

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MALIBU MEDIA, LLC,
Plaintiff,

v.

AMIRAM PELED,
Defendant.

Civil No.: 2:18-cv-00141-KSH-CLW

OPINION

Katharine S. Hayden, U.S.D.J.

I. Introduction

This matter comes before the Court on the unopposed motion for default judgment (D.E. 20) pursuant to Fed. R. Civ. P. 55(b)(2) brought by plaintiff Malibu Media, LLC (“Malibu Media”), a creator and distributor of pornographic films, against defendant Amiram Peled (“Peled”). The Court has reviewed all submissions made in support of this motion and decides it without oral argument pursuant to Federal Rule of Civil Procedure 78(b) and Local Civil Rule 78.1(b). For the reasons stated below, the motion is denied because Malibu Media has not sufficiently shown that Peled committed the complained of acts of infringement.

II. Background

Malibu Media, the owner of the copyrighted pornographic movies at issue in this case, alleges that Peled is a persistent online infringer of its copyrights. (D.E. 12 (“Amend. Compl.”) ¶ 2.) Malibu Media labels him as such because his Internet Protocol

address (“IP address”) was used to illegally distribute 19 copyrighted movies via the BitTorrent file distribution network (“BitTorrent”), a peer-to-peer filing sharing system used to distribute large amounts of data. (Amend. Compl. ¶¶ 2, 10, 23.; *see also* D.E. 12-1, Ex. A). Malibu Media further contends that its investigator, IPP International UG, established a direct Transmission Control Protocol (“TCP”)/IP connection with Peled’s IP address, and was therefore able to confirm that the IP address was used to download, copy, and distribute Malibu Media’s works without authorization. (*Id.* ¶¶ 17-23.)¹ Because Malibu Media has identified Peled as the subscriber of the IP address, it asserts that it was Peled who illegally downloaded, reproduced, distributed, and displayed its films. (Amend. Compl. ¶¶ 10, 23.)

III. Procedural History

On January 5, 2018, Malibu Media filed a complaint against John Doe Subscriber IP address 148.75.88.44, claiming damages for copyright infringement pursuant to the Copyright Act of 1976, 17 U.S.C. §§ 1010 *et seq* (“Copyright Act”). (D.E. 1.) Malibu Media then used “proven IP address geolocation technology” which it claims has “consistently worked in similar cases” to trace the alleged acts of copyright infringement

¹ To distribute a large file, the BitTorrent protocol breaks the file down into many small pieces, which BitTorrent users exchange amongst themselves. Each of these small file pieces is assigned a unique “hash value.” These hash values ensure that each small piece is properly routed amongst BitTorrent users as they engage in file sharing. The entire media file is also assigned a specific hash value. Malibu Media’s investigator established a direct connection with Peled’s IP address and downloaded one or more pieces of Malibu Media’s files, as identified by their specific hash values, to confirm that an internet user at Peled’s IP address had illegally maintained Malibu Media’s content. (Amend. Compl. ¶¶ 12-21.)

to a physical address located within the District of New Jersey. (Amend. Comp. ¶ 5.) Malibu Media asserts that this geolocation technology “has proven to be accurate to the District level in over 99% of cases.” (*Id.* ¶ 6.)

On January 24, 2018, Malibu Media moved for leave to serve a third-party subpoena on John Doe Subscriber’s Internet Service Provider (“ISP”). (D.E. 5.) The ISP maintains internal logs, which record the date, time, and customer identity for each IP address assignment made by that IP. (D.E. 4 (“Pl. Motion for Leave to Serve a Third-Party Subpoena”), at pg. 5.) As a result, the ISP can use this information to identify the subscriber of a given IP address. Malibu’s motion was granted on March 26, 2018 (D.E. 6) and on August 3, 2018, it filed an amended complaint naming Peled as the defendant-subscriber. (D.E. 12.)

On August 11, 2018, Peled was personally served with the summons and amended complaint at his home address in New Jersey. (D.E. 17.) Peled failed to answer, move, or otherwise respond. Malibu Media requested that default be entered against him on October 30, 2018 (D.E. 19) and it was entered the next day. Malibu Media filed this motion for default judgment on March 15, 2019 (D.E. 20) and served the motion for default on Peled by mail to his New Jersey address. (D.E. 20-1.)

IV. Discussion

a. Standard of Review

The Court may enter default judgment under Fed. R. Civ. P. 55(b)(2) against a properly served defendant who does not file a timely responsive pleading. The “entry

of default judgment is left primarily to the discretion of the district court.” *Hritz v. Woma Corp.*, 732 F.2d 1178, 1180 (3d Cir. 1984). In *Chanel, Inc. v. Gordashevsky*, Judge Kugler cited to Third Circuit precedent and wrote the authoritative opinion relied upon in this District, stating that in ruling on a motion for default judgment, the Court accepts the well-pleaded factual allegations in the complaint as true but “need not accept the moving party’s legal conclusions or allegations relating to the amount of damages,” and, further, the Court must “ascertain whether ‘the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law.’” 558 F. Supp. 2d 532, 535-36 (D.N.J. 2008) (citations omitted); *see also Comodyne I, Inc. v. Corbin*, 908 F.2d 1142, 1149 (3d Cir. 1990).

Prior to entering default judgment, the Court must be satisfied that it has subject matter and personal jurisdiction, that defendant was properly served, and that defendant failed to file an answer or otherwise respond to the complaint within 21 days, as provided by the Federal Rules. *See Baymont Franchise Sys., Inc. v. Shree Hanuman, Inc.*, 2015 WL 1472334, at *2, 3 (D.N.J. Mar. 30, 2015) (McNulty, J.); *see also Gold Kist, Inc. v. Laurinburg Oil Co., Inc.*, 756 F.2d 14, 18-19 (3d Cir. 1985); Fed. R. Civ. P. 12(a). Additionally, the Court must consider the following three factors: “(1) prejudice to the plaintiff if default is denied, (2) whether the defendant appears to have a litigable defense, and (3) whether defendant's delay is due to culpable conduct.” *Chamberlain v. Giampapa*, 210 F.3d 154, 164 (3d Cir. 2000); *see also Nationwide Mut. Ins. Co. v. Starlight Ballroom Dance Club, Inc.*, 175 Fed. Appx. 519, 522 (3d Cir. 2006).

b. Jurisdiction

Before entering default judgment against a party who has failed to plead or otherwise defend against a complaint, the Court has an “affirmative duty to look into its jurisdiction both over the subject matter and the parties.” *Ramada Worldwide, Inc. v. Benton Harbor Hari Ohm, L.L.C.*, 2008 WL 2967067, at *9 (D.N.J. July 31, 2008) (internal citations omitted) (Greenaway, J.). 28 U.S.C. § 1331 provides that “district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Malibu Media has sued under the Copyright Act (Amend. Compl. ¶¶ 1, 4). Because the Act creates a cause of action in favor of the copyright owner for direct infringement, the Court has subject matter jurisdiction. 17 U.S.C. § 501. The Court also has personal jurisdiction over Peled. A person’s “domicile, or home, constitutes the paradigmatic forum for the exercise of general jurisdiction. *Chanel, Inc. v. Matos*, 133 F.Supp.3d 678, 684 (internal quotations and citations omitted) (Simandle, J.). Peled is a resident of New Jersey and was personally served at his New Jersey residence. (Amend. Comp. ¶ 9.)

c. Sufficiency of Proof of Service

“Before the Court can enter default judgment, it must find that process was properly served on the Defendant.” *Teamsters Pension Fund of Phila.*, 2011 WL 4729023, at *2 (Simandle, J.) (citing *Gold Kist, Inc. v. Laurinburg Oil Co., Inc.*, 756 F.2d 14, 19 (3d Cir. 1985)). An individual defendant may be served by “delivering a copy of the summons and of the complaint to the individual personally[.]” Fed. R. Civ. P. 4(e).

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