

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

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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

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

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  
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### III. DISCUSSION

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

#### A. Liability Determination.

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

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

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

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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  
9 UN4 requests entry of a default judgment against each Defendant providing the  
10 following three categories of relief: (1) permanent injunctive relief; (2) statutory  
11 damages; and (3) attorney's fees and costs. Each category is discussed below.  
12

13 i. *Permanent Injunctive Relief*

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