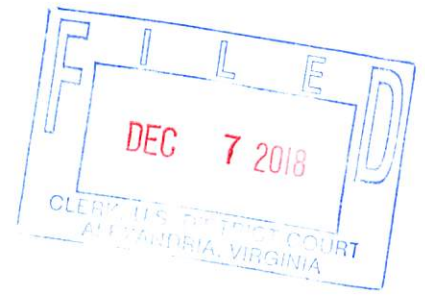


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division



MTI ENTERPRISES INC. )  
d/b/a MUSIC THEATRE INTERNATIONAL )  
)   
and )  
)   
MUSIC THEATRE INTERNATIONAL, LLC )  
d/b/a MUSIC THEATRE INTERNATIONAL )  
)   
Plaintiffs, )  
)   
v. )   
)   
THEATERPALOOZA COMMUNITY )  
THEATER PRODUCTIONS, INC. )  
d/b/a THEATERPALOOZA )  
)   
Defendant. )  
\_\_\_\_\_ )

Case No. 1:18-cv-650 (TSE/IDD)

**REPORT AND RECOMMENDATION**

This matter is before the Court on the Motion for Default Judgment from MTI Enterprises, Inc., d/b/a Music Theatre International and Music Theatre International, LLC d/b/a Music Theatre International against Theaterpalooza Community Theater Productions, Inc., d/b/a Theaterpalooza pursuant to Federal Rule of Civil Procedure 55(b)(2). (Dkt. No. 12).

After a licensed attorney for Defendant failed to appear at the hearing on August 10, 2018, the undersigned Magistrate Judge took this matter under advisement to issue this Report and Recommendation. Upon consideration of the Complaint, Plaintiffs' Motion for Default Judgment and the memorandum thereto, the undersigned Magistrate Judge makes the following findings and recommends that default judgment be **GRANTED in part and DENIED in part** against Defendant.

## I. INTRODUCTION

On June 1, 2018, Plaintiffs filed this action under Sections 106 and 501 of the Copyright Act of the United States as amended, 17 U.S.C. §§ 106 and 501, alleging copyright infringement. (Compl. ¶ 11). Plaintiffs allege that Defendant infringed and will infringe on the copyrights for various musical plays in which Plaintiffs have exclusive licensing rights. (Compl. ¶ 36). Defendant failed to submit responsive pleadings and did not appear at the August 10, 2018 hearing on Plaintiffs' Motion for Default Judgment. (Dkt. No. 14). Plaintiffs seek a money judgment awarding maximum statutory damages, a permanent injunction, and attorney's fees and costs. (Dkt. No. 12 at 10).

### A. Jurisdiction and Venue

For a court to render default judgment over a party, it must have subject matter and personal jurisdiction over the party and be the appropriate venue for the action. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 because this case arises under federal law, the Copyright Act. (Compl. ¶¶ 8-9). This Court has personal jurisdiction over Defendant because Defendant regularly conducts business in the Commonwealth of Virginia, the infringing acts took place in the Commonwealth of Virginia, and Plaintiffs suffered infringement injury in the Commonwealth of Virginia. (Compl. ¶ 10). Pursuant to 28 U.S.C. § 1391(b)(2), venue is proper in this District because a substantial part of the events giving rise to the claims occurred in this District. (Compl. ¶¶ 7, 11, 22). Therefore, the undersigned recommends a finding that jurisdiction and venue are proper with respect to the Defendant in this action.

### B. Service of Process

Federal Rule of Civil Procedure 4(h) governs service upon corporations, partnerships, and other unincorporated associations and allows service by following state law where the

district court is located. *See* Fed. R. Civ. P. 4(h)(1)(A). On June 26, 2018, a private process server served Teresa Walker, registered agent for Defendant, by delivering a copy of the Summons and Verified Complaint to 44611 Guilford Drive, #155, Ashburn, Virginia 20147. (Dkt. No. 8). Therefore, properly served Defendant with process.

### C. Grounds for Default

Plaintiffs filed their Complaint on June 1, 2018. (Dkt. No. 1). Defendant failed to appear, answer, or file any responsive pleading in this matter. On July 25, 2018, the Clerk entered default against Defendant upon Plaintiffs' Request for Entry of Default. (Dkt. Nos. 9-10). On August 1, 2018, Plaintiffs filed a Motion for Default Judgment, and the Court held a hearing on the matter on August 10, 2018. (Dkt. Nos. 12, 14). After Defendant failed to appear at the August 10, 2018 hearing, the undersigned Magistrate Judge took this matter under advisement to issue this Report and Recommendation.

## II. FACTUAL FINDINGS

The undersigned Magistrate Judge makes the following findings of fact based on the Complaint, the Motion for Default Judgment, and memorandum in support thereof.<sup>1</sup> Plaintiff MTI Enterprises, Inc. ("MTI"), is a musical licensing agency incorporated in New York. (Compl. ¶ 6). Plaintiff Musical Theatre International, LLC is an affiliate of Plaintiff MTI organized in Delaware. (*Id.*). Collectively, pursuant to Representation Agreements, Plaintiffs have the exclusive right to license performances of copyrighted musicals, such as *Annie*, *Mama Mia!*, and *Hairspray*. (Compl. ¶¶ 12-21). For small scale amateur productions, Plaintiff MTI charges a licensing fee and materials rental charge ranging from \$1,500 to \$2,500 per production,

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<sup>1</sup> Because Defendant failed to answer Plaintiffs' Complaint, Defendant admits Plaintiffs' factual allegations. Fed R. Civ. P. 8(b)(6) ("An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied."); *see also GlobalSantaFe Corp. v. Globalsantafe.com*, 250 F. Supp. 2d 610, 612 n.3 (E.D. Va. 2003) ("Upon default, facts alleged in the complaint are deemed admitted and the appropriate inquiry is whether the facts alleged state a claim.").

depending on variables including the number of performances, seats per performance, and amount of admission fees charged for each performance. (Compl. ¶¶ 15, 18, 21).

Defendant, a non-profit Florida corporation, offers children musical theater classes and camps in Ashburn, Virginia, Leesburg, Virginia, and Hagerstown, Maryland. (Compl. ¶¶ 7, 22). Defendant offers after school programs, acting classes, and theater camps, and charges tuition fees up to \$600 per child. (Compl. ¶¶ 22, 32). Defendant presents numerous musical theater productions and charges an admission fee of \$15 for adults and \$12 for children. (Compl. ¶¶ 7, 32). Plaintiffs allege that many of Defendant's musical productions are copyright protected and were performed without a license or authorization, in violation of the Copyright Act. (Compl. ¶ 23). Prior to filing this pending suit, Plaintiffs attempted to stop Defendant from infringing on its copyrighted musicals by sending Defendant multiple notices informing Defendant of its unlawful activity. (Compl. ¶¶ 27-31).

As early as January 12, 2015, Plaintiff MTI contacted Ms. Walker, owner and principal for Defendant, and informed her that Defendant was infringing on Plaintiffs' copyrighted work of *Mary Poppins* and demanded a halt of the performance until a license was obtained. (Compl. ¶ 27). Ms. Walker responded on the same day and claimed that Defendant was not using any copyrighted materials and that a payment would be made for *Mary Poppins*. (*Id.*). Plaintiff MTI did not receive a payment for the unauthorized productions of *Mary Poppins*. (*Id.*).

On April 13, 2015, Plaintiff MTI then sent a follow up notice repeating its earlier demand with respect to Defendant's infringing use of copyrighted works and the outstanding balance of \$1,110.00 for Defendant's *Mary Poppins* production. (*Id.*). Plaintiffs did not receive a payment. (*Id.*). On December 1, 2016, Plaintiff MTI sent another notice reiterating the same demands. (Compl. ¶ 28). Despite these notices, in the summer of 2016, Defendant presented an

unauthorized production of *Annie* as part of its summer camp. (Compl. ¶ 24).

In February, March, and April of 2017, Plaintiff MTI received notices from customers that Defendant was continuing to advertise and promote unlicensed shows. (Compl. ¶ 29). Accordingly, on May 15, 2017, Plaintiff MTI sent a demand by e-mail and Federal Express indicating that such performances cannot be presented without a valid performance license. (Compl. ¶ 29; Compl. Ex. T). On December 12, 2017, Plaintiffs' legal counsel sent Defendant another letter informing her of the infringements and that the payment of \$1,110.00 for *Mary Poppins* was still outstanding. (Compl. ¶ 30; Compl. Ex. U). Ms. Walker did not respond to this letter despite being requested to do so. (Compl. ¶ 30). Plaintiffs' legal counsel contacted Ms. Walker again on January 18, 2018, and demanded a response by February 1, 2018. (Compl. ¶ 31). Ms. Walker did not respond. (Compl. ¶ 31). In the spring of 2018, Defendant presented a production of *Annie*. (Compl. ¶ 25).

On July 17, 2018, two media reports were published in Loudoun County detailing the pending lawsuit. (Dkt. No. 16 Ex. A-B). In the Loudoun Now publication, Ms. Walker stated that Defendant had "been in talks" with Plaintiffs. (Dkt. No. 16 Ex. A). In the Loudoun Times Mirror publication, Ms. Walker stated, Defendant "has been working with MTI's attorneys for several weeks to resolve the issue." (Dkt. No. 16 Ex. B). On July 24, 2018, Ms. Walker sent an email to Defendant's clients and acknowledged that there is a pending suit against Defendant and admitted that money was owed to Plaintiffs. (Dkt. No. 16 Ex. C). During this time, Defendant advertised unlicensed performances, the most recent being *Annie*, *Mamma Mia!*, and *Hairspray* for July and August 2018. (Compl. ¶ 32).

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