

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

**MINDEN PICTURES, INC.,**

**Plaintiff,**

**v.**

**DENTISTRY TODAY, INC.,**

**Defendant.**

Civ. No. 22-2809 (KM) (JRA)

**OPINION AND ORDER**

**KEVIN MCNULTY, U.S.D.J.:**

This matter comes before the Court on the motion of the plaintiff, Minden Pictures, Inc. (“Minden”), for a default judgment against the defendant, Dentistry Today, Inc. (“Dentistry Today”), pursuant to Fed. R. Civ. P. 55(b)(2). (DE 9.)<sup>1</sup> This action arises from Dentistry Today’s alleged infringement of copyrights to a photographic image, of which Minden is the exclusive licensee. For the reasons expressed below, the motion is **GRANTED**.

**I. SUMMARY**

**a. Factual Allegations**

Minden is a provider of wildlife and nature stock photography. (Compl. ¶ 7.) It licenses these works for editorial, advertising, corporate, and non-profit use. (Compl. ¶ 8.) Minden is the exclusive licensee of the original photographic image appended to the complaint (the “Copyrighted Work”) and assisted the author in registering the work with the United States Copyright

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<sup>1</sup> Certain citations to the record are abbreviated as follows:

“DE” = docket entry number in this case

“Compl.” = Plaintiff’s Complaint and Jury Demand (DE 1)

“Mot.” = Memorandum of Law in Support of Plaintiff’s Motion for Default Judgment

Office. (Compl. ¶¶ 9-12, Exs. A, B.) Minden alleges that, on an unspecified date, it discovered that Dentistry Today had reproduced, distributed and public displayed the Copyrighted Work on its website without Minden's authorization.<sup>2</sup> (Compl. ¶ 14.) Minden asserts that Dentistry Today's conduct amounts to knowing and willful infringement of Minden's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501. (Compl. ¶¶ 15, 20-21.)

### **b. Procedural History**

On May 13, 2022, Minden filed its complaint against Dentistry Today seeking, among other things, 1) a declaration that Dentistry Today willfully infringed Minden's copyrights, 2) an accounting of all revenue earned by Dentistry Today during the period in which it reproduced, distributed, or displayed the copyrighted work; 3) an award of "all gains, profits, property and advantages derived by Defendant from their acts of copyright infringement," or, in lieu thereof, should Minden elect, statutory damages as provided in 17 U.S.C. § 504(c), and 4) a permanent injunction enjoining Dentistry Today from directly or indirectly infringing upon Minden's copyrights. Dentistry Today was properly served on May 18, 2022, but failed to answer or otherwise respond to the complaint. On June 21, 2022, the Clerk entered default. (Entry following DE 8.) On August 19, 2022, Minden filed a motion for default judgment seeking 1) an order enjoining Dentistry Today from its acts of copyright infringement, and 2) an award of \$10,000 in statutory damages under 17 U.S.C. § 504(c), plus attorney's fees, costs, and post-judgment interest. On October 28, 2022, I issued an order denying Minden's motion as presented, without prejudice to renewal, accompanied by the filing within 30 days of documents sufficient to establish Minden's standing to sue. (DE 10.) On November 18, 2022, Minden renewed its motion by letter, to which it attached its exclusive Agency Agreement with the author of the Copyrighted Work (the "Agency Agreement"), establishing its standing to bring the present action. (DE 11.)

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<sup>2</sup> Attached to Minden's complaint is an image that appears to be a screenshot of a page from Dentistry Today's website featuring the Copyrighted Work. (Compl. Ex. C.)

## II. DISCUSSION

### a. Legal Standard

“[T]he entry of a default judgment is left primarily to the discretion of the district court.” *Hritz v. Woma Corp.*, 732 F.2d 1178, 1180 (3d Cir. 1984) (citing *Tozer v. Charles A. Krause Milling Co.*, 189 F.2d 242, 244 (3d Cir. 1951)).

Because the entry of a default judgment prevents the resolution of claims on the merits, “this court does not favor entry of defaults and default judgments.” *United States v. \$55,518.05 in U.S. Currency*, 728 F.2d 192, 194 (3d Cir. 1984). Thus, before entering default judgment, the Court must determine whether the “unchallenged facts constitute a legitimate cause of action” so that default judgment would be permissible. *DirecTV, Inc. v. Asher*, 2006 WL 680533, at \*1 (D.N.J. Mar. 14, 2006) (citing Wright, Miller, Kane, 10A Fed. Prac. & P. Civil 3d § 2688, at 58–59, 63).

“[D]efendants are deemed to have admitted the factual allegations of the Complaint by virtue of their default, except those factual allegations related to the amount of damages.” *Doe v. Simone*, 2013 WL 3772532, at \*2 (D.N.J. July 17, 2013). While “courts must accept the plaintiff’s well-pleaded factual allegations as true,” they “need not accept the plaintiff’s factual allegations regarding damages as true.” *Id.* (citing *Chanel, Inc. v. Gordashevsky*, 558 F. Supp. 2d 532, 536 (D.N.J. 2008)). Moreover, if a court finds evidentiary support to be lacking, it may order or permit a plaintiff seeking default judgment to provide additional evidence in support of the allegations. *Doe*, 2013 WL 3772532, at \*2.

### b. Prerequisites for Entry of Default Judgment

Before a court may enter default judgment against a defendant, the plaintiff must have properly served the summons and complaint, and the defendant must have failed to file an answer or otherwise respond to the complaint within the time provided by the Federal Rules, which is twenty-one days. See *Gold Kist, Inc. v. Laurinburg Oil Co., Inc.*, 756 F.2d 14, 18–19 (3d Cir. 1985); Fed. R. Civ. P. 12(a).

Here, the complaint was filed on May 13, 2022. (DE 1.) Dentistry Today was properly served on May 18, 2022. (DE 6.) Dentistry Today failed to answer or otherwise respond to the complaint by the deadline and the Clerk's entry of default was duly noted on June 21, 2022. Therefore, the prerequisites for default have been satisfied

### **c. Three-Factor Analysis**

After the prerequisites have been satisfied, a court must evaluate the following three factors: "(1) whether the party subject to default has a meritorious defense, (2) the prejudice suffered by the party seeking default, and (3) the culpability of the party subject to default." *Doug Brady, Inc. v. N.J. Bldg. Laborers Statewide Funds*, 250 F.R.D. 171, 177 (D.N.J. 2008) (citing *Emcasco Ins. Co. v. Sambrick*, 834 F.2d 71, 74 (3d Cir. 1987)). Those factors, considered in light of the record of this case, weigh in favor of entry of a default judgment.

#### **i. Factor One: Existence of a Meritorious Defense**

As always, evaluation of the first factor is made difficult by the defendant's failure to answer or to oppose the motion for default judgment. Nevertheless, my independent review of the record does not suggest that the claims are legally flawed. Accepting the allegations in the Complaint as true, *Comdyne I, Inc. v. Corbin*, 908 F.2d 1142, 1149 (3d Cir. 1990), I find that Minden has successfully stated a claim for relief as against Dentistry Today.

To prevail on a claim of copyright infringement, Minden must 1) establish ownership of a valid copyright, and 2) unauthorized copying of protectable elements of the protected work. *Winstead v. Jackson*, 509 Fed. Appx. 139, 143 (3d Cir. 2013). Here, Minden has established that its Agency Agreement with the author of the Copyrighted Work grants it standing to sue for copyright infringement in the shoes of the copyright owner (*see, e.g., Stockfood Am., Inc. v. Adagio Teas, Inc.*, 475 F. Supp. 3d 394, 411 (D.N.J. 2020)),<sup>3</sup> and the

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<sup>3</sup> Section 2 of the Agency Agreement, as amended in 2021, provides:

For the purposes of clarification, Photographer [*i.e.*, the author of the Copyrighted Work] acknowledges, affirms, agrees, represents and warrants that the Agreement intended to grant Agency [*i.e.*, Minden] all

screenshot it has submitted corroborates its allegation that that Dentistry Today engaged in “unauthorized copying.” (See Agency Agreement; Compl. Ex. B).

I find that the facts as alleged make out a cause of action for copyright infringement.

**ii. Factors Two and Three: Prejudice to Minden and  
Dentistry Today’s Culpability**

The second and third factors also weigh in favor of default.

Dentistry Today was properly served in May but failed to appear, defend, or otherwise respond to the complaint. It is clear that Minden has been prejudiced by this dereliction because it has been “prevented from prosecuting their case, engaging in discovery, and seeking relief in the normal fashion.” See *Teamsters Pension Fund of Philadelphia & Vicinity v. Am. Helper, Inc.*, 2011 WL

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rights needed to act as the exclusive agent and syndicator of the Images, in any and all formats and media, whether now known or hereafter devised. As such, Photographer acknowledges, affirms, agrees, represents and warrants that Photographer has granted, through the Agreement, and does hereby grant, for valuable and good consideration, including but not limited to the provisions of services herein, receipt of which is hereby acknowledged, Agency the exclusive right to sell, syndicate, license, market or otherwise distribute the Images for use and exploitation, including but not limited to reproduction, further distribution, and public display, in any and all media now known or hereafter developed for any purpose whatsoever in the Territory (as defined in the Agreement) and, among other things, the right and ability, but not obligation, to pursue any present and future claims and causes of action against third parties related to the Images and such exclusive rights and copyrights. Agency shall have full discretion regarding the terms and conditions of any license or sublicense it might grant in connection with the Images without the need for prior consultation with Photographer, except as provided in the Agreement. Agency shall have the right and ability, but not the obligation, to register said works in Photographer's name, subject to Agency's sole and exclusive discretion and determination. To the extent that the terms in this Paragraph are not already in the Agreement, the Agreement is hereby modified to incorporate expressly the terms of this Paragraph, which supersede anything to the contrary in the Agreement.

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