(B)(i)). Thus, the facts set forth in the FAC sufficiently allege that Bulgin has violated the ACPA.

Under California law, the elements of defamation are: “(a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage.” *Lee Myles Assocs. Corp. v. Paul Rubke Enter., Inc.*, 557 F. Supp. 2d 1134, 1139 (S.D. Cal. 2008) (quoting 5 Witkin, *Summary of Cal. Law: Torts* § 529 (10th ed. 2005)). Here, the FAC alleges that Bulgin created a website called “manwinsucks.com” in which he posted false information about Manwin, including that Manwin “upload[s] illegal content found all over the net that they didnt [sic] pay for,” that Manwin’s websites are “a messed up scam . . . that use peoples['] private adult videos to sell their own products[,]” and that Manwin “recently had assets seized by the US government since they were said to be doing illegal financial schemes through the state of Georgia.” FAC ¶ 21. Bulgin posted these statements with knowledge of their falsity to cause those seeking information about Manwin via search engines to retrieve the defamatory material, along with links to the “manwinsucks.com” domain name. *Id.* Bulgin also used Blogpost and Twitter to claim that Manwin “was involved in child pornography.” *Id.* ¶ 26. The statements “damaged Manwin’s reputation and caused economic harm.” *Id.* ¶ 35. These allegations are sufficient to state a claim for defamation under California law.

Finally, the FAC also sufficiently states a violation of California’s Unfair Competition Law (“UCL”), which prohibits “any unlawful, unfair or fraudulent business act or practice[.]” Cal. Bus. & Prof. Code § 17200. “By proscribing any unlawful business practice, section 17200 borrows violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable.” *Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tele. Co.*, 20 Cal. 4th 163, 180 (1999). “An ‘unlawful’ business practice or act within the meaning of the UCL is an ‘act or practice, committed pursuant to business activity, that is at the same time forbidden by law.’” *People ex rel. Harris v. Pac Anchor Transp., Inc.*, 195 Cal. App. 4th 765, 773 (2011) (citation omitted). As set forth above, Plaintiff has sufficiently alleged violations of the ACPA which, in turn, may be used as the basis for Plaintiff’s UCL claim arising out of Bulgin’s attempted domain sale activities. *See Solid Host, NL v. Namecheap, Inc.*, 652 F. Supp. 2d 1092, 1120 (C.D. Cal. 2009) (“Because [plaintiff] has sufficiently alleged that [defendant] engaged in [cybersquatting], a business practice that violated a law other than the UCL, *i.e.*, the ACPA, it has stated an unfair competition claim.”).

### ***c. Consideration of the Eitel factors***

As noted above, in exercising its discretion to enter default judgment, the Court may consider the seven factors enumerated by the Ninth Circuit in *Eitel*. 782 F.2d at 1471-72. In this case, overall, those seven factors favor default judgment against Bulgin.

The first *Eitel* factor considers whether Manwin will suffer prejudice if default judgment is not entered. *Eitel*, 782 F.2d at 1471-72. Prejudice exists where a plaintiff is “denied the right to judicial resolution of the claims presented, and would be without other recourse for recovery.” *Elektra Entm’t Group Inc. v Crawford*, 226 F.R.D. 388, 392 (C.D. Cal. 2005). Were default judgment not entered in this case, Plaintiff would be without recourse against Bulgin’s ongoing campaign of defamation and harassment. Gignac Decl. ¶ 13. Bulgin’s continued publication of false statements and accusations of criminal conduct against Manwin and its owner are causing

ongoing harm to Manwin. Mayer Decl. ¶¶ 11-12. Without a default judgment, Manwin would be deprived of judicial resolution for its claims for violation of the ACPA, defamation, and unfair competition.

The second and third *Eitel* factors - the merits of Plaintiff's claim and sufficiency of the complaint - also weigh in favor of a default judgment. As set forth above, the FAC properly alleges claims for violations of the ACPA, defamation, and unfair competition. See *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal 2002) (the second and third *Eitel* factors "require that a plaintiff state a claim on which the [plaintiff] may recover.")

Under the fourth *Eitel* factor, "the court must consider the amount at stake in relation to the seriousness of [Defendants'] conduct." *PepsiCo*, 238 F. Supp. 2d at 1176-77; see also *Eitel*, 782 F.2d at 1471-72 ("The Court considers Plaintiff's declarations, calculations, and other documentation of damages in determining if the amount at stake is reasonable"). Default judgment is disfavored when a large amount of money is involved or unreasonable in light of the potential loss caused by the defendant's actions. See *Totten v. Hurell*, No. 00-2718, 2001 U.S. Dist. LEXIS 20259, at \*2 (N.D. Cal. Nov. 28, 2001).

The relief requested by Plaintiff will be addressed more fully below, but for the purposes of the analysis under *Eitel*, the amount sought by Manwin in the FAC is reasonable in relation to Bulgin's misconduct. The FAC seeks the maximum statutory damages under the ACPA, which provides that a trademark owner is entitled to recover an amount between \$1,000 and \$100,000. 15 U.S.C. § 1117(d). In light of Bulgin's serial cybersquatting, which commenced in July 2011, as well as his attempted extortion and repeated acts of defamation, the damages sought in the FAC are "reasonable under the circumstances." *HICA Educ. Loan Corp. v. Warne*, No. 11-CV-04287-LHK, 2012 U.S. Dist. LEXIS 49138, at \*7-9 (N.D. Cal. Apr. 6, 2012) (analyzing defendant's misconduct under the fourth *Eitel* factor).

On balance, the fifth *Eitel* factor, which requires the Court to consider the possibility of a dispute as to any material facts in the case, also favors default judgment. Here, Manwin conducted an extensive investigation revealing that "all of the e-mails that Plaintiff had received concerning the Infringing Domain Names originated from the same IP address," and further discovered that this address was "assigned to Defendant Nicholas Bulgin." Mayer Decl. ¶ 3. Plaintiff's investigators then "contacted Bulgin to request that he cease his conduct and transfer the Infringing Domain Names." *Id.* ¶ 4. The following day, Plaintiff's counsel "spoke to Bulgin over the phone," and Bulgin said that "he wished to resolve the dispute and would transfer the Infringing Domain Names." *Id.*

Bulgin did not, however, continue cooperating with Plaintiff. *Id.* ¶¶ 4-7. Rather, Bulgin proceeded to harass and defame Manwin over Twitter and Blogspot as part of a scheme to extort Plaintiff yet again. FAC ¶¶ 23-26. The evidence derived from Plaintiff's extensive investigation, along with Defendant's refusal to participate in this suit, convince the Court that the fifth *Eitel* factor favors default judgment. See *FDIC v. Lamarsh Fin. Inc.*, No. CV 10-0872 DOC, 2011 U.S. Dist. LEXIS 110042, at \*9 (C.D. Cal. Sept. 26, 2011) ("With respect to the fifth factor, in light of Defendants' wholesale failure to respond to Plaintiff's complaint, the likelihood of a dispute concerning material facts developing appears to be minimal . . . In any event, Plaintiff has provided substantial evidence in support of their allegations, indicating that a true dispute on the facts would have been unlikely even if Defendants had chosen to contest Plaintiff's claims.").

There is also nothing to suggest that Bulgin's failure to participate in this litigation is due to excusable neglect, the sixth *Eitel* factor. On two separate occasions, Bulgin was served with summonses and copies of the pleadings. Mayer Decl. ¶ 14. Furthermore, Bulgin communicated with Manwin and its counsel multiple times during this litigation, but he has refused to participate. Mayer Decl. ¶¶ 5-6.

Finally, while the seventh *Eitel* factor - the policy for deciding a case on the merits - weighs against an entry of default judgment, "this factor, standing alone, cannot suffice to prevent entry of default judgment[.]" *Warner Bros. Entm't Inc. v Cardi*, 346 F. Supp. 2d 1068, 1073 (C.D. Cal. 2004). "While the policy favoring [a] decision on the merits generally weighs strongly against awarding default judgment, district courts have regularly held that this policy, standing alone, is not dispositive, especially where a defendant fails to appear or defend itself in an action." *Warne*, 2012 U.S. Dist. LEXIS 49138 at \*9.

In the aggregate, the Court would find that this last factor is outweighed by the other six factors favoring default judgment against Bulgin.

#### ***d. The Relief Sought***

"A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings." Fed. R. Civ. Proc. 54(c). A plaintiff must "prove up" the amount of damages that it is claiming. *Phillip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 501 (C.D. Cal. 2003). In determining damages, a court can rely on the declarations submitted by the plaintiff or order a full evidentiary hearing. Fed. R. Civ. Proc. 55(b)(2). Injunctive relief is available in the default judgment setting. *Castworld Prods.*, 219 F.R.D. at 502.

In the instant motion, Manwin seeks a permanent injunction, statutory damages in the amount of \$400,000, and \$11,600 in attorneys' fees. See Default Mot. at 1-3.

#### ***1. Injunctive Relief***

Manwin asks the Court to enjoin Bulgin from: (1) creating domain names, Twitter accounts, or Blogspot Pages that use Manwin's trademarks or are confusingly similar to Manwin's trademarks; and (2) further disseminating, publishing or re-publishing Bulgin's previous defamatory statements about Manwin and its owner Fabian Thylmann. FAC ¶¶ 27- 33, Prayer; Default Mot. at 18. Plaintiff also asks the Court for an order transferring or removing a variety of the infringing and defamatory websites. FAC ¶¶ 27- 33, Prayer; Default Mot. at 2.

"15 U.S.C. § 1116(a) vests the district court [has] the 'power to grant injunctions according to principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right' of the trademark owner." *Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1137 (9th Cir. 2006). In fact, "[i]njunctive relief is the remedy of choice for trademark and unfair competition cases, since there is no adequate remedy at law for the injury caused by a defendant's continuing infringement." *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d 1175, 1180 (9th Cir. 1988).

In order for the Court to grant a permanent injunction, Plaintiff must demonstrate: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of 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.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, (2006).

Here, the Court agrees with Plaintiff that Bulgin’s conduct is causing injury to Manwin’s goodwill and reputation. *See Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1084 (C.D. Cal. 2012) (granting permanent injunction on Lanham Act claim because “Plaintiff would suffer irreparable injury from the ongoing damages to its goodwill and diversion of customers to counterfeit services.”). The Court also concludes that money damages are unlikely to deter Bulgin from his ongoing campaign of cybersquatting and defamation, particularly in light of his failure to appear in this litigation. *City of Carlsbad v. Shah*, 850 F. Supp. 2d 1087, 1113 (S.D. Cal. 2012) (granting permanent injunction in copyright, trademark, and ACPA case where defendant continued to use infringing domains after plaintiff initiated the lawsuit: “Given [defendant’s] behavior to date, there is a continued threat that [defendant] will continue to engage in such unlawful conduct. [Plaintiff’s] injury cannot be remedied by monetary compensation alone.”). A balancing of the hardships also favors Manwin: Bulgin will not be harmed by the proposed injunction because “an injunction would merely require [defendant] to comply with the law.” *Shah*, 850 F. Supp. 2d at 1113. By contrast, without an injunction, Manwin’s trademarks and reputation will continue to be harmed. *See Electronics Boutique Holdings Corp. v. Zuccarini*, No. 00-4055, 2000 U.S. Dist. LEXIS 15719, at \*22 (E.D. Pa. October 30, 2000) (“[I]t is impossible to determine the number of existing customers diverted from [plaintiff’s] website [and loss of reputation caused] by [defendant’s] domain misspellings”). Finally, “[t]he public has an interest in avoiding confusion between two companies’ products.” *Internet Specialities W., Inc. v. Milon-DiGiorgio Enter., Inc.*, 559 F.3d 985, 993 n. 5 (9th Cir. 2009). The fourth factor thus weighs in favor of Manwin, given that “the public interest is served when trademark holders’ rights are protected against infringement.” *Belks Media v. OnlineNIC*, No. C09-00198 HRL, 2010 U.S. Dist. LEXIS 143946, at \*14 (N.D. Cal. Aug. 23, 2010).

The Court should therefore GRANT Plaintiff’s request to enjoin Bulgin from creating domain names, Twitter accounts, or Blogspot Pages that use Manwin’s trademarks or are confusingly similar to Manwin’s trademarks, including “Manwin” and “Brazzers.” The Court should further GRANT Plaintiff’s request for an order transferring to Manwin and/or removing the domain names of the infringing websites identified by Plaintiff in the FAC and its notice of default judgment: [www.manwin.net](http://www.manwin.net), [www.manwin.co](http://www.manwin.co), [www.manwinsucks.com](http://www.manwinsucks.com), [www.manwin.us](http://www.manwin.us), [brazzers.us](http://brazzers.us), <http://manwinsucks.blogspot.com>, <http://manwinexposed.blogspot.com>, <http://manwinexposed.de>, <http://manwinexposed.blogspot.ca>, <http://manwinexposed.blogspot.se>, as well as “all Blogspot pages beginning with the URL <http://manwinexposed.blogspot>” that are located at “any other top-level domain.” FAC ¶¶ 26-30, Prayer; Default Mot. at 2. The request for an order to remove the Twitter account “ManwinExposed” would also be GRANTED, provided that this account, in its entirety, infringes Manwin’s marks.

For similar reasons, the Court would also order Defendant to remove the *existing* defamatory statements identified and specifically alleged in the FAC. Upon entry of default, these allegations are deemed true and, as mentioned above, Plaintiff has sufficiently stated a claim for defamation under California law.

However, Plaintiff’s motion for a permanent injunction with respect to Bulgin’s *future or continued* dissemination or republication of defamatory speech is DENIED. *See Oakley, Inc. v.*

*McWilliams*, 879 F. Supp. 2d 1087, 1093 (C.D. Cal. 2012) (“[T]his court declines to depart from the wisdom of precedent, and reaffirms the longstanding rule that injunctions of speech in defamation cases are impermissible under the First Amendment. The court therefore DENIES Plaintiffs’ Motion for a Permanent Injunction with respect to Defendant’s speech.”).<sup>8</sup>

## 2. Statutory Damages Under the ACPA

At its election, a trademark owner may recover either statutory or actual damages for a violation of the ACPA. 15 U.S.C. § 1117(d). Manwin has elected to recover statutory damages. FAC ¶ 31; Default Mot. at 14. “[I]f statutory damages are elected, [t]he court has wide discretion in determining the amount of statutory damages to be awarded, constrained only by the specified maxima and minima.” *Columbia Pictures Television, Inc. v. Krypton Broad. of Birmingham, Inc.*, 259 F.3d 1186, 1194 (9th Cir. 2001) (discussing statutory damages provisions of the Copyright Act) (citations omitted); *GoPets Ltd v. Hise*, 657 F.3d 1024, 1034 (9th Cir. 2011) (“The language of ACPA’s statutory damages provision is essentially identical to the language of the copyright damages provision[.]”).

“While the ACPA requires only that a court enter a damages award that it ‘considers just,’ 15 U.S.C. § 1117(d), courts generally consider a number of factors in making such determinations, including [1] the egregiousness or willfulness of the defendant’s cybersquatting, [2] the defendant’s use of false contact information to conceal its infringing activities, [3] the defendant’s status as a ‘serial’ cybersquatter - i.e., one who has engaged in a pattern of registering and using a multitude of domain names that infringe the rights of other parties - and [4] other behavior by the defendant evidencing an attitude of contempt towards the court or the proceedings.” *Verizon California Inc. v. Onlinenic, Inc.*, No. C-08-2832 JF (RS), 2009 U.S. Dist. LEXIS 84235, at \*8-9 (N.D. Cal. Aug. 25, 2009).

For reasons already identified in this Order, each of these factors favors a substantial award of damages under the ACPA. Bulgin registered the Manwin domains knowing that they infringed Manwin’s trademarks (FAC ¶ 17); attempted to extort payment from Manwin for the domains (FAC ¶ 18); created false personas to defame Plaintiff (Mayer Decl. ¶ 8); “serially” registered numerous infringing domains (Mayer Decl. ¶ 3 Ex. 1); and has refused to participate in these proceedings (Mayer Decl. ¶ 14).

However, while the Court agrees with Plaintiff that it is entitled to statutory damages under the ACPA, the Court notes that “a default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings.” Fed. R. Civ. Proc. 54(c). Here, the FAC states that Manwin is entitled to damages in an amount to be proven at trial or, in the alternative, “maximum statutory damages of \$100,000 pursuant to 15 U.S.C. § 1117(d).” FAC ¶ 31. But in its motion for default judgment, Plaintiff seeks \$400,000 in statutory damages “[f]or each

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<sup>8</sup> Similar to this case, in *Oakley*, the plaintiffs identified existing statements that the court previously found libelous and asked the court to enjoin the defendant “from repeating these defamatory statements.” *Oakley*, 879 F. Supp. 2d at 1088. After a lengthy discussion of unconstitutional prior restraints under the First Amendment, the *Oakley* court refused to issue an injunction: “The injunction here, like injunctions against defamation in general, would also be ineffective, overbroad or both. The injunction could ‘be limited to the exact communication already found to be defamatory,’ but it would then be ‘useless because a defendant [could] avoid its restrictions by making the same point using different words.’” *Id.* at 1090-91.

infringing domain name[.]” Def. Mot. at 14-15. While the relief requested by Manwin in the FAC is otherwise largely the same as what Manwin seeks in its motion for default judgment, the specific amounts of statutory damages expressly identified under 15 U.S.C. § 1117(d) (\$100,000 in the FAC compared to \$400,000 in the motion for default judgment) differ significantly. Therefore, under Rule 54(c), the Court is precluded from awarding Manwin the amount in excess of what was originally demanded in the FAC.<sup>9</sup> Bulgin “might understandably have decided to appear and defend this suit” if \$400,000 in damages were at stake instead of \$100,000. *Tragni v. Southern Elec. Inc.*, No. 09-CV-0032 JF (RS), 2010 U.S. Dist. LEXIS 86818, at \*5-7 (N.D. Cal. Sept. 22, 2009) (plaintiffs barred from the “larger recovery” sought in their motion for default judgment where the complaint originally requested a smaller amount); *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 923-24 (C.D. Cal. 2010) (denying plaintiff’s request for prejudgment interest where plaintiff failed to pray for such damages in the complaint).

The Court would not, therefore, award Plaintiff damages beyond the \$100,000 specifically mentioned in the FAC.<sup>10</sup>

### 3. Attorneys’ Fees

The Lanham Act provides that “[t]he court in exceptional cases may award reasonable attorneys fees to the prevailing party.” 15 U.S.C. § 1117(a)(3). The interpretation of what constitutes an “exceptional case” is a question of law. *Earthquake Sound Corp. v. Bumper Indus.*, 352 F.3d 1210, 1216 (9th Cir. 2003). Exceptional cases include those in which the infringing party acted maliciously, fraudulently, deliberately or willfully. See *Gracie v. Gracie*, 217 F.3d 1060, 1068 (9th Cir. 2000).

In this case, Bulgin allegedly registered the Manwin domain names in bad faith, tried to

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<sup>9</sup> In the FAC, Plaintiff’s claim for relief under the ACPA realleged “each and every allegation set forth [in the preceding paragraphs],” and specifically mentioned Defendants’ use of “the infringing Manwin Domains” and “Blogspot Page” that incorporated the Manwin Marks. FAC ¶¶ 27-30. Elsewhere, the FAC referenced “numerous domain names containing Manwin trademarks, including but not limited to” four specific domain names. FAC ¶ 17. The Prayer for Relief also generally requested “statutory damages under 15 U.S.C. § 1117(d).” FAC, Prayer. However, the FAC expressly referred to a dollar value “of \$100,000 pursuant to 15 U.S.C. § 1117(d).” FAC ¶ 31. While subsection 1117(d) technically provides for up to \$100,000 “per domain name,” the FAC, on the whole, suggested that Plaintiff was seeking a *total* of \$100,000 in ACPA damages. If Plaintiff intended to allege four separate counts for \$100,000 in damages “for each infringing domain name,” as it does in its motion for default judgment (Default Mot. at 14-15), those allegations and the total amount of \$400,000 were not clear from the FAC. *Silge v. Merz*, 510 F.3d 157, 160-61 (2d Cir. 2007) (“By limiting damages to what is specified in the ‘demand for judgment,’ [Rule 54(c)] ensures that a defendant who is considering default can look at the damages clause, satisfy himself that he is willing to suffer judgment in that amount, and then default without the need to hire a lawyer”).

<sup>10</sup> The FAC also seeks “such other relief as this Court may deem just and proper.” (FAC, Prayer). That boilerplate language is insufficient to put a defendant on notice of the specific damages sought as required by Rule 54(c). See *Silge*, 510 F.3d at 160 (“In reaching this result, we must reject Silge’s argument that his demand for pre-judgment interest was implied by his generic request for ‘such other and further relief which this Court deems just and proper.’ It has been observed that ‘language . . . seeking “such other and further relief as the court may deem proper” is mere boilerplate, meant to cover all bases as to the claims asserted in the complaint.’ *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1277 n. 6 (9th Cir. 2006). Whatever its import in other contexts, this formulaic language cannot substitute for the meaningful notice called for by Rule 54(c), which anticipates that defendants will look to the demand clause to understand their exposure in the event of default”).

extort Plaintiff for payment, disregarded Plaintiff's trademarks, and repeatedly engaged in cybersquatting. FAC ¶¶ 17, 20. Bulgin also allegedly used the Manwin domains as a platform to defame and harass Manwin, and he continued his attacks despite receiving a cease-and-desist letter from Plaintiff's counsel before the initiation of this lawsuit. *Id.* ¶¶ 21-26. Bulgin's infringing conduct was, in other words, "willful, deliberate, knowing" and "malicious." *Earthquake Sound*, 352 F.3d at 1216. Indeed, the facts here closely parallel those of *Lahoti v. Verichack, Inc.*, 636 F.3d 501, 511 (9th Cir. 2011), in which the Ninth Circuit affirmed the district court's finding that the case was "exceptional" because the defendant had "attempt[ed] to extort thousands of dollars from [plaintiff]," disregarded the plaintiff's trademark rights, and engaged in a "pattern and practice of cybersquatting[.]" Under Ninth Circuit precedent, therefore, Bulgin's conduct makes this an "exceptional case" and Manwin is entitled to reasonable attorneys' fees.

Pursuant to Local Rule 55-3, Manwin seeks \$11,600 for its attorneys. Default Mot. at 24. However, as explained above, because Plaintiff's complaint referenced only \$100,000 in statutory damages, Manwin is not entitled to the \$11,600 in fees that would be awarded for \$400,000 in damages. Rather, according to Local Rule 55-3, assuming the Court decides to award \$100,000 in statutory damages, the amount of attorneys' fees should be \$5,600 (\$3600 plus 4% of the amount over \$50,000).

#### **IV. Conclusion**

The Court would GRANT Plaintiff's motion for default judgment and enjoin Bulgin from creating domain names, Twitter accounts, or Blogspot Pages that use Manwin's trademarks or are confusingly similar to Manwin's trademarks.

The Court would GRANT Plaintiff's request for an order transferring the domain names www.manwin.net, www.manwin.co, www.manwinsucks.com, www.brazzers.us, and www.manwin.us to Plaintiff.

The Court would GRANT Plaintiff's request for an order removing the existing defamatory and/or infringing domain names, Twitter accounts and Blogspot pages.

The Court would DENY Plaintiff's motion to enjoin Bulgin from engaging in future defamatory conduct.

The Court would GRANT Plaintiff's request for statutory damages under the ACPA up to \$100,000.

The Court would GRANT Plaintiff's request for costs and for attorneys' fees (the latter up to the amount of \$5,600).