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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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10 UNITED STATES OF AMERICA,) CASE NO. CV 14-09421 MMM (PJWx)
11 Plaintiff,)
12 vs.) ORDER GRANTING PLAINTIFF'S
13 BROASTER KITCHEN, INC.; MICHAEL) MOTION FOR DEFAULT JUDGMENT
14 W. MONROE; and GERALDINE M.)
15 MONROE,)
Defendants.)
16

17 On December 8, 2014, the United States of America (the “government”) filed this action against
18 Broaster Kitchen, Inc. (“Broaster”), Michael Monroe (“Michael”), and Geraldine Monroe (“Geraldine”)
19 (collectively, “defendants”), seeking entry of a permanent injunction under 26 U.S.C. § 7402(a).¹ The
20 government served the summons and complaint on Michael on December 19, 2014.² It served Geraldine
21 and Broaster three days later.³ On February 4, 2015, the clerk entered defendants’ defaults as to the
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25 ¹Complaint, Docket No. 1 (Dec. 8, 2014).

26 ²Proof of Service Upon Michael W. Monroe, Docket No. 8 (Jan. 16, 2015).

27 ³Proof of Service Upon Geraldine M. Monroe, Docket No. 6 (Jan. 15, 2015); Proof of Service
28 Upon Broaster Kitchen, Inc., Docket No. 7 (Jan. 15, 2015).

complaint.⁴ On March 3, 2015, the government filed a motion for entry of default judgment against defendants.⁵

Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the court finds this matter appropriate for decision without oral argument. The hearing calendared for June 1, 2015, is therefore vacated, and the matter is taken off calendar.

I. FACTUAL BACKGROUND

Broaster Kitchen, Inc., is a suspended California corporation that was first formed in the 1970s by Bernard Monroe.⁶ The complaint alleges that Broaster's corporate status was suspended by the California Secretary of State as a result of the fact that it had outstanding tax liabilities to the California Franchise Tax Board ("CFTB").⁷ Michael Monroe, Bernard's son, is allegedly Broaster's Chief Executive Officer ("CEO"); Geraldine Monroe is Michael's wife and allegedly the registered Secretary and Chief Financial Officer ("CFO") of Broaster.⁸

The government alleges that, between 2006 and 2012, Broaster employed numerous individuals to work at its restaurant in Los Angeles.⁹ It asserts that, as an employer, Broaster was required by law to (1) withhold federal income and Federal Insurance Contributions Act ("FICA") taxes for its

⁴Default by Clerk Entered As To Broaster Kitchen, Inc., Docket No. 18 (Feb. 4, 2015); Default by Clerk Entered As To Michael W. Monroe, Docket No. 19 (Feb. 4, 2015); Default by Clerk Entered As To Geraldine M. Monroe, Docket No. 20 (Feb. 4, 2015); see also Second Request for Clerk to Enter Default Against Defendant Broaster Kitchen, Inc., Docket No. 15 (Jan. 27, 2015); Second Request for Clerk to Enter Default Against Defendant Michael W. Monroe, Docket No. 16 (Jan. 27, 2015); Second Request for Clerk to Enter Default Against Defendant Geraldine M. Monroe, Docket No. 17 (Jan. 27, 2015).

⁵Notice of Motion and Motion for Default Judgment Against Defendants Broaster Kitchen, Inc., Michael Monroe, and Geraldine Monroe ("Motion"), Docket No. 22 (Mar. 3, 2015).

⁶Complaint, ¶ 10.

⁷*Id.*, ¶¶ 5-6.

⁸*Id.*, ¶¶ 7-8.

⁹*Id.*, ¶ 10.

employees, and to pay the amounts withheld to the IRS together with the employer's FICA and Federal Unemployment Tax Act ("FUTA") taxes (collectively, "employment taxes") under 26 U.S.C. §§ 3102, 3111, 3301, and 3402; (2) make periodic deposits of withheld FICA taxes, as well as its share of unemployment taxes, in an appropriate federal depository bank in accordance with federal deposit regulations set forth in 26 U.S.C. §§ 6302, 6157 and 26 C.F.R. §§ 31.6302-1, 31.6302(c)-1, and 31.6302(c)-3; and (3) file Employer's Quarterly Federal Tax Returns (IRS Forms 941) and annual FUTA Tax Returns (IRS Forms 940) (collectively, "employment tax returns") with the IRS under 26 U.S.C. § 6011 and 26 C.F.R. § 31.6071(a)-1.¹⁰ Broaster was purportedly required to file the returns and pay taxes without notice from or demand by the IRS.¹¹

Beginning in the third quarter of 2006, Broaster purportedly failed to comply with its employment tax obligations despite the fact that the IRS made numerous efforts to secure its compliance.¹² Broaster has allegedly incurred significant employment tax liabilities, has consistently failed to make complete federal employment tax deposits, and has failed to file timely employment tax returns.¹³ As a result of these failures, the government alleges that Broaster has incurred Form 941 employment tax liabilities totaling \$127,290.24 for tax periods from September 30, 2006 to June 30, 2012.¹⁴ It has also purportedly incurred Form 940 unemployment tax liabilities totaling \$4,687.95 for the 2007, 2008, 2009, 2010, and 2011 tax years.¹⁵

The government further alleges that Broaster's noncompliance with its tax obligations has continued.¹⁶ It asserts that although Broaster remains in operation, it has failed to file any Form 941

¹⁰*Id.*, ¶ 11.

¹¹*Id.*, ¶ 12.

¹²*Id.*, ¶ 13.

¹³*Id.*

¹⁴*Id.*, ¶ 14.

¹⁵*Id.*, ¶ 15.

¹⁶*Id.*, ¶ 17.

returns since the second quarter of 2012 or any Form 940 returns for the 2012 and 2013 tax years.¹⁷ Broaster allegedly made intermittent employment tax deposits between 2006 and 2013, which were insufficient to satisfy its employment tax liabilities.¹⁸ It has also purportedly failed to make any employment tax deposits since the first quarter of 2013.¹⁹

The complaint contends that the IRS has made numerous attempts to bring Broaster into compliance with its tax obligations.²⁰ The IRS purportedly undertook unsuccessful collection investigations and actions against Broaster and Michael in 2010 and late 2012.²¹ Following the unsuccessful compliance demands, the IRS purportedly sent Broaster a letter on November 21, 2012, which warned that it might attempt to collect past due amounts by placing liens, assessing a trust fund recovery penalty, or seeking a civil injunction.²² Since sending the letter, the IRS has purportedly been unable to collect Broaster's outstanding employment tax liabilities.²³ Moreover, Broaster allegedly continues to operate and incur employment taxes, which it has failed to pay.²⁴

As a result, the government seeks a permanent injunction under 26 U.S.C. § 7402(a)²⁵ (1) enjoining defendants and their representatives, agents, servants, employees, attorneys, successors in interest and assigns, as well as anyone in active concert or participation with them, from failing to withhold and pay over to the IRS all employment taxes, including federal income and FICA taxes, required by law; (2) requiring defendants to segregate and hold separate and apart from other funds the

¹⁷*Id.*

¹⁸*Id.*, ¶ 18.

¹⁹*Id.*, ¶ 17.

²⁰*Id.*, ¶ 19.

²¹*Id.*

²²*Id.*

²³*Id.*, ¶ 20.

²⁴*Id.*, ¶ 21.

²⁵*Id.*, ¶¶ 22-29.

monies withheld from employees or collected from others for taxes due under any internal revenue law and to deposit the monies withheld and collected, as well as the employer's share of FICA taxes, in an appropriate federal depository bank; (3) requiring defendants to deposit FUTA taxes each quarter in an appropriate federal depository bank; (4) requiring defendants, for a period of five years, to sign and deliver affidavits to an IRS officer on the 20th day of each month stating that the requisite withheld income, FICA, and FUTA tax deposits were timely made; (5) requiring defendants to file all Forms 940 and 941 unemployment and employment tax returns in a timely fashion; (6) requiring defendants to pay all required outstanding liabilities on each tax return in a timely fashion; (7) enjoining defendants and their representatives, agents, servants, employees, attorneys, successors in interest and assigns, as well as anyone in active concert or participation with them, from assigning any of Broaster's property, rights, or assets before paying delinquent federal employment and unemployment taxes due for a given payroll period; and (8) requiring defendants to notify the IRS of their future employment tax conduct with respect to any new or presently unknown company.²⁶ The government also requests that the court require defendants to post the court's order and keep it posted for five years. It asks that the court retain jurisdiction to ensure defendants' compliance with the injunction.²⁷

II. DISCUSSION

A. Standard Governing Motions for Entry of Default Judgment

A court may enter judgment against parties whose default has been taken pursuant to Rule 55(b). See *PepsiCo, Inc. v. California Security Cans*, 238 F.Supp.2d 1172, 1174 (C.D. Cal. 2002); *Kloeping v. Fireman's Fund*, No. 94-2684 TEH, 1996 WL 75314, *2 (N.D. Cal. Feb. 13, 1996). Once a party's default has been entered, the factual allegations in the complaint, except those concerning damages, are deemed to have been admitted by the non-responding party. See FED.R.CIV.PROC. 8(b)(6); see also, e.g., *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977) (stating the general rule that "upon default[,], the factual allegations of the complaint, except those relating to the amount of damages, will

²⁶*Id.* at 8-9.

²⁷*Id.* at 9.

1 be taken as true”). The court must still “consider[, however,] whether the unchallenged facts constitute
 2 a legitimate cause of action, since a party in default does not admit mere conclusions of law.” 10A
 3 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE: CIVIL
 4 3D § 2688, at 63 (1998) (footnote omitted); see also *Cripps v. Life Ins. Co. of North America*, 980 F.2d
 5 1261, 1267 (9th Cir. 1992) (“[N]ecessary facts not contained in the pleadings, and claims which are
 6 legally insufficient, are not established by default”); *Doe v. Qi*, 349 F.Supp.2d 1258, 1272 (N.D. Cal.
 7 2004) (“[Although] the factual allegations of [the] complaint together with other competent evidence
 8 submitted by the moving party are normally taken as true . . . this Court must still review the facts to
 9 insure that the Plaintiffs have properly stated claims for relief”).

10 If the court determines that the allegations in the complaint are sufficient to establish liability,
 11 it must then determine the “amount and character” of the relief that should be awarded. 10A Wright,
 12 Miller, & Kane, *supra*, § 2688, at 63; see also *Elecktra Entertainment Group Inc. v. Crawford*, 226
 13 F.R.D. 388, 394 (C.D. Cal. 2005) (stating that the district court has “wide latitude” and discretion in
 14 determining the amount of damages to award upon default judgment, quoting *James v. Frame*, 6 F.3d
 15 307, 310 (5th Cir. 1993)).

16 **B. Procedural Requirements**

17 Before a court can enter default judgment against a defendant, the plaintiff must satisfy the
 18 procedural requirements for default judgments set forth in Rules 54(c) and 55 of the Federal Rules of
 19 Civil Procedure, as well as in Local Rule 55-1. Rule 54(c) states that “judgment by default shall not be
 20 different in kind from or exceed in amount that prayed for in the demand for judgment.”
 21 FED.R.CIV.PROC. 54(c). Rule 55(a) provides that the clerk must enter default “[w]hen a party against
 22 whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure
 23 is shown by affidavit or otherwise.” FED.R.CIV.PROC. 55(a). Rule 55(b)(2) requires service of any
 24 motion for default judgment on the defaulting party if the party has appeared in the action.
 25 FED.R.CIV.PROC. 55(b)(2) (“If the party against whom a default judgment is sought has appeared
 26 personally or by a representative, that party or its representative must be served with written notice of
 27 the application at least 3 days before the hearing”); see also, e.g., *In re Roxford Foods, Inc.*, 12 F.3d 875,
 28 879 (9th Cir. 1993) (stating that Rule 55(b)(2) notice “is only required where the party has made an

1 appearance”).

2 Additionally, Local Rule 55-1 requires that a party moving for default judgment submit a
3 declaration (1) indicating when and against which party default has been entered; (2) identifying the
4 pleading as to which default has been entered; (3) indicating whether the defaulting party is an infant
5 or incompetent person, and if so, whether that person is represented by a general guardian, committee,
6 conservator or other representative; (4) stating that the Servicemembers Civil Relief Act, 50 App. U.S.C.
7 § 521 does not apply; and (5) affirming that notice has been served on the defaulting party if required
8 by Rule 55(b)(2). CA CD L.R. 55-1, 55-2; *PepsiCo, Inc.*, 238 F.Supp.2d at 1174.

9 The government has satisfied the procedural requirements for the entry of default judgment. In
10 its motion, the government seeks permanent injunctive relief under 26 U.S.C. § 7402(a) – the same relief
11 sought in the complaint.²⁸ As a result, the government has complied with Rule 54(c) of the Federal
12 Rules of Civil Procedure. Defendants, moreover, have failed to file a responsive pleading or otherwise
13 appear, with the result that their default was entered. Because there was no appearance, the government
14 was not required to serve the motion for default judgment on them. See FED.R.CIV.PROC. 55 (b)(2).

15 In addition to satisfying Rules 54(c) and 55 of the Federal Rules of Civil Procedure, the
16 government has also complied with the procedural requirements set out in Local Rule 55-1. The
17 government served the summons and complaint on Michael on December 19, 2014,²⁹ and served
18 Geraldine and Broaster on December 22, 2014.³⁰ When defendants failed to respond or defend, the clerk
19 entered their default as to the complaint.³¹ The government reports that none of the defendants is an
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21 ²⁸See Motion at 8; Complaint, ¶¶ 22-29.

22 ²⁹Proof of Service Upon Michael W. Monroe, Docket No. 8 (Jan. 16, 2015).

23 ³⁰Proof of Service upon Geraldine M. Monroe, Docket No. 6 (Jan. 15, 2015); Proof of Service
24 upon Broaster Kitchen, Inc., Docket No. 7 (Jan. 15, 2015).

25 ³¹Default by Clerk Entered as to Broaster Kitchen, Inc., Docket No. 18 (Feb. 4, 2015); Default
26 by Clerk Entered as to Michael W. Monroe, Docket No. 19 (Feb. 4, 2015); Default by Clerk Entered as
27 to Geraldine M. Monroe, Docket No. 20 (Feb. 4, 2015); See also Second Request for Clerk to Enter
28 Default Against Defendant Broaster Kitchen, Inc., Docket No. 15 (Jan. 27, 2015); Second Request for
Clerk to Enter Default Against Defendant Michael W. Monroe, Docket No. 16 (Jan. 27, 2015); Second
Request for Clerk to Enter Default Against Defendant Geraldine M. Monroe, Docket No. 17 (Jan. 27,

1 infant or incompetent person, or otherwise exempt under the Servicemembers Civil Relief Act.³² For
 2 these reasons, the court concludes that the government has satisfied the procedural prerequisites of Rules
 3 54(c) and 55 of the Federal Rules of Civil Procedure, as well as Local Rule 55-1. The court therefore
 4 turns to the merits of the motion.

5 **C. The *Eitel* Factors**

6 Granting or denying a motion for default judgment is a matter within the court's discretion.
 7 *Elektra Entertainment Group, Inc. v. Bryant*, No. CV 03-6381 GAF (JTLx), 2004 WL 783123, *1 (C.D.
 8 Cal. Feb. 13, 2004); see also *Sony Music Entertainment, Inc. v. Elias*, No. CV 03-6387 DT (RCx), 2004
 9 WL 141959, *3 (C.D. Cal. Jan. 20, 2004). The Ninth Circuit has directed that courts consider the
 10 following factors in deciding whether to enter default judgment: (1) the possibility of prejudice to
 11 plaintiff; (2) the merits of plaintiff's substantive claims; (3) the sufficiency of the complaint; (4) the sum
 12 of money at stake in the action; (5) the possibility of a dispute concerning the material facts; (6) whether
 13 defendant's default was the product of excusable neglect; and (7) the strong policy favoring decisions
 14 on the merits. See *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986); see also *Bryant*, 2004 WL
 15 783123 at *1-2.

16 **1. Possibility of Prejudice to Plaintiff**

17 The first *Eitel* factor considers whether the plaintiff will suffer prejudice if a default judgment
 18 is not entered. *PepsiCo, Inc.*, 238 F.Supp.2d at 1177; see also *Eitel*, 782 F.2d at 1471-72. Because
 19 defendants have not responded to the complaint or otherwise appeared, the government would be left
 20 without recourse against them if default judgment were not entered. Given defendants' alleged failure
 21 to comply with mandated tax obligations, the government would be prejudiced if denied a remedy
 22 against defendants. See *PepsiCo, Inc.*, 238 F.Supp.2d at 1177 (stating that plaintiffs would have no
 23 other recourse if a default judgment were no entered). As a result, the first *Eitel* factor weighs in favor
 24 of the entry of default judgment.

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27 ³²Declaration of Charles Parker in Support of Plaintiff's Motion for Entry of Default Judgment
 28 ("Parker Decl."), Docket No. 22-2 (Mar. 3, 2015), ¶¶ 11-17.

2. Substantive Merits and Sufficiency of the Claims

The second and third *Eitel* factors assess the substantive merit of the movant's claims and the sufficiency of its pleadings. These factors "require that a [movant] 'state a claim on which [it] may recover.'" *PepsiCo, Inc.*, 238 F.Supp.2d at 1175 (quoting *Kloepping*, 1996 WL 75314 at *2); see also *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978) (stating that the issue is whether the allegations in the pleading state a claim upon which plaintiff can recover); *Discovery Communications, Inc. v. Animal Planet, Inc.*, 172 F.Supp.2d 1282, 1288 (C.D. Cal. 2001) ("The Ninth Circuit has suggested that the [] two *Eitel* factor[s] involving the substantive merits of Plaintiff's claims and the sufficiency of the complaint [] 'require that plaintiff's allegations state a claim on which they may recover,'" quoting *Danning*, 572 F.2d at 1388).

26 U.S.C. § 7402 authorizes district courts to issue injunctions as necessary to ensure the enforcement of internal revenue laws. See 26 U.S.C. § 7402(a); *Ryan v. Bilby*, 764 F.2d 1325, 1327 (9th Cir. 1985); *United States v. Ernst & Whinney*, 735 F.2d 1296, 1300 (11th Cir. 1984). Injunctive relief is appropriate if the defendant is reasonably likely to violate the federal tax laws again. See *United States v. Thompson*, 395 F.Supp.2d 941, 946 (E.D. Cal. 2005) (granting injunctive relief because defendant's past violations of federal tax laws, continuous challenges to the authority of the courts and the federal tax system, and ability to reopen his business after his term of incarceration ended, demonstrated a likelihood of future tax violations by the defendant); *United States v. Stoll*, No. Civ. C 05-0262RSM, 2005 WL 1763617, *8 (W.D. Wash. June 27, 2005) ("In a statutory injunction action . . . the moving party must demonstrate that the statute has been violated and that 'there is a reasonable likelihood of future violations,'" quoting *SEC v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982)); see also *Cummings v. Connell*, 316 F.3d 886, 898 (9th Cir. 2003) ("In seeking a permanent injunction, the moving party must convince the court that relief is needed: 'The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive,'" quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953)).

"In predicting the likelihood of future violations, a court must assess the totality of the circumstances surrounding the defendant and his violations." *SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980). Courts can consider such factors as (1) the gravity of harm caused by the offense; (2) the

1 extent of the defendant's participation, and his degree of scienter; (3) the isolated or recurrent nature of
 2 the infraction and the likelihood that the defendant's customary business activities might again involve
 3 him in such transaction; (4) the defendant's recognition of his own culpability; and (5) the sincerity of
 4 his assurances against future violations. *United States v. Laerdal Mfg. Corp.*, 73 F.3d 852, 854-855 (9th
 5 Cir. 1995); *United States v. Harkins*, 355 F.Supp.2d 1175, 1181 (D. Or. 2004) (citing *United States v.*
 6 *Raymond*, 228 F.3d 804, 813 (7th Cir. 2000)).

7 Here, the government has alleged, and defendants, by their failure to answer, have admitted that
 8 there is a likelihood they will commit future tax violations. The government estimates that defendants'
 9 repeated violations of the internal revenue laws have caused the United States Treasury to lose
 10 estimated revenue of more than \$130,000; they have also drained government administrative resources
 11 by requiring efforts to collect monies owed and obtain required tax returns.³³ Cf. *Raymond*, 228 F.3d
 12 at 813 (holding that the government had incurred a significant loss as a result of the administrative
 13 burden defendant placed on the IRS by causing it to respond to frivolous Freedom of Information Act
 14 requests, investigate unlawful tax evasion activities, and engage in collection efforts to obtain unpaid
 15 taxes).

16 The government has also established that defendants have knowingly and continuously violated
 17 federal tax laws. Defendants' violations date back to 2006; in the intervening period, the IRS has
 18 repeatedly attempted to compel their compliance with federal tax laws. Despite numerous
 19 communications from the IRS, defendants have persisted in their noncompliance. See
 20 *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 564 (9th Cir. 1990) ("Permanent injunctive relief is
 21 warranted where . . . defendant's past and present misconduct indicates a strong likelihood of future
 22 violations" (citations omitted)).

23 Furthermore, the public interest also favors entry of a permanent injunction. Defendants'
 24 conduct encourages willful disregard of internal revenue laws, and shakes public confidence in the
 25 fairness of the federal income tax system. See *Stoll*, 2005 WL 1763617 at *8 (finding that the public
 26 interest supported entry of a permanent injunction).

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 28 ³³Complaint, ¶¶ 14-15.

1 Considering the totality of the circumstances surrounding defendants' violations, it is apparent
 2 that an injunction under § 7402(a) is necessary to ensure the enforcement of internal revenue laws. The
 3 government has thus sufficiently stated a claim for a statutory injunction. Accordingly, the second and
 4 third *Eitel* factors weigh in favor of entering default judgment against defendants.

5 **3. Sum of Money at Stake in the Action**

6 The fourth *Eitel* factor balances "the amount of money at stake in relation to the seriousness of
 7 the [defaulting party's] conduct." *PepsiCo, Inc.*, 238 F.Supp.2d at 1176; see also *Eitel*, 782 F.2d at
 8 1471-72. This determination requires a comparison of the recovery sought and the nature of defendant's
 9 conduct to determine whether the remedy is appropriate. See *Walters v. Statewide Concrete Barrier,*
 10 *Inc.*, No. C-04-2559 JSW (MEJ), 2006 WL 2527776, *4 (N.D. Cal. Aug. 30, 2006) ("If the sum of
 11 money at issue is reasonably proportionate to the harm caused by the defendant's actions, then default
 12 judgment is warranted").

13 As noted, the government seeks non-monetary relief – a permanent injunction against
 14 defendants.³⁴ The fourth *Eitel* factor – the sum of money at stake in the action – therefore weighs in
 15 favor of entry of default judgment. See, e.g., *United States v. Torres*, No. CV 2:12-cv-10530-SVW
 16 (MRW), 2013 WL 7137587, *5 (C.D. Cal. Apr. 17, 2013) ("There is no money at stake in this action,
 17 only permanent injunctive relief. Accordingly, this factor favors granting a default judgment"); *United*
 18 *States v. Brekke*, No. CIV 2:12-cv-0722-WBS-JFM, 2012 WL 2450718, *4 (E.D. Cal. June 26, 2012)
 19 ("Under the fourth factor cited in *Eitel*, 'the court must consider the amount of money at stake in relation
 20 to the seriousness of Defendant's conduct.' Here, plaintiff seeks no monetary damages and accordingly
 21 this factor does not weigh against entry of default judgment" (citation omitted)); *United States v.*
 22 *Tarantino*, No. CIV S-06-0618 GEB EFB, 2007 WL 1521031, *5 (E.D. Cal. May 24, 2007) ("Where,
 23 as here, the United States seeks non-monetary relief [under 26 U.S.C. § 7402(a)], this factor weighs in
 24 favor of granting default judgment for the United States," citing *Crawford*, 226 F.R.D. at 393).

25 **4. Possibility of Dispute**

26 The fifth *Eitel* factor considers the possibility that material facts may be in dispute. *PepsiCo*,

28 ³⁴See Motion at 8; Complaint, ¶¶ 22-29.

1 *Inc.*, 238 F.Supp.2d at 1177; see also *Eitel*, 782 F.2d at 1471-72. As defendants have failed to respond
 2 to the complaint, the court accepts the government's allegations as true. See *PepsiCo, Inc.*, 238
 3 F.Supp.2d at 1177 ("Upon entry of default, all well-pleaded facts in the complaint are taken as true,
 4 except those relating to damages," citing *Television Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917-18
 5 (9th Cir. 1987)). As a result, there is little possibility of dispute concerning the material facts of this
 6 case, and the fifth *Eitel* factor weighs in favor of entering default judgment against defendants.

7 **5. Possibility of Excusable Neglect**

8 The sixth *Eitel* factor considers whether defendants' default may have been the product of
 9 excusable neglect. See *PepsiCo, Inc.*, 238 F.Supp.2d at 1177; see also *Eitel*, 782 F.2d at 1471-72. Here,
 10 the possibility of excusable neglect is remote. The government served Michael on December 19, 2014.³⁵
 11 It then served Geraldine and Broaster on December 22, 2014.³⁶ On February 4, 2015, the clerk entered
 12 defendants' defaults as to the complaint.³⁷ Since service was effected, defendants have neither
 13 responded to the complaint nor attempted to have their defaults set aside. This chronology compels the
 14 conclusion that defendants' defaults were not the product of excusable neglect. Cf. *PepsiCo, Inc.*, 238
 15 F.Supp.2d at 1177 (finding no excusable neglect where plaintiffs made numerous attempts to contact
 16 defendant to settle the matter). Consequently, this factor favors the entry of default judgment.

17 **6. Policy in Favor of Decisions on the Merits**

18 "Cases should be decided upon their merits whenever reasonably possible." *Eitel*, 782 F.2d at
 19 1472. The fact that Rule 55(b) has been enacted, however, indicates that "this preference, standing
 20 alone, is not dispositive." *PepsiCo, Inc.*, 238 F.Supp.2d at 1177 (quoting *Klopping*, 1996 WL 75315
 21

22 ³⁵Proof of Service upon Michael W. Monroe, Docket No. 8 (Jan. 16, 2015).

23 ³⁶Proof of Service upon Geraldine M. Monroe, Docket No. 6 (Jan. 15, 2015); Proof of Service
 24 upon Broaster Kitchen, Inc., Docket No. 7 (Jan. 15, 2015).

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 26 by Clerk Entered as to Michael W. Monroe, Docket No. 19 (Feb. 4, 2015); Default by Clerk Entered as
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 28 Default Against Defendant Broaster Kitchen, Inc., Docket No. 15 (Jan. 27, 2015); Second Request for
 Clerk to Enter Default Against Defendant Michael W. Monroe, Docket No. 16 (Jan. 27, 2015); Second
 Request for Clerk to Enter Default Against Defendant Geraldine M. Monroe, Docket No. 17 (Jan. 27,
 2015).

1 at *3). Rule 55(a) allows a court to decide a cause before the merits are heard if defendants fail to
 2 appear and defend. See *PepsiCo, Inc.*, 238 F.Supp.2d at 1177 (“Defendant’s failure to answer plaintiffs’
 3 complaint makes a decision on the merits impractical, if not impossible”). Since defendants failed to
 4 respond to the government’s claims, the seventh *Eitel* factor does not preclude the entry of default
 5 judgment against it.

6 **7. Conclusion Regarding the *Eitel* Factors**

7 On balance, the *Eitel* factors support the entry of default judgment against defendants. Although
 8 the policy of deciding cases on the merits always weighs against the entry of default judgment, the
 9 government has alleged a meritorious claim against defendants, there is no indication of excusable
 10 neglect on defendants’ part, and there is little likelihood of dispute. Consequently, the court grants the
 11 government’s motion for entry of default judgment against defendants.

12 **D. The Character and Amount of Plaintiff’s Recovery**

13 As noted, the government seeks a permanent injunction under 26 U.S.C. § 7402(a). Specifically
 14 it seeks an order (1) enjoining defendants and their representatives, agents, servants, employees,
 15 attorneys, successors in interest and assigns, as well as anyone in active concert or participation with
 16 them, from failing to withhold and pay over to the IRS all employment taxes, including federal income
 17 and FICA taxes, required by law; (2) requiring defendants to segregate and hold separate and apart from
 18 other funds the monies withheld from employees or collected from others for taxes due under any
 19 internal revenue law and to deposit the monies withheld and collected, as well as the employer’s share
 20 of FICA taxes, in an appropriate federal depository bank; (3) requiring defendants to deposit FUTA
 21 taxes each quarter in an appropriate federal depository bank; (4) requiring defendants, for a period of
 22 five years, to sign and deliver affidavits to an IRS officer on the 20th day of each month stating that the
 23 requisite withheld income, FICA, and FUTA tax deposits were timely made; (5) requiring defendants
 24 to file all Forms 940 and 941 unemployment and employment tax returns in a timely fashion; (6)
 25 requiring defendants to pay all required outstanding liabilities on each tax return in a timely fashion; (7)
 26 enjoining defendants and their representatives, agents, servants, employees, attorneys, successors in
 27 interest and assigns, as well as anyone in active concert or participation with them, from assigning any
 28 of Broaster’s property, rights, or assets before paying delinquent federal employment and unemployment

1 taxes due for a given payroll period; and (8) requiring defendants to notify the IRS of their future
 2 employment tax conduct with respect to any new or presently unknown company. The government also
 3 asks that the court require defendants to post the court's order and keep it posted for five years, and that
 4 it retain jurisdiction to ensure defendants' compliance with the injunction.³⁸

5 As noted, § 7402 authorizes district courts to issue injunctions as necessary to ensure the
 6 enforcement of the internal revenue laws. See 26 U.S.C. § 7402(a); *Ryan*, 764 F.2d at 1327; *Ernst &*
 7 *Whinney*, 735 F.2d at 1300. Because § 7402(a) grants the court power to enter injunctive relief, the
 8 government need only show that an injunction is appropriate to enforce the internal revenue laws; it
 9 need not make the showing required by the traditional equitable factors. See *United States v. Estate*
 10 *Preservation Service*, 202 F.3d 1093, 1098 (9th Cir. 2000) (holding that the "traditional requirements
 11 for equitable relief need not be satisfied" for purposes of § 7408 "since [the statute] expressly authorizes
 12 the issuance of an injunction"); *Thompson*, 395 F.Supp.2d at 945 ("Because § 7402(a) grants the court
 13 injunctive power, the government need only show that an injunction is appropriate for the enforcement
 14 of the internal revenue laws, without reference to the traditional equitable factors" (citations omitted));
 15 *Stoll*, 2005 WL 1763617 at *8 ("Because I.R.C. §§ 7402(a) and 7408 set forth the criteria for injunctive
 16 relief, the United States need only meet those criteria, without reference to the traditional equitable
 17 factors, for a court to issue a permanent injunction under these sections"); *Duke v. Uniroyal, Inc.*, 777
 18 F.Supp. 428, 433 (E.D.N.C. 1991) (where an injunction is expressly authorized by statute, and the
 19 statutory conditions have been satisfied, the moving party is not required to establish irreparable injury
 20 to obtain injunctive relief).

21 The court has concluded that injunctive relief is appropriate because the government has
 22 demonstrated that it is reasonably likely defendants will violate the federal tax laws again. See
 23 *Thompson*, 395 F.Supp.2d at 946; *Stoll*, 2005 WL 1763617 at *8. The court will therefore enter the
 24 permanent injunction sought by the government.³⁹

25
 26 ³⁸*Id.* at 8-9.

27 ³⁹Courts routinely enter permanent injunctions with provisions that are substantially similar as
 28 those contained in the government's proposed injunction. See, e.g., *United States v. Casillas*, No. CV
 14-5907 PA (Ex), 2015 WL 627382, *1-2 (C.D. Cal. Jan. 21, 2015); *United States v. Wickham*, No.

III. CONCLUSION

For the reasons stated, the court grants plaintiff's motion for entry of default judgment against defendants. The court will enter a permanent injunction as follows:

1. Defendants and their representatives, agents, servants employees, attorneys, successors in interest and assigns, as well as anyone in active concert or participation with them, are prohibited from failing to withhold and pay over to the IRS all employment taxes, including federal income and FICA taxes, required by law;
2. Defendants are ordered to segregate and hold separate and apart from all other funds the monies withheld from employees or collected from others for taxes under any internal revenue law of the United States and to deposit the monies so withheld and collected, as well as the employer's share of FICA taxes, in an appropriate federal depository bank in accordance with the federal deposit regulations;
3. Defendants are ordered to deposit FUTA taxes in an appropriate federal depository bank in accordance with the federal deposit regulations;
4. Defendants are ordered for a period of five years from the date of this order, to sign and deliver affidavits to Eric Wang, the assigned IRS revenue officer, 9350 E. Flair Drive, Fourth Floor, El Monte, California 91731, or to such other specific location or person as the IRS may deem appropriate, no later than the twentieth day of each month, which state that the requisite withheld income, FICA, and FUTA tax deposits were timely made;
5. Defendants are ordered to timely file all Forms 940 and 941 unemployment and employment tax returns with Revenue Officer Wang or at such other specific location or with such other person as the IRS may deem appropriate;
6. Defendants are ordered to timely pay all required outstanding liabilities due on each tax return required to be filed;
7. Defendants and their representatives, agents, servants employees, attorneys, successors

3:10-cv-00087-RRB, 2010 WL 4179599, *3-4 (D. Alaska Oct. 19, 2010).


1 in interest and assigns, as well as anyone in active concert or participation with them, are
2 prohibited in the event all required outstanding liabilities due on each employment tax
3 return required to be filed are not timely paid, from assigning any of Broaster's property
4 or rights to property or making any disbursements from Broaster's assets before paying
5 the delinquent federal employment and unemployment taxes due for a given payroll
6 period;

7 8. Defendants are ordered to notify the IRS of their future employment tax conduct with
8 respect to any new or presently unknown company; and

9 9. Defendants are ordered to post and keep posted for five years in one or more places
10 where notices to employees are customarily posted, a copy of this order.

11 The court will retain jurisdiction over the case to ensure compliance with this injunction.

12
13 DATED: May 27, 2015



MARGARET M. MORROW
UNITED STATES DISTRICT JUDGE