

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

_____)	
COOK PRODUCTIONS, LLC,)	
)	
Plaintiff,)	
)	
vs.)	Civ. No. 17-00034 ACK-RLP
)	
ALEX STEWART, et al.,)	
)	
Defendants.)	
_____)	

ORDER ADOPTING IN PART AND REJECTING IN PART THE FINDINGS AND RECOMMENDATION TO GRANT IN PART AND DENY IN PART PLAINTIFF COOK PRODUCTIONS, LLC'S MOTION FOR ENTRY OF DEFAULT JUDGMENT AGAINST DEFENDANT ALEX STEWART

For the reasons set forth below, the Court adopts in part and rejects in part the Findings and Recommendation to Grant in Part and Deny in Part Plaintiff Cook Productions, LLC's Motion for Entry of Default Judgment Against Defendant Alex Stewart, ECF No. 29, issued by Magistrate Richard L. Puglisi on August 22, 2017.

BACKGROUND

On January 25, 2017, Plaintiff Cook Productions, LLC ("Plaintiff") filed a complaint against 15 unknown Doe defendants alleging claims for direct and contributory copyright infringement. Compl., ECF No. 1. Plaintiff is the owner of a copyrighted motion picture entitled "Mr. Church" ("Work"). Id. ¶ 10; First Am. Compl. ¶ 17, ECF No. 18. Plaintiff alleges that

each defendant used BitTorrent, a peer-to-peer file sharing protocol, to reproduce, distribute, display or perform the copyrighted Work at issue in violation of 17 U.S.C. § 106(1), (3)-(5). First Am. Compl. ¶¶ 22-65, ECF No. 18.

Plaintiff filed a First Amended Complaint on May 5, 2017 naming Alex Stewart specifically as a defendant. Id. ¶¶ 5, 9-15. Through early discovery, Plaintiff appears to have been able to identify Mr. Stewart based on the Internet Protocol address ("IP address") at which the alleged infringement was observed. Id. ¶¶ 5, 9-12. Plaintiff alleges that activity at that IP address shows that 12 titles, including the copyrighted Work at issue, were consistently downloaded and/or distributed. Id. ¶ 10. Plaintiff also alleges that the subscriber of that IP address, Lawrence Stewart, stated that his son, defendant Alex Stewart, "was likely responsible for this activity." Id. ¶ 12.

A copy of the summons was left at Mr. Stewart's residence with his father on March 28, 2017. ECF No. 22. On June 16, 2017 Plaintiff's counsel spoke with Mr. Stewart's father, who stated that he had given the documents to his son "quite a while ago." Declaration of Counsel ¶ 5, ECF No. 24-1. After Mr. Stewart failed to appear, the Clerk of Court entered default against him on June 21, 2017, pursuant to Plaintiff's request. ECF Nos. 24-25. On July 7, 2017, Plaintiff filed the instant motion for default judgment against Mr. Stewart seeking

statutory damages, injunctive relief, and attorneys' fees. Motion at 1-2, ECF No. 26 ("Motion"). Mr. Stewart did not oppose the Motion.

On August 22, 2017, Judge Puglisi entered Findings and Recommendation to Grant in Part and Deny in Part Plaintiff's Motion. ECF No. 29 ("F&R"). After determining the Court had subject matter jurisdiction and personal jurisdiction, Judge Puglisi recommended that default judgment be entered in Plaintiff's favor against Mr. Stewart. Id. at 4-9. However, he recommended denying Plaintiff's requests for a permanent injunction and for an order requiring Mr. Stewart to destroy all illegal copies of the Work and the software used for the alleged infringement. Id. at 10-12, 16. Judge Puglisi also recommended awarding statutory damages, but only in the amount of \$750, rather than the \$7,500 requested. Id. at 12-13, 17. Finally, Judge Puglisi recommended denying Plaintiff's request for attorneys' fees. Id. at 14-17.

Plaintiff filed objections to the F&R on August 25, 2017. ECF No. 30 ("Obj."). Mr. Stewart did not file a response to the objections.

STANDARD

The district court may accept those portions of the findings and recommendation that are not objected to if it is satisfied that there is no clear error on the face of the

record. United States v. Bright, Civ. No. 07-00311 ACK-KSC, 2009 WL 5064355, at *3 (D. Haw. Dec. 23, 2009); Stow v. Murashige, 288 F. Supp. 2d 1122, 1127 (D. Haw. 2003). If a party objects to a magistrate judge's findings or recommendation, the district court must review de novo those portions to which the objections are made and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C); see also United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) ("[T]he district court must review the magistrate judge's findings and recommendations de novo *if objection is made*, but not otherwise." (emphasis in original)).

Under a de novo standard, a district court "review[s] the matter anew, the same as if it had not been heard before, and as if no decision previously had been rendered." Freeman v. DirecTV, Inc., 457 F.3d 1001, 1004 (9th Cir. 2006). The district court need not hold a de novo hearing; however, it is the court's obligation to arrive at its own independent conclusion about those portions of the magistrate judge's findings or recommendation to which a party objects. United States v. Remsing, 874 F.2d 614, 618 (9th Cir. 1989).

It is within the district court's discretion to "receive further evidence, recall witnesses, or recommit the

matter to the magistrate judge with instructions." Local Rule 74.2. Pursuant to Local Rule 74.2, this Court "may consider the record developed before the magistrate judge," but the Court must make its "own determination on the basis of that record."

DISCUSSION

The parties have not objected to Judge Puglisi's finding that Plaintiff is entitled to default judgment against Mr. Stewart or to the award of only \$750 in statutory damages to Plaintiff. See generally F&R; Obj. The Court does not find clear error in the F&R regarding these findings and adopts them for the reasons stated therein.

Plaintiff objects to three findings in the F&R: (1) that Plaintiff is not entitled to a permanent injunction; (2) that the request for an order that Mr. Stewart destroy all copies of the infringing work and file-sharing software be denied; and (3) that Plaintiff's request for an award of attorneys' fees be denied. Obj. at 2. The Court agrees with Plaintiff's objections and accordingly ADOPTS IN PART and REJECTS IN PART Magistrate Judge Puglisi's Findings and Recommendation.

I. Plaintiff Correctly Asserts That It Is Entitled to a Permanent Injunction and Order

The Copyright Act authorizes a court to "grant temporary and final injunctions on such terms as it may deem

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