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FOR PUBLICATION

**IN THE SUPERIOR COURT
 FOR THE
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**AMERICAN HERBAL ESSENCE GROUP,)
 AMERICAN CREATE BEAUTY CORP.,)
 AND DONGSHENG CORPORATION,)**

CIVIL ACTION NO. 19-0318

Plaintiffs,

**ORDER GRANTING IN PART AND
 DENYING IN PART PLAINTIFFS'
 MOTION FOR DEFAULT JUDGMENT**

vs.

**IMPERIAL PACIFIC INTERNATIONAL)
 (CNMI), LLC,)**

Defendant.

I. INTRODUCTION

This matter came before the Court on May 25, 2021 at 10:00 a.m. in Courtroom 202A, Guma Hustisia, Susupe, Saipan, Commonwealth of the Northern Mariana Islands on Plaintiffs' Motion for Default Judgment. Plaintiffs American Herbal Essence Group, American Create Beauty Corporation, and American Dongsheng Corporation (collectively, "Plaintiffs") appeared before the Court through counsel, Attorney Oliver Manglona, standing in for Attorney Robert T. Torres. Defendant Imperial Pacific International (CNMI), LLC ("Defendant") appeared before the Court through counsel, Attorney Stephen J. Nutting. At the hearing, the Court heard the testimony of Mr. Weidong Guo ("Mr. Guo"), principal and owner of Plaintiffs, and Mr. Guo, Cao Qian aka "Steve" Qian ("Mr. Qian"), President and owner of USA Fanter Corporation ("USA Fanter").

By Order of the Court, Judge TERESA KIM-TENORIO

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1 At the conclusion of the evidentiary hearing, the Court ordered counsels to submit Findings
2 of Facts and Conclusions of Law by July 16, 2021. Both parties timely submitted Findings of Facts
3 and Conclusions of Law on July 16, 2021.¹

4 Based on a review of the parties' filings, testimonies of the witnesses, oral arguments and
5 applicable law, the Court hereby **GRANTS IN PART** and **DENIES IN PART** Plaintiffs' Motion
6 for Default Judgment.

7 **II. BACKGROUND**

8 Plaintiffs are corporations duly organized under the laws of the Commonwealth of the
9 Northern Mariana Islands and are authorized to operate Plaintiffs' businesses on Saipan. *See* Compl.
10 at ¶¶ 3–5. Defendant operates a casino which was undergoing extensive construction directly across
11 from Plaintiffs' leased premises. *See id.* at ¶ 15. Plaintiffs operate a restaurant and retail business in
12 Garapan, Saipan, in a commercial space situated in Lot 002 D 76. *See id.* at ¶¶ 3, 7. Lot 002 D 76
13 abuts a public side-street, Coral Tree Avenue, which cuts directly between Defendant's casino and
14 Plaintiffs' businesses. *See id.* at ¶ 8. At the hearing on May 25, 2021, Mr. Guo testified that Lot 002
15 D 76 is located in the heart of Garapan's tourist district and that he selected this area to operate his
16 retail and restaurant businesses in the hopes of attracting more customers, including Defendant's
17 casino patrons. *See* Pls.' [Proposed] Findings of Facts and Conclusions of Law After Default J.
18 Hearing at 3, 5.

19 **A. Plaintiffs' Lease Agreements**

20 The Plaintiffs are the current sublessees of the commercial building located on Lot 002 D 76
21 in Garapan, consisting of two floors and a rooftop area. *See* Compl. at ¶ 7. Lam's Enterprises, Inc.
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25 ¹ Defendant timely submitted its Findings of Facts and Conclusions of Law as part of its (Proposed) Order Denying Plaintiff's Motion for Entry of Default Judgment and Entry of Order of Dismissal on July 16, 2021. Defendant also submitted an identical proposed order on July 17, 2021.

1 (“Lam's Enterprises”) was Plaintiffs' landlord for the commercial building situated in Lot 002 D 76.
2 *See id.* at ¶ 9.

3 American Dongsheng occupies Unit 1, on the first floor of the commercial building, by virtue
4 of a three-year commercial sublease agreement with Lam's Enterprises, which took effect on
5 February 1, 2018 and expired on January 31, 2021. *See id.* at ¶ 10. This sublease was signed and
6 executed on December 1, 2017. *See id.* Mr. Guo testified that the monthly rental price for this
7 sublease was \$5,000.00 per month. *See Pls.’ [Proposed] Findings of Facts and Conclusions of Law*
8 *After Default J. Hearing* at 3.

9 American Herbal occupies Units 2 and 5, which are also located on the first floor of the
10 commercial building, by virtue of a three-year commercial sublease agreement with Lam's
11 enterprises, which took effect on February 1, 2018 and expired on January 31, 2021. *See Compl. at*
12 *¶ 11.* This sublease was signed and executed on December 1, 2017. *See id.* Mr. Guo testified that
13 the monthly rental price for this sublease was \$2,500.00 per month. *See Pls.’ [Proposed] Findings*
14 *of Facts and Conclusions of Law After Default J. Hearing* at 4.

15 American Create Beauty occupies Units 3 and 5 of the commercial building, by virtue of a
16 three-year commercial sublease agreement with Lam's Enterprises, which took effect on October 1,
17 2018 and expired on September 30, 2021. *See Compl. at ¶ 12.* This sublease was signed and executed
18 in July of 2018. *See id.* Mr. Guo testified that the monthly rental price for this sublease was \$3,500.00
19 per month. *See Pls.’ [Proposed] Findings of Facts and Conclusions of Law After Default J. Hearing*
20 *at 4.*

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22 American Create Beauty also occupies the third floor of the commercial building, by virtue
23 of a three-year commercial sublease agreement with Lam's Enterprises, which took effect on
24 November 1, 2018 and expires on October 31, 2021. *See Compl. at ¶ 13.* This sublease was signed
25 and executed on October 12, 2018. *See id.* Mr. Guo testified that the monthly rental price for this

1 sublease was \$1,000.00 per month. *See* Pls.’ [Proposed] Findings of Facts and Conclusions of Law
2 After Default J. Hearing at 4. Mr. Guo also testified that although the sublease was for the third floor
3 of the commercial building, the third floor is actually the rooftop area of the commercial building.
4 *See id.*

5 Mr. Guo testified that he sought assistance from his landlord for rent abatement because he
6 was not able to fully utilize the entire commercial space due to Defendant’s continuous and
7 bothersome construction activities in the area. *See* Pls.’ [Proposed] Findings of Facts and
8 Conclusions of Law After Default J. Hearing at 8. Mr. Guo also testified that the owner of Lam’s
9 Enterprises has a son who works for Defendant, which may have been the reason for Lam’s
10 Enterprises’ refusal to cooperate with Plaintiffs with rent. *See id.* Mr. Guo testified that he stopped
11 paying rent to Lam’s Enterprises from December 2018 through March 2019. *See id.* at 9.

12 Mr. Guo testified that, because he failed to pay rent, Lam’s Enterprises brought a lawsuit
13 against the Plaintiffs in *Lam Enterprise v. American Herbal Essence*, No. 19-0113-CV (NMI Super.
14 Ct. Mar. 28, 2019). *See id.* Mr. Guo further testified that the Plaintiffs and Lam’s Enterprises entered
15 into a settlement agreement in that lawsuit to continue the subleases through December 2019,
16 terminate the subleases prematurely on or before December 2019, and hold Plaintiffs liable to pay
17 the monthly rent on the four subleases from December 2018 through December 2019. *See id.*

18 Plaintiffs claim to have expended \$9,134.00 in attorney’s fees and costs in the lawsuit brought
19 by Lam’s Enterprises. *See id.* Plaintiffs claim they were ultimately obligated to pay Lam’s
20 Enterprises \$156,000.00 for rent on the four subleases from December 2018 through December
21 2019, despite Plaintiffs’ alleged inability to fully operate their businesses and utilize the entire
22 commercial building for much of that period. *See id.*

1 **B. Plaintiffs’ Renovations**

2 Mr. Guo testified that Plaintiffs American Dongsheng and American Herbal began operating
3 their businesses out of the commercial space in Lot 002 D 76 on February 1, 2018, but prior to the
4 operation of their businesses, Lam’s Enterprises had allowed American Dongsheng and American
5 Herbal to conduct major renovations of the commercial space, beginning in December of 2017. *See*
6 Pls.’ [Proposed] Findings of Facts and Conclusions of Law After Default J. Hearing at 5. Mr. Guo
7 testified that he expended approximately \$250,000.00 to renovate the entire commercial space. *See*
8 *id.*

9 Mr. Guo testified that the subleases for Plaintiff American Create Beauty were executed in
10 October and November 2018, and that, at the time, the renovations of the second floor and rooftop
11 were still ongoing. *See id.* Mr. Guo testified that he had anticipated completing all the renovations
12 required for the second floor and rooftop of the commercial building by January 1, 2019, so that
13 American Create Beauty could open its restaurant business before the New Year holiday. *See*
14 Compl. at ¶ 47; *see also* Pls.’ [Proposed] Findings of Facts and Conclusions of Law After Default
15 J. Hearing at 5. Mr. Guo testified that American Create Beauty was unable to open its business on
16 the anticipated date of January 1, 2019 because Defendant began heavy roadwork construction
17 directly across and within close proximity to Plaintiffs’ subleased premises on or about December
18 2018. *See* Pls.’ [Proposed] Findings of Facts and Conclusions of Law After Default J. Hearing at 5.

19 **C. Defendant’s Construction Activities**

20 Defendant operates a casino which was undergoing extensive construction directly across
21 from Plaintiff’s leased premises. *See* Compl. at ¶ 15. Defendant was granted a major siting permit,
22 which included the extensive excavation of a substantial portion of Coral Tree Avenue, the roadway
23 which separated Plaintiffs’ and Defendant’s properties. *See id.* at ¶ 32. Construction began on the
24 roadway on or about December 20, 2018. *See id.* at ¶ 33. Defendant contracted with USA Fanter to
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1 perform roadwork construction on Coral Tree Avenue. *See* Pls.' [Proposed] Findings of Facts and
2 Conclusions of Law After Default J. Hearing at 6. Mr. Qian testified that USA Fanter entered into
3 several contracts with Defendant, which included projects within Defendant's casino facility and
4 roadwork construction in Coral Tree Avenue. *See id.* Mr. Qian testified that USA Fanter had entered
5 into a year-long contract with Defendant to conduct roadwork construction on Coral Tree Avenue,
6 sometime in 2016, which included the construction of a canal system located within close proximity
7 to Defendant's casino and a sidewalk within close proximity to Plaintiffs' businesses. *See id.*

8 As part of the construction process in Coral Tree Avenue, Defendant, through its contractor,
9 USA Fanter, dug a two-foot deep trench which ran approximately sixteen meters across the south-
10 facing entrance of Plaintiffs' subleased premises and six meters across a portion of the east-facing
11 area of the subleased premises. *See* Compl. at ¶ 19. Defendant also posted detour signs redirecting
12 foot and vehicular traffic away from the south-facing entrance of Plaintiffs' subleased premises. *See*
13 *id.* The south-facing portion of the subleased premises was the only available and accessible entrance
14 into Plaintiffs' business establishment. *See id.* at ¶ 20.

15 According to Mr. Qian, in order to construct the sidewalk and canal, USA Fanter had to
16 excavate portions of Coral Tree Avenue between Defendant's casino and Plaintiffs' subleased
17 premises. *See* Pls.' [Proposed] Findings of Facts and Conclusions of Law After Default J. Hearing at
18 6. Mr. Qian testified that USA Fanter began construction of the sidewalk in early 2019 and that this
19 type of project would normally be completed within a month. *See id.* However, due to several
20 instances of non-payment for the roadwork construction project by Defendant, Mr. Qian testified that
21 USA Fanter had to halt the roadwork construction project altogether, which delayed the completion
22 of the sidewalk construction. *See id.* at 6–7. Mr. Qian testified that when USA Fanter did not receive
23 payment for its roadwork project contract, his company would completely stop work on the roadwork
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1 project and redirect its employees to other areas of Defendant's casino under a separate construction
2 contract, including the front portion of Defendant's casino. *See id.*

3 Mr. Qian testified that Defendant failed to make timely payments for their roadwork project
4 and has, in several instances, required USA Fanter to front the cost associated with its construction
5 activities that were part of Defendant's obligations under the contract. *See id.* at 7. In one such
6 instance, Mr. Qian testified that he had to front the cost of hiring a Construction Manager for its
7 construction project with Defendant, although Defendant was obligated to cover such costs. *See id.*
8 Mr. Qian testified that Defendant has never reimbursed USA Fanter for hiring a Construction
9 Manager for the construction project. *See id.*

10 Mr. Qian testified that the construction of Coral Tree Avenue was delayed, including the
11 remedial work needed to complete the sidewalk construction affecting Plaintiffs' businesses, because
12 Defendant failed to make the required contractual payments for the roadwork construction projects.
13 *See id.* Mr. Qian testified that despite the one-year term contract for the completion of the roadwork
14 construction project, USA Fanter continued to perform its obligations under the contract past its
15 expiration deadline. *See id.* Mr. Qian testified that to this day, roadwork construction activities
16 continue to occur in the portion of Coral Tree Avenue abutting Plaintiffs' businesses. *See id.*

17 On or about January 4, 2019, Plaintiffs, through counsel, contacted numerous CNMI
18 governmental agencies to complain and request enforcement actions against Defendant for its road
19 construction. *See Compl.* at ¶ 22. On or about January 9, 2019, Ms. Janice E. Castro, Director of the
20 Division of Coastal Resource Management (“DCRM”), informed Plaintiffs’ counsel that Defendant
21 had been granted a major siting permit for the roadside construction and that, upon inspection of the
22 construction site, the DCRM had determined that no permit violations had occurred. *See id.* at ¶ 23.
23 Mr. Qian also testified that at no time during the course of construction did USA Fanter violate any
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1 term or condition of the permit authorizing Defendant's construction activities. *See* Def's (Proposed)
2 Order Den. Pl.'s Mot. for Entry of Default J. and Entry of Order of Dismissal at 5.

3 On or about March 21, 2019, Defendant completed its pavement repair work on Coral Tree
4 Avenue and backfilled the trench affecting access to Plaintiffs' subleased premises. *See* Compl. at ¶
5 24. Mr. Guo testified that despite Defendant performing corrective work on the portion of Coral Tree
6 Avenue affecting Plaintiffs' businesses, Defendant continues to conduct roadwork construction in the
7 area. *See* Pls.' [Proposed] Findings of Facts and Conclusions of Law After Default J. Hearing at 8.
8 Defendant allegedly continues to obstruct and burden a significant area of Coral Tree Avenue, by
9 maintaining detour signs in the area during random hours of the day. *See* Compl. at ¶ 25. Mr. Guo
10 testified that Plaintiff American Create Beauty was unable to ever open up its restaurant and retail
11 business on the second floor and rooftop area of Plaintiffs' commercial building, due to Defendant's
12 ongoing construction on Coral Tree Avenue. *See* Pls.' [Proposed] Findings of Facts and Conclusions
13 of Law After Default J. Hearing at 8.

14 **D. Procedural History**

15 On October 14, 2019, Plaintiffs filed their Summons and Complaint and Demand for Jury
16 Trial with this Court. Plaintiffs' Complaint alleged claims of Private Nuisance Per Accidens and
17 Tortious Interference with a Prospective Business Advantage² and also sought relief of punitive
18 damages from Defendant. *See generally* Compl. Defendant was originally represented through
19 counsel, Attorney Phillip J. Tydingco. On December 11, 2019, Attorney Michael W. Dotts was
20 substituted in as Defendant's legal counsel. On December 16, 2019, Defendant filed its Motion to
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24 ² Plaintiffs admit that, although they initially alleged a claim for Tortious Interference with a Prospective Business
25 Advantage, under Restatement (Second) Torts § 766B, Plaintiffs intended to allege a claim for Tortious Interference with
an Existing Contract, under Restatement (Second) Torts § 766A. This was addressed in Plaintiff's Opposition to
Defendant's Motion to Dismiss. *Compare* Compl. at 7-9 with Opp'n to Def.'s Mot. to Dismiss at 14-16; *see also* Pls.'
[Proposed] Findings of Facts and Conclusions of Law After Default J. Hearing at 12.

1 Dismiss Plaintiffs' Complaint for failure to state a claim upon which relief could be granted. On
2 March 25, 2020, this Court issued its Order Denying Defendant's Motion to Dismiss, finding that
3 Plaintiffs' Nuisance Per Accidens and Tortious Interference claims presented legally cognizable
4 issues upon which relief could be granted, when viewed in a light most favorable to Plaintiffs. On
5 April 3, 2020, Defendant filed its Answer to Plaintiffs' Complaint.

6 On December 18, 2020, Attorney Michael W. Dotts filed his Motion to Withdraw as Counsel
7 for Defendant. On December 22, 2020, the Court granted Attorney Michael W. Dotts' Motion to
8 Withdraw from the underlying civil action and set a status conference for January 26, 2021 at 9:00
9 a.m. Defendant was ordered to appear through new counsel at the upcoming status conference. Order
10 at 1. The Court further warned Defendant that new counsel must appear for Defendant, else the Court
11 would strike Defendant's Answer and enter a default against Defendant. *Id.*

12 At the January 26, 2021 status conference, Defendant company's Chief Executive Officer,
13 Ray Yumul ("Mr. Yumul"), and Vice President, Tao Xing ("Mr. Xing"), appeared, but without
14 corporate counsel, contrary to the Court's prior order. *See* Order Continuing Status Conference
15 Hearing. The Court advised Mr. Yumul and Mr. Xing that it was inclined to grant Plaintiffs' relief to
16 strike Defendant's Answer and entertain an entry of default against Defendant. *Id.* Although Mr.
17 Yumul initially requested a week continuance to obtain legal counsel, Mr. Xing informed the Court
18 that Defendant's legal counsel was on his way to the hearing. *Id.* Upon consideration of the Court's
19 morning calendar and to prevent delay on hearing the Court's docket, the Court continued the matter,
20 for cause, to January 27, 2021 at 1:30 p.m.

21 On January 27, 2021 at 1:30 p.m., Defendant did not appear through counsel, and neither Mr.
22 Yumul nor Mr. Xing appeared. *See* Order Granting Entry of Default Pursuant to NMI R. Civ. P. Rule
23 55(a) and 37(b)(1)(A) Order Setting Matter for Status Conference. On February 5, 2021, Plaintiffs
24 moved to strike Defendant's Answer and Affirmative Defenses and enter a default against Defendant,
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1 pursuant to NMI R. Civ. P. 37(b)(1)(A) and 55(a). On February 9, 2021, the Court granted Plaintiffs'
2 proposed Order Granting Entry of Default Pursuant to NMI R. Civ. P. Rule 55(a) and 37(b)(1)(A)
3 against Defendant, for failing to appear at the status conference with counsel, as previously ordered
4 by the Court, and for disregarding the Court's orders regarding case management. On February 10,
5 2021, the Law Offices of Stephen J. Nutting, LLC, filed a Notice of Appearance, as counsel for
6 Defendant.

7 On March 1, 2021, Plaintiffs filed their Motion for Default Judgment against Defendant,
8 pursuant to NMI R. Civ. P. 55(b)(2), now at issue before the Court. On April 5, 2021, Defendant filed
9 its Opposition to Motion for Entry of Default Judgment. On April 14, 2021, Plaintiffs filed their Reply
10 to Defendant's Opposition to Plaintiff's Motion for Default Judgment. In total, Plaintiffs seek to
11 recover over four hundred twenty-four thousand six hundred seventy-four dollars and thirty-eight
12 cents (\$424,674.38) in damages.

13 The two issues before the Court are (1) whether default judgment is appropriate on each of
14 Plaintiffs' claims and (2) to what damages are Plaintiffs entitled.

15 **III. LEGAL STANDARD**

16 Once the clerk has filed an entry of default, if the judgment entered is not for a sum certain,
17 the party that is not in default must apply to the Court for a default judgment and the Court may
18 conduct hearings and make referrals when it needs to: (A) conduct an accounting; (B) determine the
19 amount of damages; (C) establish the truth of any allegation by evidence; or (D) investigate any
20 other matter. NMI R. Civ. Proc. 55(b)(1), (2); *see also J.C. Tenorio Enters. v. Pedro*, 2006 MP 22 ¶
21 14. Default judgments are ordinarily disfavored, and cases should be decided on their merits if
22 reasonably possible. *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986). However, an entry of
23 default judgment is ultimately within the discretion of the Court. *See Haw. Carpenters' Trust Funds*
24 *v. Stone*, 794 F.2d 508, 511–12 (9th Cir. 1986). Before the Court may enter a default judgment
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1 against Defendant, Plaintiffs must satisfy the procedural and substantive requirements for default
2 judgment. *See Westmoreland v. Culturenik Publ'g, Inc.*, SACV No. 20-1088 JVS(JDEx), 2020 U.S.
3 Dist. LEXIS 250275, at *2 (C.D. Cal. Nov. 12, 2020) (analyzing default judgment under Fed. R.
4 Civ. P. 55(b)(2), which is substantially similar to default judgment under NMI R. Civ. Proc.
5 55(b)(2)).

6 Before the Court may enter a default judgment against Defendant, Plaintiffs must satisfy the
7 procedural requirements of the Northern Mariana Islands Rules of Civil Procedure. *See*
8 *Westmoreland*, 2020 U.S. Dist. LEXIS 250275, at *2. NMI R. Civ. Proc. 54(c) requires that relief
9 granted by a default judgment cannot be different from the requested relief in a complaint. NMI R.
10 Civ. Proc. 54(c). Under NMI R. Civ. Proc. 55(a), a clerk must make an entry of default when a
11 defendant has failed to plead, defend, or appear in any form. NMI R. Civ. Proc. 55(a). If a defaulting
12 party has appeared in an action, then a plaintiff needs to serve a motion for default on the defaulting
13 party. NMI R. Civ. Proc. 55(b)(2).
14

15 Before the Court may enter a default judgment against Defendant, Plaintiffs must also satisfy
16 the substantive requirements of default judgment. *See Westmoreland*, 2020 U.S. Dist. LEXIS
17 250275, at *2. The Ninth Circuit has identified seven factors (collectively, the "*Eitel* factors") that a
18 court may consider when determining whether to grant a default judgment:

- 19 1) the possibility of prejudice to the plaintiff;
- 20 2) the merits of the plaintiff's substantive claim;
- 21 3) the sufficiency of the complaint;
- 22 4) the sum of money at issue;
- 23 5) the possibility of a dispute regarding material facts;
- 24 6) whether the default was due to excusable neglect,
- 25

1 7) the strong policy favoring decisions on the merits. *Eitel*, 782 F.2d at 1471–72.

2 The Court shall consider the Ninth Circuit’s *Eitel* factors to guide the exercise of its discretion
3 to enter a default judgment. When considering these factors, the factual allegations in the complaint
4 are taken as true, with the exception of those regarding damages. *See Pope v. United States*, 323 U.S.
5 1, 12 (1944). “[N]ecessary facts not contained in the pleadings, and claims which are legally
6 insufficient, are not established by default.” *Cripps v. Life Ins. Co.*, 980 F.2d 1261, 1267 (9th Cir.
7 1992). Furthermore, Defendant’s Answer and Affirmative Defenses were struck by NMI R. Civ.
8 Proc. 37(b)(1)(A) sanction, imposed by the Court’s February 9, 2021 Order.

9 IV. DISCUSSION

10 **A. Plaintiffs have satisfied the requirements of default judgment for their private** 11 **nuisance per accidens claim, but not for their tortious interference claim, considering** 12 **the *Eitel* factors.**

13 Before the Court can enter a default judgment against Defendant, Plaintiffs must satisfy the
14 procedural and substantive requirements of default judgment. *See Westmoreland*, 2020 U.S. Dist.
15 LEXIS 250275, at *2. Plaintiffs have sufficiently satisfied the procedural requirements of default
16 judgment. Plaintiffs have not requested relief that is different from that in the complaint. *Compare*
17 *Compl. with Pls.’ Mem. P. & A. Supp. Pls.’ Mot. for Default J.* Default has already been entered by
18 the clerk of court and Plaintiffs have properly served a motion for default on the defaulting party,
19 Defendant. Thus, the issue becomes whether Plaintiffs have satisfied the substantive requirements of
20 default judgment for each of their claims.

21 **1. Plaintiffs will suffer prejudice if default judgment is not entered.**

22 The first *Eitel* factor considers whether a plaintiff will suffer prejudice if default judgment is
23 not entered. *See Eitel*, 782 F.2d at 1471. “The law presumes injury from unreasonable delay.” *Su Yue*
24 *Min v. Feng Hua Enter.*, No. 2014-SCC-0016-CIV, 2017 N. Mar. I. LEXIS 3, at *10 (N. Mar. I. Mar.
25 23, 2017) (quoting *Anderson v. Air W., Inc.*, 542 F.2d 522, 524 (9th Cir. 1976)). Although Defendant

1 has recently come before the Court through counsel, the Court has already struck Defendant's Answer
2 and Affirmative Defenses. Any further delay would clearly prejudice Plaintiffs. Therefore, the first
3 *Eitel* factor weighs in favor of default judgment.

4 **2. At this time, Plaintiffs' tortious interference claim is not sufficient to support a
5 default judgment.**

6 The second and third *Eitel* factors assess the merits of Plaintiffs' substantive claims and the
7 sufficiency of the complaint. *See Eitel*, 782 F.2d at 1471. The second and third *Eitel* factors "require
8 that plaintiffs' allegations state a claim on which it may recover." *Tianming Wang v. Gold Mantis*
9 *Constr. Decoration (CNMI)*, No. 1:18-cv-00030, 2021 U.S. Dist. LEXIS 99966, at *15 (D. N. Mar.
10 I. May 24, 2021) (quoting *Discovery Commc'n Inc. v. Animal Planet, Inc.*, 172 F. Supp. 2d 1282,
11 1288 (C.D. Cal. 2001)). "Upon entry of a default judgment, facts alleged to establish liability are
12 binding upon the defaulting party," but "facts which are not established by the pleadings of the
13 prevailing party, or claims which are not well-pleaded, are not binding and cannot support the
14 judgment." *Id.* (quoting *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978)). The Court shall
15 assess the merits and legal sufficiency of each of Plaintiffs' substantive claims, individually.

16 First, the Court shall examine Plaintiffs' claim of tortious interference with an existing
17 contract. The Commonwealth Supreme Court has adopted the Restatement (Second) of Torts on
18 interference with contract relations and economic relations. *See Lucky Dev. Co., Ltd. v. Tokai U.S.A.,*
19 *Inc.*, 3 N.M.I. 79, 93 (1992). To state a claim for tortious interference with contract, under the
20 Restatement, a plaintiff must plead that the defendant intentionally and improperly interfered with
21 the performance of a contract between the plaintiff and a third person by inducing or otherwise
22 causing the third person not to perform the contract. Restatement (Second) of Torts § 766A (1979).

23 Interference is intentional "if the actor desires to bring it about or if he knows that the
24 interference is certain or substantially certain to occur as a result of his action...." Restatement
25

1 (Second) of Torts § 766A cmt. e (1979). However, Plaintiffs’ factual allegations, taken as true, do
2 not clearly support a finding that Defendant acted with intent. Plaintiffs allege that, on or about
3 January 4, 2019, Plaintiffs’ counsel notified “the appropriate governmental agencies”, along with the
4 Commonwealth Casino Commission, of their issue with Defendant’s conduct. *See* Compl. at ¶ 48.
5 Plaintiffs further allege that, on or about January 9, 2019, Ms. Castro, the Director for the DCRM,
6 had informed Plaintiffs’ counsel that Defendant would be informed of Plaintiffs’ complaint. *See id.*
7 at ¶ 49. Even if Defendant had then been informed of Plaintiffs’ complaint, Defendant would not be
8 certain or substantially certain that its construction would result in Plaintiffs’ breach of contract with
9 its landlord. Plaintiffs present no further evidence that Defendant had actual or constructive
10 knowledge that its actions were certain or substantially certain to interfere with Plaintiffs’ lease
11 contract. At this time, Plaintiffs’ allegations are insufficient to show that Defendant acted with intent.

12
13 Even if the Court found that Defendant acted with intent, Plaintiffs’ allegations, again taken
14 as true, fail to show that Defendant acted improperly with any motive to adversely affect Plaintiffs’
15 contract or with any other wrongful purpose. To determine whether an interference was improper,
16 Restatement (Second) of Torts suggests that courts consider the following factors (“Restatement
17 factors”):

- 18 a) the nature of the actor's conduct;
- 19 b) the actor's motive;
- 20 c) the interests of the other with which the actor's conduct interferes;
- 21 d) the interests sought to be advanced by the actor;
- 22 e) the social interests in protecting the freedom of action of the actor and the contractual
23 interests of the other;
- 24 f) the proximity or remoteness of the actor's conduct to the interference; and
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1 g) the relations between the parties. Restatement (Second) of Torts § 767 (1979); *see also*
2 Restatement (Second) of Torts § 766A cmt. e (1979).

3 When assessing these factors, the Ninth Circuit gives the greatest weight to the first two factors. *See*
4 *MDY Indus. v. Blizzard Entm't, Inc.*, Nos. 09-15932, 09-16044, 2011 U.S. App. LEXIS 3428, at *64
5 (9th Cir. Feb. 17, 2011).

6 **a. The Nature of Defendant's Conduct**

7 The first Restatement factor weighs slightly in favor of improper interference because the
8 delayed construction caused by Defendant's failure to pay USA Fanter was unjustified. "The nature
9 of the actor's conduct is a chief factor in determining whether the conduct is improper or not."
10 Restatement (Second) of Torts § 767 cmt. c (1979). "The issue is not simply whether the actor is
11 justified in causing the harm, but rather whether he is justified in causing it in the manner in which
12 he does cause it." *Id.* In January of 2019, Plaintiffs contacted the DCRM, which informed them that
13 Defendant had been granted a major siting permit for the roadside construction abutting Plaintiffs'
14 leased premises and that upon inspection of the construction site, the DCRM determined that no
15 permit violations had occurred. *See* Compl. at ¶¶ 22–23. Mr. Qian testified that at no time during the
16 course of construction did USA Fanter violate any term or condition of the permit authorizing
17 Defendant's construction activities. *See* Def's (Proposed) Order Den. Pl.'s Mot. for Entry of Default
18 J. and Entry of Order of Dismissal at 5. Defendant was merely performing as directed by the
19 Commonwealth Development and Planning Agency to improve Coral Tree Avenue and the canal that
20 ran adjacent, and the facts alleged by Plaintiffs further support this notion. Plaintiffs make no showing
21 that Defendant was unjustified in causing the harm.
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23 However, the manner in which Defendant caused the harm may have been unjustified.
24 Plaintiffs claim that Defendant's sidewalk construction was delayed due to Defendant failing to pay
25 its contractor, USA Fanter. *See* Pls.' [Proposed] Findings of Facts and Conclusions of Law After

1 Default J. Hearing at 6–7. As a result of this delayed construction, Plaintiffs were unable to utilize
2 their entire commercial space and stopped paying rent to their landlord, Lam’s Enterprises, from
3 December 2018 through March 2019. *See* Compl. at ¶ 26. This failure to pay rent led to a lawsuit
4 against Plaintiffs, by Lam’s Enterprises, and ultimately Plaintiffs’ obligation to pay Lam’s
5 Enterprises \$156,000. *See* Pls.’ [Proposed] Findings of Facts and Conclusions of Law After Default
6 J. Hearing at 9. Considering that Plaintiffs factual allegations are taken as true for the purposes of this
7 analysis, Defendant’s conduct was unjustified because Defendant’s failure to pay USA Fanter
8 delayed the construction that obstructed Plaintiffs’ commercial space. Thus, the first Restatement
9 factor weighs slightly in favor of a finding that Defendant’s interference was improper.

10 **b. Defendant’s Motive**

11 Plaintiffs’ factual allegations do not sufficiently support a finding that Defendant acted with
12 any improper motive. “[I]f the sole purpose of the actor is to vent his ill will, the interference may be
13 improper although the means are less blameworthy.” Restatement (Second) of Torts § 766A cmt. e
14 (1979); *see also Belleview Valley Land Co. v. Walterscheid Trucking & Farms*, No. 97-2307, 1998
15 U.S. App. LEXIS 18368, at *6 (10th Cir. Aug. 10, 1998) (“Improper motive ... requires some
16 showing that defendants’ aim was solely to harm [plaintiff].”). If Defendant “had no desire to
17 effectuate the interference by [its] action but knew that the interference would be a mere incidental
18 result of the conduct that it was engaging in for another purpose, the interference may be found to be
19 not improper.” Restatement (Second) of Torts § 766A cmt. e (1979). Plaintiffs’ factual allegations,
20 taken as true for the purpose of default judgment, do not sufficiently support a finding that Defendant
21 acted with any improper motive. Thus, the second Restatement factor weighs heavily against a finding
22 that Defendant’s interference was improper.
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1 **c. Plaintiffs' Interests with Which Defendant Allegedly Interfered; the Interest That**
2 **Defendant Seeks to Advance; the Social Interests in Protecting Defendant's Freedom**
3 **to Act Against Plaintiffs' Contractual Interests**

4 The third, fourth, and fifth Restatement factors, collectively, weigh in favor of Defendant.
5 Plaintiffs claim that Defendant's interference affected Plaintiffs' contractual relationship with its
6 landlord, Lam's Enterprises, and led to Lam's Enterprises' suit against Plaintiffs for breach of
7 contract. Plaintiffs' interests in maintaining its lease contract are opposed by Defendant's interests in
8 the construction of the canal and Coral Tree Avenue. Defendant was contractually bound to improve
9 the canal and Coral Tree Avenue, as directed by the Commonwealth Development and Planning
10 Agency. *See* Def's (Proposed) Order Den. Pl.'s Mot. for Entry of Default J. and Entry of Order of
11 Dismissal at 9. This interest balances against Plaintiffs' interest in maintaining its own lease
12 agreement. Plaintiffs also had an interest in the revitalization and cleanup of the roadway and the
13 cleanup and containment of the Garapan Canal, as adjacent businesses. This is further supported by
14 Mr. Guo's testimony that he chose Plaintiffs' business location, in part, because he anticipated
15 increased traffic to the area upon completion of Defendant's casino. *See* Pls.' [Proposed] Findings of
16 Facts and Conclusions of Law After Default J. Hearing at 5.

17 Furthermore, the social interests in protecting Defendant's freedom to act outweigh Plaintiffs'
18 contractual interests. The DCRM determined that Defendant had been granted the proper major siting
19 permit. *See* Compl. at ¶ 23. Furthermore, Mr. Qian testified that at no time during the course of
20 construction did USA Fanter violate any term or condition of the permit authorizing Defendant's
21 construction activities. *See* Def's (Proposed) Order Den. Pl.'s Mot. for Entry of Default J. and Entry
22 of Order of Dismissal at 5. The social interests in protecting the freedom to engage in permitted
23 construction of public improvements and satisfying one's own contractual obligations outweigh
24 Plaintiffs' contractual interests. As such, the third, fourth, and fifth Restatement factors weigh against
25 a finding that Defendant's interference was improper.

1 Plaintiffs' lease or that the relationship between Defendant and Plaintiffs, through Plaintiffs' landlord,
2 was otherwise substantial enough to cause the alleged interference. Thus, the seventh Restatement
3 factor weighs against the merits of Plaintiffs' tortious interference claim.

4 **f. Considering the Restatement factors, collectively, Plaintiffs' factual allegations do
5 not sufficiently evidence that Defendant acted improperly.**

6 The first and sixth Restatement factors weigh in favor of a finding that Defendant's
7 interference was improper. However, the second, third, fourth, fifth, and seventh Restatement factors
8 suggest that Defendant did not act improperly. The Court, at its discretion, gives the greatest weight
9 to the first two Restatement factors, following the Ninth Circuit's standard, but shall still consider all
10 of the Restatement factors, in totality. *See Blizzard Entm't, Inc.*, 2011 U.S. App. LEXIS 3428, at *64.
11 Considering the Restatement factors, collectively, Plaintiffs' claim does not show that Defendant
12 acted improperly.

13 The Court finds that Plaintiffs' factual allegations, even when taken as true for the purpose of
14 default judgment, do not evidence that Defendant acted improperly or with the requisite intent to
15 interfere with Plaintiffs' lease agreement. The Court recognizes that this may seem inconsistent with
16 its earlier decision to deny Defendant's Motion to Dismiss. However, in its Order Denying
17 Defendant's Motion to Dismiss, the Court explicitly noted that Plaintiffs had not asserted the facts
18 necessary to show that Defendant had desired the interference or otherwise interfered for some
19 improper purpose. *See Order Den. Def.'s Mot. Dismiss at 12.* Plaintiffs' tortious interference claim
20 could still prove meritorious, through additional discovery. However, at this time, the Court finds that
21 Plaintiffs' claim of tortious interference with an existing contract is not sufficiently meritorious.
22 Therefore, the second and third *Eitel* factors weigh against a default judgment as to Plaintiffs' claim
23 of tortious interference with an existing contract.
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3. The merits of Plaintiffs’ nuisance claim are sufficient to support a default judgment.

Plaintiffs claim that Defendant committed private nuisance per accidens. “A private nuisance is a non-trespassory interference with the private use and enjoyment of land.” *Coppola v. Smith*, 935 F. Supp. 2d 993, 1018 (E.D. Cal. 2013) (internal quotations and citations omitted). A nuisance per accidens or nuisance in fact is one which becomes a nuisance by virtue of circumstances and surroundings. *See Martin v. Artis*, 2012 MT 249, P14 (Mont. 2012). A nuisance in fact is not a nuisance of itself, but becomes a nuisance in the manner in which it is operated. An otherwise lawful use of land may become a nuisance per accidens by virtue of the circumstances surrounding the use. *See Hutchens v. MP Realty Group*, 654 N.E.2d 35, 38 (Ind. 1995). In order to establish nuisance per accidens, a plaintiff must prove: (1) that the defendant’s use of its property, under the circumstances, unreasonably invaded or interfered with the plaintiff’s use and enjoyment of the plaintiff’s property; and (2) because of the unreasonable invasion or interference, the plaintiff suffered substantial injury. *See Elliott v. Muehlbach*, 620 S.E.2d 266, 269 (N.C. 2005).

Plaintiffs’ factual allegations, taken as true for the purpose of default judgment, sufficiently support the first element of nuisance per accidens. Defendant used its property, under its permit, to dig a two feet deep trench, which ran approximately sixteen meters across the south-facing entrance of Plaintiffs’ subleased premises and six meters across a portion of the east-facing area of the subleased premises. *See Compl.* at ¶ 44. The south-facing entrance of Plaintiffs’ property was the only available and accessible entrance into Plaintiffs’ business establishment. *See id.* Defendant also posted detour signs redirecting foot and vehicular traffic away from the south-facing entrance of Plaintiffs’ subleased premises. *See id.* at ¶ 46. As Mr. Qian testified, Defendant’s failure to pay its contractor, USA Fanter, significantly delayed construction of the sidewalk abutting Plaintiffs’ property and other roadwork in the vicinity of Plaintiffs’ property. *See Pls.’ [Proposed] Findings of*

1 Facts and Conclusions of Law After Default J. Hearing at 6–7. Defendant’s construction activities
2 clearly interfered with Plaintiffs’ use and enjoyment of its property, and this interference became
3 unreasonable, when Defendant’s own conduct delayed construction.

4 Plaintiffs’ factual allegations, taken as true for the purpose of default judgment, sufficiently
5 support the second element of nuisance per accidens. Mr. Guo testified that Plaintiff American Create
6 Beauty was unable to open its business on its expected date, and was unable to ever open up its
7 restaurant and retail business on the second floor of Plaintiffs’ property because of the heavy
8 roadwork construction. *See* Pls.’ [Proposed] Findings of Facts and Conclusions of Law After Default
9 J. Hearing at 8. Due to Defendant’s unreasonable interference, Plaintiffs also suffered substantial
10 injury, in the form of loss of present and future economic profit. *See* Compl. at ¶ 45. Plaintiffs’ factual
11 allegations, taken as true for the purpose of default judgment, sufficiently support Plaintiffs’ claim of
12 private nuisance per accidens. Therefore, the second and third *Eitel* factors weigh in favor of a default
13 judgment as to Plaintiffs’ claim of private nuisance per accidens.

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15 **4. The sum of money at issue is not too large or unreasonable.**

16 The fourth *Eitel* factor balances "the amount of money at stake in relation to the seriousness
17 of the Defendant's conduct." *Tianming Wang*, 2021 U.S. Dist. LEXIS 99966, at *20 (quoting
18 *PepsiCo, Inc. v. California Security Cans*, 238 F. Supp. 2d 1172, 1176 (C.D. Cal. 2002)). "Default
19 judgment is disfavored where the sum of money at stake is too large or unreasonable in relation to
20 defendant's conduct." *Id.* at *20–21 (quoting *Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998, 1012 (C.D.
21 Cal. 2014)). Here, Plaintiffs seek to recover four hundred twenty-four thousand six hundred seventy-
22 four dollars and thirty-eight cents (\$424,674.38) in damages. As the Court will discuss in the damages
23 portion of this Order, Plaintiffs are not necessarily entitled to this full amount. Regardless, the Court
24 finds that the sum of money at stake is not too large or unreasonable in relation to Defendant's
25 conduct. Therefore, the fourth *Eitel* factor weighs in favor of default judgment.

1 **5. There is no possibility of a dispute regarding material facts, except those related to**
2 **damages, as the Court already struck Defendant’s Answer and Affirmative Defenses.**

3 The fifth *Eitel* factor considers the possibility of a dispute regarding material facts. On
4 February 9, 2021, the Court struck Defendant’s Answer and Affirmative Defenses. While a dispute
5 concerning material facts related to damages may exist, there is no other possibility of dispute
6 regarding material facts. Thus, this factor weighs in favor of default judgment.

7 **6. The default was not due to excusable neglect.**

8 The sixth *Eitel* factor considers whether the defendant's default may have resulted from
9 excusable neglect. “It takes into account factors such as prejudice, the length of the delay and impact
10 on judicial proceedings, the reason for the delay, including whether it was within the reasonable
11 control of the movant, and whether the movant acted in good faith.” *Tianming Wang*, 2021 U.S. Dist.
12 LEXIS 99966, at *22 (internal quotation and citation omitted). Here, default was entered and
13 colligated with a sanction striking Defendant’s Answer and Affirmative Defenses because Defendant
14 had failed to appear at multiple case management conferences with counsel, in violation of the Court’s
15 order. Defendant’s conduct, which warranted such a drastic sanction, cannot reasonably be reduced
16 to excusable neglect. Therefore, the sixth *Eitel* factor weighs in favor of default judgment.

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18 **7. There is strong policy favoring decisions on the merits, but this factor alone is not**
19 **dispositive.**

20 The seventh *Eitel* factor considers the strong policy favoring decisions on the merits. Default
21 judgments are ordinarily disfavored, and cases should be decided on their merits if reasonably
22 possible. *See Eitel*, 782 F.2d at 1472. However, an entry of default judgment is ultimately at the
23 discretion of the Court. *See Haw. Carpenters' Trust Funds*, 794 F.2d at 511–12. While the seventh
24 *Eitel* factor weighs against default judgment, it is not dispositive, and the Court may enter a default
25 judgment, within its discretion, when the other six *Eitel* factors otherwise weigh in favor of default

1 judgment. *See generally Duralar Techs. v. Plasma Coating Techs., Inc.*, 848 Fed. Appx. 252 (9th Cir.
2 2021) (determining that the district court did not abuse its discretion by entering a default judgment,
3 where all of the *Eitel* factors, except for the seventh, weighed in favor of default judgment).

4 As to Plaintiffs' claim of tortious interference with an existing contract, the second, third, and
5 seventh *Eitel* factors weigh against an entry of default judgment. However, as to Plaintiffs' claim of
6 private nuisance per accidens, only the seventh *Eitel* factor weighs against default judgment. After
7 considering the *Eitel* factors, in totality, the Court concludes that an entry of default judgment is
8 appropriate for Plaintiffs' claim of private nuisance per accidens, but not for Plaintiffs' claim of
9 tortious interference with an existing contract.

10 **B. Damages**

11 Plaintiffs seek the following relief:

- 12 a) \$9,134.00 in damages for attorney's fees and costs associated with the lawsuit brought
13 against Plaintiffs by its landlord, Lam's Enterprises, in *Lam Enterprise*, No. 19-0113-CV
14 (NMI Super. Ct. Mar. 28, 2019);
- 15 b) \$156,000.00 in damages for reimbursement of its rental payments made to its landlord
16 from December 2018 to December 2019;
- 17 c) \$251,640.00 in damages for its renovation expenses expended in the subleased premises;
- 18 d) \$7,900.00 for its litigation expenses in the underlying civil action as punitive damages;
- 19 e) Such additional reasonable attorney's fees and costs incurred in any further post-judgment
20 proceedings to enforce this judgment;
- 21 f) Post-Judgment interest at 9% per annum from the date of the judgment until fully paid
22 and satisfied;
- 23 g) Any other just or proper relief at the discretion of this Court.

24 In total, Plaintiffs seek to recover over four hundred twenty-four thousand six hundred
25 seventy-four dollars and thirty-eight cents (\$424,674.38) in damages. The Court has denied Plaintiffs'

1 Motion for Default Judgment as to its claim of tortious interference with existing contract. Therefore,
2 the Court shall only examine damages related to Plaintiffs' nuisance per accidens claim. This
3 excludes damages for attorney's fees and costs associated with the lawsuit brought against Plaintiffs
4 by its landlord, Lam's Enterprises, in *Lam Enterprise*, No. 19-0113-CV (NMI Super. Ct. Mar. 28,
5 2019) and damages for reimbursement of Plaintiffs rental payments made to its landlord from
6 December 2018 to December 2019, as both relate to Plaintiffs' claim of tortious interference with
7 existing contract.³

8 **1. Renovation Expenses Expended in the Subleased Premises**

9 Plaintiffs' claim, with respect to the renovation costs, is for private abatable nuisance per
10 accidens. "A private nuisance is a non-trespassory interference with the private use and enjoyment of
11 land." *Coppola*, 935 F. Supp. 2d at 1018 (internal quotations and citations omitted). A nuisance per
12 accidens is one which becomes a nuisance by virtue of circumstances and surroundings. *See Martin*,
13 2021 MT at P14. When a defendant commits a private abatable nuisance per accidens, he is liable for
14 the actual damages flowing from that nuisance. *See Miller v. Cudahy Co.*, 592 F. Supp. 976, 1005
15 (D. Kan. 1984). These damages may take form as a loss of profits, injuries to the land itself, and other
16 damages consequential of the loss of use and enjoyment of the land. *See generally id.* Additionally,
17 courts have allowed punitive damages in private abatable nuisance claims. *See generally id.*

18 While some courts may hold that abstract consequential damages, such as the personal losses
19 associated with annoyance, discomfort, and inconvenience, are recoverable, the actual damages of a
20 nuisance claim must flow from the nuisance itself. *See id.* Here, Plaintiffs' renovation costs lack any
21 causal connection to Defendant's alleged nuisance per accidens. Even if Defendant committed no
22 nuisance, the renovation costs would still exist, independently. If all of Plaintiffs' factual allegations
23 are taken as true, Plaintiffs may be entitled to loss of profits due to loss of use of the land or other

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25 ³ Although Plaintiffs' Complaint did not limit damages to each of the respective claims, Plaintiffs' Motion for Default Judgment only claims these damages as to Plaintiffs' tortious interference claim. *Compare* Compl. at 9 with Pls.' Mem. P. & A. Supp. Pls.' Mot. for Default J. at 4-5; *see also* Pls.' [Proposed] Findings of Facts and Conclusions of Law After Default J. Hearing at 12-13.

1 such consequential damages, but not to recover costs of renovation that Plaintiffs had merely hoped
2 they could pay back with those lost profits.

3 **2. Litigation Expenses in the Underlying Civil Action as Punitive Damages and Such**
4 **Additional Reasonable Attorney’s Fees and Costs Incurred in Any Further Post-**
5 **Judgment Proceedings to Enforce this Judgment**

6 The CNMI follows the “American Rule” when awarding attorney’s fees and costs of suit,
7 which dictates that each party is responsible for paying its own attorney’s fees and costs of suit, unless
8 specific authority, granted by statute, contract, or court rule, allows otherwise. *See Deleon Guerrero*
9 *v. Commonwealth Dep’t of Pub. Safety*, 2013 MP 17 ¶ 21. Although attorney fees may result from an
10 award of punitive damages, the attorney-fee award itself is not an element of the punitive-damages
11 award, but instead is classified as compensatory damages. *See Neal-Pettit v. Lahman*, 125 Ohio St.
12 3d 327, 329 (Ohio 2010). The two awards are distinct. *See id.* Therefore, Plaintiffs’ attorney’s fees
13 and costs should not be incorporated into punitive damages, and there exists no other convincing
14 reason to allow recovery of attorney’s fees and costs for the instant case, in consideration of the
15 “American Rule”.

16 **3. Punitive Damages**

17 This Court has already acknowledged that a claimant can request punitive damages in a torts
18 case, and that it is at the discretion of the trier of fact whether the facts support an award of punitive
19 damages. *See Order Den. Def.’s Mot. Dismiss at 13.* “In assessing punitive damages, the trier of fact
20 can properly consider the character of the defendant’s act, the nature and the extent of the harm to the
21 plaintiff that the defendant has caused or intended to cause and the wealth of the defendant.”
22 Restatement (Second) of Torts § 908(2) (1979). However, at this time, the Court shall withhold any
23 award of punitive damages, until the amount of damages related to Plaintiffs’ nuisance per accidens
24 claim has been determined.
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V. CONCLUSION

Based on the foregoing, the Court finds the following:

1. Plaintiffs' Motion for Default Judgment is **GRANTED** as to the Plaintiffs' claim of private nuisance per accidens.
2. Plaintiffs' Motion for Default Judgment is **DENIED** as to the Plaintiffs' claim of tortious interference with an existing contract.
3. The Court hereby sets this matter for further hearing **on December 14, 2021 at 9:00 a.m.**, to determine the amount of damages resulting from Plaintiffs' claim of private nuisance per accidens. Prior to the hearing, Plaintiffs are **ORDERED** to submit evidence reasonably related to loss of profits or other damages consequential to the loss of use and enjoyment of Plaintiffs' land, caused by Defendant's private nuisance per accidens.

SO ORDERED this 13th day of October, 2021.



TERESA K. KIM-TENORIO
Associate Judge