

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UN4 PRODUCTIONS, INC.,

Plaintiff,

v.

LIBAN HARO, *et al.*,

Defendants.

Case No. C17-0892RSL

ORDER GRANTING IN PART UN4'S
MOTIONS FOR DEFAULT
JUDGMENT

I. INTRODUCTION

This matter comes before the Court on plaintiff UN4's motions for default judgment against defendants Andrei Saar (Dkt. #49), Andrey Savin (Dkt. #51), and Eric McClain (Dkt. #53). Having reviewed the relevant briefing and the remainder of the record, UN4's motions for default judgment are GRANTED IN PART and DENIED IN PART.

II. BACKGROUND

The three motions for default judgment that are the subject of this Order are just a portion of the more than one hundred default judgment motions filed by plaintiff's counsel in twenty-six cases before the undersigned. All of the cases assert essentially

ORDER GRANTING IN PART MOTIONS

1 the same causes of action based on remarkably similar allegations, although the motion
2 picture at issue, the owner of the copyright, and the defendants vary. For purposes of
3 these motions, UN4 alleges that 60 individual defendants unlawfully infringed its
4 exclusive copyright to the motion picture *Boyka Undisputed 4*, which it developed and
5 produced, by copying and distributing the film over the Internet through a peer-to-peer
6 network using the BitTorrent protocol. Plaintiff served internet service providers
7 (“ISP”s) with subpoenas in order to identify the alleged infringers. Amended complaints
8 identifying defendants by name were subsequently filed.
9

10
11 Defendants Saar, Savin, and McClain (collectively “Defendants”) are named in
12 the same complaint because, given the unique identifier associated with a particular
13 digital copy of *Boyka Undisputed 4* and the timeframe in which the internet protocol
14 address associated with each Defendant accessed that digital copy, UN4 alleges the
15 named Defendants were all part of the same “swarm” of users that reproduced,
16 distributed, displayed, and/or performed the copyrighted work. According to UN4,
17 Defendants directly or indirectly shared, downloaded, and distributed a single unique
18 copy of *Boyka Undisputed 4* that had been seeded to the torrent network at some
19 undefined point in the past.
20
21

22
23 Defendants did not respond to UN4’s complaint. The Clerk of Court therefore
24 entered default against Defendants at UN4’s request. See Dkts. #45-47. UN4 now seeks
25 judgment against each Defendant.
26
27
28

ORDER GRANTING IN PART MOTIONS

III. DISCUSSION

1
2 Federal Rule of Civil Procedure 55(b) authorizes a court to grant default
3 judgment. Prior to entering judgment in defendant's absence, the Court must determine
4 whether the allegations of a plaintiff's complaint establish his or her liability. Eitel v.
5 McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). The court must accept all well-pled
6 allegations of the complaint as established fact, except allegations related to the amount
7 of damages. TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).
8
9 Where the alleged facts establish a defendant's liability, the court has discretion, not an
10 obligation, to enter default judgment. Alan Neuman Productions, Inc. v. Albright, 862
11 F.2d 1388, 1392 (9th Cir. 1988). If plaintiff seeks an award of damages, it must provide
12 the Court with evidence to establish the amount. TeleVideo Sys., 826 F.2d at 917-18.
13
14

A. Liability Determination.

15
16 The allegations in UN4's complaint establish Defendants' liability for direct
17 copyright infringement. To establish direct infringement, UN4 must demonstrate
18 ownership of a valid copyright and that Defendants copied "constituent elements of the
19 work that are original." L.A. Printex Indus., Inc. v. Aeropostale, Inc., 676 F.3d 841, 846
20 (9th Cir. 2012) (quoting Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361
21 (1991)). Here, UN4 alleges it owns the exclusive copyright to the motion picture *Boyka*
22 *Undisputed 4* and that Defendants participated in a "swarm" to unlawfully copy and/or
23 distribute the same unique copy of *Boyka Undisputed 4*. These allegations were
24 established by entry of default against Defendants. Accordingly, UN4 has established
25 Defendants' liability for direct copyright infringement.
26
27
28

ORDER GRANTING IN PART MOTIONS

1 B. Default Judgment is Warranted.

2 Having established liability, plaintiff must also show that default judgment is
3 warranted. Courts often apply the factors listed in Eitel, 782 F.2d at 1471-72, to make
4 this determination. Those factors are:

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

12 The majority of these factors weigh in favor of granting default judgment against
13 Defendants. UN4 may be prejudiced without the entry of default judgment as it will be
14 left without a legal remedy. See Landstar Ranger, Inc. v. Parth Enters., Inc., 725 F.
15 Supp.2d 916, 920 (C.D. Cal. 2010). UN4’s complaint sufficiently alleges a claim of
16 direct copyright infringement, and Defendants did not present any evidence or argument
17 to the contrary. Additionally, the Court finds there is a low probability that default against
18 Defendants was due to excusable neglect: Defendants were given ample opportunity to
19 respond to the filings in this matter between the time they were served with UN4’s
20 complaint and the date of this Order. Finally, although there is a strong policy favoring
21 decisions on the merits, the Court may consider Defendants’ failure to respond to UN4’s
22 requests for default and default judgment as admissions that the motions have merit. LCR
23 7(b)(2).
24

25
26 The Court acknowledges that a dispute concerning the material facts alleged by
27 UN4, including the identity of the alleged infringers, could arise in this case. The Court
28

ORDER GRANTING IN PART MOTIONS

1 also acknowledges that the amount at stake may be significant depending on the means
2 of each Defendant. UN4 seeks enhanced statutory damages in the amount of at least
3 \$1,500 along with attorneys' fees in excess of \$1,550 and costs in excess of \$150 from
4 each individual Defendant. Notwithstanding these considerations, the Eitel factors
5 weigh in favor of granting default judgment against Defendants.
6

7 C. Appropriate Relief.

8 UN4 requests entry of a default judgment against each Defendant providing the
9 following three categories of relief: (1) permanent injunctive relief; (2) statutory
10 damages; and (3) attorney's fees and costs. Each category is discussed below.
11

12 i. *Permanent Injunctive Relief*

13 Permanent injunctive relief is appropriate. Section 502(a) of Title 17 of the
14 United States Code allows courts to "grant temporary and final injunctions on such
15 terms as it may deem reasonable to prevent or restrain infringement of a copyright." As
16 part of a default judgment, courts may also order the destruction of all copies of a work
17 made or used in violation of a copyright owner's exclusive rights. 17 U.S.C. § 503(b).
18 Given the nature of the BitTorrent protocol and Defendants' participation therein, the
19 Court finds Defendants possess the means to continue infringing in the future. MAI Sys.
20 Corp. v. Peak Comput., Inc., 991 F.2d 511, 520 (9th Cir. 1993) (granting permanent
21 injunction where "liability has been established and there is a threat of continuing
22 violations."). Consequently, the Court will issue a permanent injunction enjoining
23 Defendants from infringing UN4's rights in *Boyka Undisputed 4* and directing them to
24 destroy all unauthorized copies of *Boyka Undisputed 4*.
25
26
27
28

ORDER GRANTING IN PART MOTIONS

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.