

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 LHF Productions, Inc.,
5 Plaintiff
6 v.
7 Philina Buenafe,
8 Defendant

2:16-cv-01804-JAD-NJK
Order Granting Default Judgment
[ECF No. 43]

9
10 This is one of several essentially identical cases filed by plaintiff LHF
11 Productions, Inc., in which LHF sues many unidentified Doe defendants—under a
12 single filing fee—for infringing its copyright in the film “London Has Fallen” by
13 using BitTorrent software. LHF’s practice in these cases is to move for expedited
14 discovery to identify the defendants, and then systematically dismiss the
15 defendants after failing to serve them, or settling with them.¹ LHF brought this
16 particular case against 18 initially unidentified defendants.² After learning their
17 identities, LHF amended its complaint against 14 named defendants, and then LHF
18 proceeded to dismiss them from the case.³ Only one defendant remains: Philina
19 Buenafe. LHF now moves for default judgment against Buenafe, and because she
20 has been completely absent from this action, I grant the motion.

21 Background

22 After identifying Buenafe, LHF sent a demand letter informing her of this
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25 ¹ See LHF Productions, Inc. v. Smith, 2:16-cv-01803-JAD-NJK; LHF Productions,
26 Inc. v. Kabala, 2:16-cv-02028-JAD-NJK; LHF Productions, Inc. v. Boughton, 2:16-
27 cv-01918-JAD-NJK; LHF Productions, Inc. v. Wilson, 2:16-cv-02368-JAD-NJK.

28 ² ECF No. 1.

³ See generally docket report case 2:16-cv-01804-JAD-NJK.

1 case and her potential liability.⁴ Buenafe did not respond, so LHF sent her a second
2 demand letter approximately three weeks later.⁵ LHF filed its first-amended
3 complaint three weeks after that and sent Buenafe a third demand letter and
4 served her with process.⁶ Despite adequate service of process, Buenafe did not
5 respond to the first-amended complaint or demand letter.⁷ The Clerk of Court
6 entered default against Buenafe on May 8, 2017.⁸ LHF now moves for default
7 judgment, requesting \$15,000 in statutory damages, \$6,480 in attorney’s fees and
8 costs, and a permanent injunction to prohibit Buenafe from further infringing its
9 copyright.⁹

10 Discussion

11 A. Default-judgment standard

12 Federal Rule of Civil Procedure 55(b)(2) permits a plaintiff to obtain default
13 judgment if the clerk previously entered default based on a defendant’s failure to
14 defend. After entry of default, the complaint’s factual allegations are taken as true,
15 except those relating to damages.¹⁰ “[N]ecessary facts not contained in the
16 pleadings, and claims [that] are legally insufficient, are not established by
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19 ⁴ ECF No. 43 at 4.

20 ⁵ Id.

21 ⁶ Id.

22 ⁷ Id.

23 ⁸ ECF No. 34.

24 ⁹ ECF No. 43.

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26 ¹⁰ *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987) (per
27 curiam); FED. R. CIV. P. 8(b)(6) (“An allegation—other than one relating to the
28 amount of damages—is admitted if a responsive pleading is required and the
allegation is not denied.”).

1 default.”¹¹ The court has the power to require a plaintiff to provide additional proof
2 of facts or damages in order to ensure that the requested relief is appropriate.¹²
3 Whether to grant a motion for default judgment lies within my discretion,¹³ which is
4 guided by the seven factors outlined by the Ninth Circuit in *Eitel v. McCool*:

- 5 (1) the possibility of prejudice to the plaintiff; (2) the
6 merits of plaintiff’s substantive claim; (3) sufficiency of
7 the complaint; (4) the sum of money at stake in the action;
8 (5) the possibility of a dispute concerning material facts;
9 (6) whether the default was due to excusable neglect; and
10 (7) the strong policy underlying the Federal Rules of Civil
11 Procedure favoring decisions on the merits.¹⁴

12 A default judgment is generally disfavored because “[c]ases should be decided upon
13 their merits whenever reasonably possible.”¹⁵

14 B. Evaluating the Eitel factors

15 1. Possibility of prejudice to LHF

16 The first Eitel factor weighs in favor of granting default judgment against
17 Buenafe. LHF sent Buenafe numerous demand letters and a summons along with
18 the first-amended complaint, but Buenafe never responded. LHF claims that
19 Buenafe infringed its copyright by downloading its film using BitTorrent software.
20 Given the nature of BitTorrent software, Buenafe may be exacerbating LHF’s injury
21 by seeding the file to the BitTorrent swarm.

22 2. Substantive merits and sufficiency of the claims

23 The second and third Eitel factors require LHF to demonstrate that it has

24 ¹¹ *Cripps v. Life Ins. Co.*, 980 F.2d 1261, 1267 (9th Cir. 1992).

25 ¹² See Fed. R. Civ. P. 55(b)(2).

26 ¹³ *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986).

27 ¹⁴ *Eitel*, 782 F.2d at 1471–72.

28 ¹⁵ *Id.* at 1472.

1 stated a claim on which it may recover.¹⁶ The first-amended complaint sufficiently
2 pleads LHF's direct-copyright-infringement, contributory-copyright-infringement,
3 and vicarious-liability claims.

4 To present a prima facie case of direct infringement, LHF must show that: (1)
5 it owns the allegedly infringed material, and (2) the alleged infringers violate at
6 least one exclusive right granted to copyright holders under 17 U.S.C. § 106.¹⁷ LHF
7 alleges that it is the owner of the copyright registration for the film "London Has
8 Fallen."¹⁸ LHF also alleges that Buenafe willfully violated several exclusive rights
9 granted by 17 U.S.C. § 106 and that those violations caused it to suffer damages.¹⁹

10 The contributory-copyright-infringement claim requires LHF to allege that
11 Buenafe "had knowledge of the infringing activity" and "induce[d], cause[d], or
12 materially contribute[d] to the infringing conduct of another."²⁰ "Put differently,
13 liability exists if the defendant engages in personal conduct that encourages or
14 assists the infringement."²¹ Given the nature of BitTorrent technology, BitTorrent-
15 swarm participants who download files compulsorily upload those same files so that
16 other participants may download them at a faster rate. Accordingly, LHF's
17 allegation that each defendant is a contributory copyright infringer because they

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20 ¹⁶ See *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978).

21 ¹⁷ *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001).

22 ¹⁸ ECF No. 8 at 11, ¶ 46; see also ECF No. 8-2.

23 ¹⁹ ECF No. 8 at 11–12.

24 ²⁰ *A&M Records*, 239 F.3d at 1019 (quoting *Gershwin Publ'g Corp. v. Columbia*
25 *Artists Mgmt.*, 443 F.2d 1159, 1162 (2d Cir. 1971) and citing *Fonovisa, Inc. v.*
26 *Cherry Auction, Inc.*, 76 F.3d 259, 264 (9th Cir. 1996)).

27 ²¹ *Id.* (quoting *Matthew Bender & Co. v. West Publ'g Co.*, 158 F.3d 693, 706 (2d Cir.
28 1998)).

1 participated in a BitTorrent swarm²² is sufficient to satisfy the induced-caused-or-
2 contributed requirement. LHF satisfies the remaining requirements by alleging
3 that each defendant knew or should have known that other BitTorrent-swarm
4 participants were directly infringing on LHF's copyright by downloading the files
5 that they each uploaded.²³

6 LHF also claims that each defendant, as the account holder for the Internet
7 service, is vicariously liable for any infringing activity conducted by other users on
8 its Internet connection.²⁴ "Vicarious infringement is a concept related to, but
9 distinct from, contributory infringement."²⁵ "To state a claim for vicarious copyright
10 infringement, [LHF] must allege that [Buenafe] had (1) the right and ability to
11 supervise the infringing conduct and (2) a direct financial interest in the infringing
12 activity."²⁶

13 LHF's allegations satisfy the first prong of the vicarious-infringement test.
14 As the court discussed in *Dallas Buyers Club, LLC v. Doughty*, "the Internet service
15 account holder, appea[rs] to have had exclusive control over use of the Internet
16 service" and the account holder "could have simply secured access to the Internet by
17 creating a password or by changing an already existing password."²⁷ "Thus, . . . [the
18 account holder] had the capacity to terminate use of [her] Internet service by any
19 infringing third party if [s]he believed it was being used to violate applicable law."²⁸

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21 ²² ECF No. 8 at 13, ¶ 56.

22 ²³ *Id.* at 13, ¶¶ 58–61.

23 ²⁴ *Id.* at 14.

24 ²⁵ *Perfect 10, Inc. v. Visa Intern. Service Ass'n*, 494 F.3d 788, 802 (9th Cir. 2007).

25 ²⁶ *Id.*

26 ²⁷ *Dallas Buyers Club, LLC v. Doughty*, 2016 WL 1690090 (D. Or. Apr. 27, 2016).

27 ²⁸ *Id.* (citing *A&M Records*, 239 F.3d 1004).

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