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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Hydentra HLP Int. Limited,
10 Plaintiff,
11 v.
12 Tubenn.com, et al.,
13 Defendants.
14

No. CV-15-00239-PHX-DLR
ORDER

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16 Before the Court is Plaintiff Hydentra HLP International Limited's Motion for
17 Default Judgment Against Defendants Danh Manh Nguyen and Thai Nguyen. (Doc. 37.)
18 For the following reasons, the motion is granted.

19 **BACKGROUND**

20 Plaintiff brought this action against various pornographic websites asserting
21 claims for copyright infringement based on the publication of numerous videos
22 copyrighted by Plaintiff. (Doc. 1.) Plaintiff moved for leave to conduct limited
23 discovery to determine the owners and operators of the offending websites, which the
24 Court granted in part. (Docs. 9, 12.) Based on this early discovery, Plaintiff amended its
25 complaint to name Danh Manh Nguyen and Thai Nguyen as Defendants. (Docs. 18, 28.)
26 Thereafter, Plaintiff moved for leave to serve Defendants, who are located in Vietnam,
27 via email. (Doc. 19.) The Court granted the motion and Plaintiff served Defendants via
28 email on October 26, 2015. (Docs. 21, 25-26.) Since then, Defendants have failed to

1 appear. On January 26, 2016, the Clerk of the Court entered default. (Doc. 33.) Plaintiff
2 now moves for default judgment pursuant to Fed. R. Civ. P. 55. (Doc. 37.) Plaintiff
3 seeks \$8,100,000 in statutory damages, \$22,045 in attorneys' fees and costs, and a
4 permanent injunction enjoining Defendants and their respective agents, servants, and
5 employees from infringing upon Plaintiff's copyrighted works. (*Id.*)

6 **LEGAL STANDARD**

7 When determining whether to enter a default judgment, the court should consider
8 factors such as:

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

13 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). In applying these factors, "the
14 well-pleaded factual allegations of the complaint are taken as true, except for those
15 allegations relating to damages." *Philip Morris USA, Inc. v. Castworld Prod., Inc.*, 219
16 F.R.D. 494, 498 (C.D. Cal. 2003).

17 **DISCUSSION**

18 **I. Entitlement to Default Judgment**

19 The first three *Eitel* factors favor entry of default judgement. "A plaintiff bringing
20 a claim for copyright infringement must demonstrate (1) ownership of a valid copyright,
21 and (2) copying of constituent elements of the work that are original." *Funky Films, Inc.*
22 *v. Time Warner Entm't Co., L.P.*, 462 F.3d 1072, 1076 (9th Cir. 2006) (internal
23 quotations and citation omitted). Plaintiff alleges that it owns the copyright to numerous
24 videos, and that Defendants displayed 18 of these copyrighted videos utilizing five
25 different websites, amounting to 54 separate instances of infringement. (Doc. 28, ¶¶ 44-
26 47.) Plaintiff substantiates these allegations with declarations from Jason Tucker,
27 Director of Battleship Stance LLC, an intellectual property management and anti-piracy
28 investigation and enforcement company, and Jon Krogman, President of Hydrentra HLP

1 International Limited and its subsidiaries. (Docs. 37-2, 37-3.) Thus, Plaintiff has
2 sufficiently alleged meritorious copyright infringement claims. Moreover, this Court
3 likely is the only forum in which Plaintiff may obtain relief. Defendants are located in
4 Vietnam, but the offending websites are hosted here in Arizona. (Doc. 28, ¶ 10.)
5 Plaintiff will be prejudiced if a default judgment is not granted because it “will likely be
6 without other recourse for recovery.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d
7 1172, 1177 (C.D. Cal. 2002).

8 The fourth factor weighs against entry of default judgment. Plaintiff seeks
9 \$8,100,000 in statutory damages. Although Rule 55 does not limit the amount that can be
10 recovered through a default judgment, the substantial size of Plaintiff’s requested damage
11 award is cause for hesitation.

12 The fifth and sixth factors both weigh in favor of entry of default judgment.
13 Plaintiff substantiates its copyright infringement claims with the declarations of Tucker
14 and Krogman, and nothing suggests that these facts are subject to reasonable dispute.
15 Additionally, Defendants were served with the summons and complaint but have made
16 no effort to respond or otherwise participate in this action. Nothing suggests that
17 Defendants’ default was the result of excusable neglect.

18 Finally, the seventh factor generally weighs against entry of default judgment
19 because “[c]ases should be decided upon their merits whenever reasonably possible.”
20 *Eitel*, 782 F.2d at 1472. Defendants’ failure to participate in this litigation, however,
21 “makes a decision on the merits impractical, if not impossible.” *PepsiCo*, 238 F. Supp.
22 2d at 1177. On balance, the Court finds that the *Eitel* factors support entry of default
23 judgment against Defendants.

24 **II. Damages**

25 A copyright owner may recover statutory damages if the copyright was registered
26 with the United States Copyright Office before the date of infringement. 17 U.S.C. §§
27 412, 504(a). Statutory damages may range from \$750 to \$30,000 per copyrighted work.
28 17 U.S.C. § 504(c)(1). The statutory maximum increases to \$150,000 per copyrighted

1 work in cases of willful infringement. § 504(c)(2).

2 Plaintiff requests that statutory maximum for each of the 54 separate instances of
3 copyright infringement, for a total of \$8,100,000. Plaintiff has shown that the infringed-
4 upon videos were registered prior to infringement. (Doc. 37-2, ¶ 23; Doc. 37-3, ¶ 25.)
5 Plaintiff also alleges that Defendants’ infringement was willful, (Doc. 28, ¶¶ 60-61),
6 which the Court must accept as true. *See Derek Andrew, Inc. v. Proof Apparel Corp.*,
7 528 F.3d 696, 702 (9th Cir. 2008) (noting that, as a result of the defendant’s default, “all
8 factual allegations in the complaint are deemed true, including the allegation of [the
9 defendant’s] willful infringement of [the plaintiff’s] trademarks”). Moreover, Plaintiff
10 provides evidence that Defendants continue to display Plaintiff’s copyrighted videos on
11 at least two of their websites, despite being served with this lawsuit. (Doc. 37-3, ¶¶ 39-
12 40.) Given these circumstances, the Court finds that the statutory maximum is
13 appropriate and awards Plaintiff the maximum statutory award per willfully infringed
14 video, totaling \$8,100,000.

15 **III. Attorneys’ Fees**

16 A prevailing copyright owner may recover reasonable attorneys’ fees and costs if
17 the subject copyright was registered before the date of infringement. 17 U.S.C. §§ 412,
18 505. Plaintiff requests \$22,045 in attorneys’ fees and costs, which reflects the \$400 filing
19 fee and 48.1 hours of work billed at a rate of \$450 per hour. (Doc. 37-4.) Plaintiff’s
20 attorney has submitted a task-based itemization of the work performed, which includes
21 drafting the complaints, a motion to conduct early discovery, a motion for leave to serve
22 Defendants by alternative means, and the instant motion for default judgment. (*Id.*) The
23 Court finds Plaintiff’s fee request reasonable and awards \$22,045 in attorneys’ fees and
24 costs.

25 **IV. Injunctive Relief**

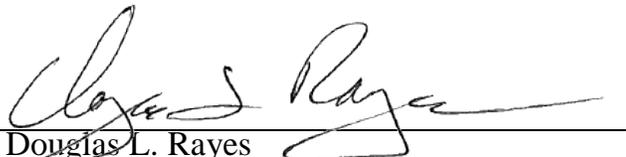
26 Finally, Plaintiff requests that the Court permanently enjoin Defendants from
27 infringing Plaintiff’s copyrighted videos. The Court is authorized to “grant . . . final
28 injunctions on such terms as it may deem reasonable to prevent or restrain infringement

1 of a copyright.” 17 U.S.C. § 502. Plaintiff has demonstrated that it has been harmed by
2 Defendants’ willful infringement and that Defendants continue to unlawfully display
3 copyrighted works on at least two of their websites, despite notice of this lawsuit. The
4 Court finds that injunctive relief is appropriate under the circumstances. Accordingly,

5 **IT IS ORDERED** that Plaintiff’s Motion for Default Judgment, (Doc. 37), is
6 **GRANTED**. The Clerk shall enter judgment awarding Plaintiff \$8,100,000 in statutory
7 damages and \$22,045 in attorneys’ fees and costs. Defendants and their respective
8 agents, servants, and employees are permanently enjoined from infringing Plaintiff’s
9 copyrighted works. The Clerk shall terminate this case.

10 Dated this 26th day of October, 2016.

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Douglas L. Rayes
United States District Judge