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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TWENTIETH CENTURY FOX FILM CORPORATION,)	CV 16-8463-RSWL-MRWx
)	
Plaintiff,)	ORDER re: Plaintiff's
)	Motion for Entry of
v.)	Default Judgment [18]
)	
)	
MATTHEW SAUNDRY and DOES 1-)	
10,)	
)	
Defendants.)	
)	
)	

Currently before the Court is Plaintiff Twentieth Century Fox Film Corporation's ("Plaintiff") Motion for Entry of Default Judgment ("Motion" or "Motion for Default Judgment") against Defendant Matthew Saundry ("Defendant"). ECF No. 18. Having reviewed all papers submitted pertaining to this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the Court **GRANTS** Plaintiff's Motion [18].

1 I. BACKGROUND

2 A. Factual Background

3 Plaintiff is a corporation that produces and
4 distributes motion pictures and television programs.
5 Compl. ¶ 5, ECF No. 1. Plaintiff holds copyright
6 registrations in twenty-four episodes from Season 1 of
7 the popular television program, *New Girl* (the
8 "Program"). Id. at ¶ 6, Ex. A; Pl.'s Mot. for Default
9 J. ("Mot.") 2:15-17. Plaintiff has exclusive rights to
10 reproduce, distribute, and/or license reproduction of
11 the Program in video format, including DVDs. Compl. ¶
12 6. Defendant is a resident of Melbourne, Florida who
13 purportedly does business in this judicial district
14 through his eBay seller "User ID," "mws5000." Id. at ¶
15 10.

16 Defendant allegedly infringed Plaintiff's
17 copyrights by copying, reproducing, distributing, and
18 selling unauthorized copies of the Program;
19 specifically, a DVD boxed set of *New Girl* Season 1 (the
20 "DVDs"). See id. at ¶ 12; Decl. of Daniel Kim ("Kim
21 Decl.") ¶ 4.

22 On May 4, 2016, an employee of IPCybercrime.com,
23 LLC ("IPCybercrime"), an investigator of intellectual
24 property crimes, purchased a copy of the DVDs on an
25 eBay auction posted by user mws5000 and received it by
26 mail on May 16, 2016. Declaration of Robert L. Holmes
27 ("Holmes Decl.") ¶ 2; Mot. Ex. A. The employee paid
28 Defendant via PayPal and sent payment to the email

1 address "mattsaunder@gmail.com" Id.

2 Plaintiff reviewed the allegedly infringing DVDs
3 and determined they were unauthorized copies of the
4 Program based on their digital content and the fact
5 that the quality and format of the DVD disc art was
6 "inconsistent with and inferior to authorized versions"
7 of the Program. Kim Decl. ¶ 4. Moreover, the DVDs had
8 Plaintiff's logo, listed Plaintiff's location in
9 Beverly Hills, California, and contained other
10 identifying information. Mot. 3:12-16. The DVDs also
11 had typographical errors on the package regarding
12 Plaintiff's copyright notice. Id.

13 **B. Procedural Background**

14 Plaintiff filed a Complaint against Defendant on
15 November 14, 2016, alleging a claim for copyright
16 infringement, 17 U.S.C. §§ 501, *et seq.* [1].

17 Defendant was personally served on December 3, 2016
18 in Melbourne, Florida. ECF No. 14. On February 2,
19 2017, the parties stipulated that Defendant would have
20 until February 24, 2017 to Answer the Complaint. ECF
21 No. 10. Defendant did not answer or otherwise respond
22 to the Complaint by February 24, 2017. Pursuant to
23 Plaintiff's request, the Clerk entered default as to
24 Defendant on March 16, 2017 per Federal Rules of Civil
25 Procedure 55(a). ECF No. 16. On May 5, 2017,
26 Plaintiff filed the instant Motion for Default
27 Judgment. ECF No. 18. Defendant did not file an
28 Opposition by the June 6, 2017 deadline. Plaintiff

1 seeks the following damages: statutory damages totaling
2 \$240,000 pursuant to 17 U.S.C. § 504(c); attorneys'
3 fees totaling \$8,400; and post-judgment interest
4 calculated at the rate set forth in 28 U.S.C. §
5 1961(a). Mot. 2:3-9.

6 **II. DISCUSSION**

7 **A. Legal Standard**

8 The granting of default judgment is within the
9 discretion of the district court. Aldabe v. Aldabe,
10 616 F.2d 1089, 1092 (9th Cir. 1980); see Fed. R. Civ.
11 P. 55. Procedural and substantive requirements must be
12 satisfied.

13 Procedurally, the requirements set forth in Federal
14 Rules of Civil Procedure ("FRCP" or "Rule") 54(c) and
15 55(b), and Local Rule 55-1 must be met. See Vogel v.
16 Rite Aid Corp., 992 F. Supp. 2d 998, 1006 (C.D. Cal
17 2014). Local Rule 55-1 provides: "When an application
18 is made to the Court for a default judgment, the
19 application shall be accompanied by a declaration in
20 compliance with F.R.Civ.P. 55(b)(1) and/or (2) and
21 include the following: (a) When and against what party
22 the default was entered; (b) The identification of the
23 pleading to which default was entered; (c) Whether the
24 defaulting party is an infant or incompetent person,
25 and if so, whether that person is represented by a
26 general guardian, committee, conservator or other
27 representative; (d) That the Service Members Civil
28 Relief Act, 50 U.S.C. App. § 521, does not apply; and

1 (e) That notice has been served on the defaulting
2 party, if required by F.R.Civ.P. 55(b)(2)." L.R. 55-1.

3 Courts should also consider the following factors
4 in determining whether to grant a motion for default
5 judgment: "(1) the possibility of prejudice to
6 plaintiff, (2) the merits of plaintiff's substantive
7 claims, (3) the sufficiency of the complaint, (4) the
8 sum of money at stake in the action, (5) the
9 possibility of a dispute concerning the material facts,
10 (6) whether defendant's default was the product of
11 excusable neglect, and (7) the strong public policy
12 favoring decisions on the merits." Eitel v. McCool,
13 782 F.2d 1470, 1471-72 (9th Cir. 1986).

14 If the court determines that the defendant is in
15 default, "the factual allegations of the complaint,
16 other than those relating to damages, are taken as
17 true.'" Televideo Sys., Inc. v. Heidenthal, 826 F.2d
18 915, 917-18 (9th Cir. 1987) (quoting Geddes v. United
19 Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977)).

20 Additionally, "[w]hen entry of judgment is sought
21 against a party who has failed to plead or otherwise
22 defend, a district court has an affirmative duty to
23 look into its jurisdiction over both the subject matter
24 and the parties." In re Tuli, 172 F.3d 707, 712 (9th
25 Cir. 1999).

26 If the Court determines that the allegations in the
27 complaint are sufficient to establish liability, the
28 plaintiff must provide proof of all damages sought in

1 the complaint, and the Court must determine the "amount
2 and character" of the relief that should be awarded.
3 Vogel, 992 F. Supp. 2d at 1005-06 (citations omitted).
4 "A default judgment must not differ in kind from, or
5 exceed in amount, what is demanded in the pleadings."
6 Fed. R. Civ. P. 54(c).

7 **B. Analysis**

8 1. Jurisdiction and Service of Process are Proper

9 In considering whether to enter default judgment
10 against Defendant, the Court must first determine
11 whether it has jurisdiction over the subject matter and
12 the parties to the case. In re Tuli, 172 F.3d at 712.

13 The Court has subject matter jurisdiction over this
14 copyright infringement action, as district courts have
15 original jurisdiction of any civil action "arising
16 under any Act of Congress relating to . . .
17 copyrights." 28 U.S.C. § 1338(a).

18 Personal jurisdiction is also met. Defendant, a
19 Florida citizen, may be subject to specific
20 jurisdiction in California. The Ninth Circuit employs
21 a three-part test to determine whether a court has
22 specific jurisdiction over a defendant: (1) the non-
23 resident defendant purposefully directs his activities
24 at the forum state or performs some act in which he
25 purposefully avails himself of the privilege of

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28 ///

1 conducting activities in the forum;¹ (2) the claim
2 arises out of or relates to the defendant's forum-
3 related activities; and (3) the exercise of
4 jurisdiction comports with fair play and substantial
5 justice. Mavrix Photo, Inc. v. Brand Techs., Inc., 647
6 F.3d 1218, 1227-28 (9th Cir. 2011).

7 Specific jurisdiction is satisfied. First,
8 Defendant "purposefully directed" his activities at
9 California through the intentional act of copying and
10 distributing the allegedly infringing DVDs; expressly
11 aiming the sales at California consumers through a
12 California corporation like eBay and shipping products
13 to California consumers; and causing harm likely to be
14 suffered by Plaintiff, an entertainment-based
15 corporation with its principal place of business in Los
16 Angeles, California. Defendant was likely aware that
17 Plaintiff would suffer harm in California, as he
18 affixed his DVDs with Plaintiff's location in "Beverly
19 Hills, California." Holmes Decl. Ex. B.

20 Second, the copyright infringement claim arises out
21 of Defendant's business with California, as he sells
22 eBay products and ships them to California consumers.

24 ¹ To determine whether a defendant has purposefully directed
25 itself at the forum, courts use the three-part "effects" test set
26 forth by the Supreme Court in Calder v. Jones, 465 U.S. 783
27 (1984). To satisfy the Calder test, the defendant must have: (1)
28 committed an intentional act; (2) that is expressly aimed at the
forum state; (3) causing harm that defendant understands is
likely to be felt in the forum state. Dole Food v. Watts, 303
F.3d 1104, 1111 (9th Cir. 2002).

1 Holmes Decl. ¶ 3. Third, the exercise of jurisdiction
2 is reasonable because the evidence, in the form of
3 DVDs, is portable as evidenced by the relative ease
4 with which Defendant mailed them to California.
5 Further, the forum state may have an interest in
6 adjudicating copyright infringement actions given its
7 panoply of entertainment-based corporations and
8 residents.

9 Although a one-time eBay sale may not necessarily
10 be dispositive of specific jurisdiction, it is unclear
11 how many other eBay sales Defendant made of the
12 allegedly infringing DVDs. See Boschetto v. Hansing,
13 539 F.3d 1011, 1019 (9th Cir. 2008)(explaining that
14 while eBay can be used to support personal jurisdiction
15 over a defendant if said defendant used eBay to
16 establish regular business with a remote forum, a one-
17 time eBay transaction "does not have any dispositive
18 effect on jurisdiction.") Nevertheless, Plaintiff has
19 at least "ma[d]e a prima facie showing of
20 jurisdictional facts" to support an inference of
21 specific jurisdiction. Dole, 303 F.3d at 1108.

22 Service of process is also satisfied because
23 Defendant was personally served with the Summons and
24 Complaint on December 3, 2016 [14] in accordance with
25 Federal Rules of Civil Procedure 4(e)(2)(A). Decl. of
26 Annie S. Wang ("Wang Decl.") ¶ 3.

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1 2. Procedural Requirements

2 Plaintiff has met the procedural requirements for
3 default judgment pursuant to Federal Rules of Civil
4 Procedure 55 and Central District Local Rule 55-1.
5 Under Rule 55(a), the Clerk properly entered default
6 against Defendant on March 16, 2017 [16]. Plaintiff
7 moved pursuant to Rule 55(b) for entry of default
8 judgment on May 5, 2017 [18].

9 Plaintiff has also established the Local Rule 55-1
10 requirements. Per the Motion, the Clerk entered
11 default against Defendant on March 16, 2017 as to the
12 entire Complaint, ecf no. 16; Defendant is neither a
13 minor, nor an incompetent person nor in the military
14 service or otherwise exempted under the Soldier's and
15 Sailor's Civil Relief Act of 1940, the predecessor to
16 the Servicemembers Civil Relief Act; and Defendant was
17 served with the Motion for Default Judgment on May 5,
18 2017. Wang Decl. ¶¶ 5, 7, 9; Stip. to Extend Time to
19 Resp. to Compl. 2:3-5, ECF No. 10.

20 3. Eitel Factors

21 Plaintiff has sufficiently set forth the seven
22 Eitel factors: "(1) the possibility of prejudice to the
23 plaintiff; (2) the merits of plaintiff's substantive
24 claims; (3) the sufficiency of the complaint; (4) the
25 sum of money at stake in the action; (5) the
26 possibility of a dispute concerning the material facts;
27 (6) whether the default was due to excusable neglect;
28 and (7) the strong public policy underlying the Federal

1 Rules of Civil Procedure favoring decisions on the
2 merits." 782 F.2d at 1471-72.

3 a. *Risk of Prejudice to Plaintiff*

4 The first Eitel factor considers whether a
5 plaintiff will suffer prejudice if a default judgment
6 is not entered. Vogel, 992 F. Supp. 2d at 1007.

7 This factor weighs in favor of granting default
8 judgment. Plaintiff gave Defendant ample opportunity
9 to participate in this litigation by extending the
10 deadline to Answer so that the parties could
11 meaningfully negotiate settlement options. Wang Decl.
12 ¶ 4; Wang Decl. re Stip ¶¶ 5-7, ECF No. 11.

13 Nevertheless, Defendant has failed to participate in
14 the litigation and, without default judgment, Plaintiff
15 would be unable to halt Defendant's infringement or
16 recoup damages for harm suffered. IO Grp., Inc. v.
17 Jordon, 708 F. Supp. 2d 989, 997 (N.D. Cal. 2010)

18 b. *Sufficiency of the Complaint and*

19 *Likelihood of Success on the Merits*

20 The second and third Eitel factors consider the
21 merits of the plaintiff's substantive claims and the
22 sufficiency of the complaint. "Under an [Eitel]
23 analysis, [these factors] are often analyzed together."
24 Dr. JKL Ltd. v. HPC IT Educ. Ctr., 749 F. Supp.2d 1038,
25 1048 (N.D. Cal. 2010). Plaintiff has asserted a
26 meritorious claim for willful copyright infringement.

27 To plead a viable copyright infringement claim
28 pursuant to 17 U.S.C. § 501, Plaintiff must establish

1 "(1) ownership of a valid copyright, and (2) copying of
2 the constituent elements of the work that are
3 original." Feist Publ'ns., Inc. v. Rural Tel. Serv.
4 Co., 499 U.S. 340, 361 (1991). Absent direct evidence
5 of copying, the second prong is satisfied by showing
6 that "the infringer had access to the work and that the
7 two works are substantially similar." Shaw v.
8 Lindheim, 919 F.2d 1353, 1356 (9th Cir. 1990).

9 Plaintiff owns a valid copyright in the twenty-four
10 episodes of the Program's first season. The copyright
11 registration numbers for each episode were issued
12 between October 6, 2011 and June 13, 2012. Wang Decl.
13 Ex. C. Plaintiff attaches copies of the copyright
14 registrations and printout forms from the Copyright
15 Office's website.² Wang Decl. ¶ 9, Ex. C. Considering
16 this, and the fact that the certificate of registration
17 was made within five years after the Program's first
18 publication, the first prong is satisfied. 17 U.S.C. §
19 410(c).

20 Defendant also likely copied the Program.
21 Plaintiff's work was likely widely disseminated, as the
22 Program is a popular television show. Warner Bros Home
23 Entm't Inc. v. Jacek, No. CV 13-04065 DMG (Jcx), 2013

24
25 ² In the Wang Declaration, Plaintiff requests judicial
26 notice of copies of its copyright registrations in all twenty-
27 four episodes of *New Girl*. Wang Decl. Ex. C. Because judicial
28 notice is appropriate for copyright registration documents, the
Court **GRANTS** Plaintiff's request for judicial notice. Idema v.
Dreamworks, Inc., 90 F. App'x 496, 498 (9th Cir. 2003)

1 WL 12134186, at *3 (C.D. Cal. Dec. 20, 2013). What's
2 more, both works are substantially similar, as
3 Plaintiff alleges the DVDs are "copies" of all twenty-
4 four copyrighted episodes. Mot. 7:13-15; see Warner
5 Bros. Home Entm't, Inc. v. Campbell, No. CV 13-00876
6 BRO (Anx), 2013 WL 12120082, at *2 (C.D. Cal. Aug. 1,
7 2013)(complaint sufficient where defendant sold
8 counterfeit DVDs of television show). Only minor,
9 typographical errors on the packaging differentiate the
10 pirated DVDs and original copies. Thus, the Complaint
11 sufficiently pleads a copyright infringement claim and
12 entry of default judgment is favored.

13 c. *The Sum of Money at Stake*

14 "Under the [fourth] Eitel factor, the court must
15 consider the amount of money at stake in relation to
16 the seriousness of Defendant's conduct." PepsiCo, Inc.
17 v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1176 (C.D.
18 Cal. 2002). The Court will review declarations,
19 calculations, and other damages documentation to
20 determine whether the sum of money at stake is
21 appropriate. HICA Educ. Loan Corp. v. Warne, No. 11-
22 CV-04287-LHK, 2012 WL 1156402, at *3 (N.D. Cal. Apr. 6,
23 2012).

24 Plaintiff requests \$240,000 in statutory damages
25 pursuant to 17 U.S.C. § 504(c); \$8,400 in attorneys'
26 fees; and post-judgment interest pursuant to 28 U.S.C.
27 § 1961(a). Mot. 2:3-9.

28 The Copyright Act permits a copyright owner to

1 recover "statutory damages for all infringements
2 involved in the action . . . in a sum of not less than
3 \$750 or more than \$30,000 as the court considers just."
4 17 U.S.C. § 504(c)(1). Plaintiff seeks \$10,000 for
5 each of the twenty-four copyright infringements. The
6 Complaint sufficiently pleads that Defendant willfully
7 infringed the Program by selling DVDs whose cover art
8 was "inconsistent with and inferior to authorized
9 versions of these products." Kim Decl. ¶ 6. In
10 similar cases involving pirated television shows or
11 movies where plaintiffs have sought \$25,000 per
12 infringement, which is arguably on the higher side of
13 section 504(c)(1) requests, courts have reduced the
14 damages sought per copyright as necessary. See, e.g.,
15 Jacek, 2013 WL 12134186, at *3 (collecting default
16 judgment cases where Central District courts awarded
17 \$1,500 to \$3,000 per infringement where plaintiffs
18 initially sought \$25,000 per infringement). As
19 discussed in infra Part II.B.4.b, the requested
20 \$240,000 does not outpace the egregiousness and
21 willfulness of Defendant's conduct, considering that he
22 had a small business operation and tendered pirated
23 DVDs through eBay. Thus, this factor weighs towards
24 granting this Motion.

25 d. *The Possibility of a Dispute Concerning*
26 *the Material Facts*

27 The fifth Eitel factor examines the likelihood of a
28 dispute between the parties regarding the material

1 facts in the case. A defendant is "deemed to have
2 admitted all well-pleaded factual allegations" in the
3 Complaint upon entry of default. DirectTV, Inc. v. Hoa
4 Huynh, 503 F.3d 847, 851 (9th Cir. 2007).

5 This factor weighs towards granting default
6 judgment. The possibility of a dispute is low, as the
7 Complaint aptly demonstrated that the Program and the
8 DVDs are substantially similar, and the allegedly
9 infringing DVDs were sent from the eBay UserID and
10 email address associated with Defendant. Holmes Decl.
11 ¶ 2, Ex. A, Ex. B, at 34. Due to Defendant's lack of
12 response after default was entered against him, he has
13 failed to dispute any material facts. He is unlikely
14 to do so considering his disregard for the extra time
15 already granted for him to respond and his seeming
16 abandonment of settlement negotiations. See Wang Decl.
17 to Stip. ¶¶ 5-7.

18 e. *The Possibility of Excusable Neglect*

19 Excusable neglect takes into account factors like
20 "prejudice . . . , the length of the delay and its
21 potential impact on judicial proceedings, the reason
22 for the delay, including whether it was within the
23 reasonable control of the movant, and whether the
24 movant acted in good faith." J.L. v. Moreno Valley
25 Unified Sch. Dist., No. CV 09-1978 ODW (PJWx), 2010 WL
26 1708839, at *1 (C.D. Cal. Apr. 20, 2010)(internal
27 quotation marks and citations omitted).

28 Excusable neglect is negligible, as Defendant

1 received the Summons, Complaint, and instant Motion,
2 stipulated for an extension of time to respond to the
3 Complaint, and was even in preliminary settlement
4 discussions with Plaintiff. ECF Nos. 10, 11, 14. In
5 spite of repeated notice of the Action, Defendant made
6 no effort to further participate after early February
7 2017. Thus, this factor weighs in favor of Plaintiff.

8 f. *Policy Favoring a Decision on the Merits*

9 The Ninth Circuit has stated that “[c]ases should
10 be decided upon their merits whenever reasonably
11 possible.” Eitel, 782 F.2d at 1472. However, “this
12 preference, standing alone, is not dispositive.”
13 PepsiCo, 238 F. Supp. 2d at 1177. The copyright
14 infringement claim cannot be adjudicated, as Defendant
15 failed to Answer or appear in the action. While this
16 factor may weigh against entering default judgment, the
17 Court nonetheless will grant the Motion in light of the
18 remaining factors.

19 In total, the Eitel factors weigh towards granting
20 default judgment.

21 4. Character and Amount of Plaintiff’s Recovery

22 Plaintiff requests \$240,000 total statutory
23 damages, with \$10,000 for each of the twenty-four
24 instances of copyright infringement; a permanent
25 injunction to stop Defendant from infringing the
26 Program; attorneys’ fees totaling \$8,400, and post-
27 judgment interest pursuant to 28 U.S.C. § 1961(a).
28 Mot. 2:3-9. The Court takes up the validity of each

1 request in turn.

2 a. *Permanent Injunction*

3 Plaintiff asks the Court to enjoin Defendant from
4 reproducing, distributing, shipping, or selling
5 unauthorized copies of the Program in any format.

6 Compl. Prayer for Relief ¶ 1a. Pursuant to section 502
7 of the Copyright Act, courts may grant permanent
8 injunctive relief, where reasonably appropriate, to
9 prevent copyright infringement. 17 U.S.C. § 502(a).

10 To receive a permanent injunction, Plaintiff must show
11 "(1) that it has suffered an irreparable injury; (2)
12 that remedies available at law, such as monetary
13 damages, are inadequate to compensate for that injury;
14 (3) that, considering the balance of hardships between
15 the plaintiff and defendant, a remedy in equity is
16 warranted; and (4) that the public interest would not
17 be disserved by a permanent injunction." Ebay Inc. v.
18 MercExchange, L.L.C., 547 U.S. 388, 391 (2006).

19 The permanent injunction factors weigh in
20 Plaintiff's favor. First, Plaintiff has suffered an
21 irreparable injury, as Defendant infringes its
22 copyrights by continuing to distribute DVDs featuring
23 unauthorized copies of the Program. Compl. ¶¶ 3, 10.
24 Second, monetary damages alone will not remedy the
25 injury as Defendant's refusal to appear in the
26 litigation does not assure the Court that Defendant
27 will stop his infringing activity. Jackson v. Sturkie,
28 255 F. Supp. 2d 1096, 1096, 1103 (N.D. Cal. 2003).

1 Third, the balance of hardships tip in Plaintiff's
2 favor because if the Court grants a permanent
3 injunction, it should cause very little harm to
4 Defendant as infringing is not permitted by the
5 Copyright Act; however, if he intends to continue
6 infringing, then it will provide adequate protection of
7 Plaintiff's rights in its copyrighted works. See Polo
8 Fashions, Inc. v. Dick Bruhn, Inc., 793 F.2d 1132,
9 1135-36 (9th Cir. 1986). Fourth, this district has
10 seen an expansion of cases with defendants trafficking
11 in the pirated movie and television DVD industry, and a
12 permanent injunction would serve the public interest by
13 deterring these individuals. See, e.g., Jacek, 2013 WL
14 12134186. Thus, the Court grants Plaintiff's request
15 for a permanent injunction.

16 *b. Statutory Damages*

17 17 U.S.C. § 504 provides, in relevant part: "an
18 infringer of copyright is liable for either - (1) the
19 copyright owner's actual damages and any additional
20 profits of the infringer . . . or (2) statutory
21 damages." 17 U.S.C. § 504(a). A "copyright owner may
22 elect . . . to recover . . . an award of statutory
23 damages . . . in a sum of not less than \$750 or more
24 than \$30,000 as the court considers just." 17 U.S.C. §
25 504(c)(1). "In a case where the copyright owner
26 sustains the burden of proving, and the court finds,
27 that infringement was committed willfully, the court in
28 its discretion may increase the award of statutory

1 damages to a sum of not more than \$150,000." 17 U.S.C.
2 § 504(c)(2). In exercising its discretion, "the court
3 can consider such factors as: "(1) the expenses saved
4 and the profits reaped; (2) the revenues lost by the
5 plaintiff; (3) the value of the copyright; (4) the
6 deterrent effect on others besides the defendant; (5)
7 whether the defendant's conduct was innocent or
8 willful; (6) whether a defendant has cooperated in
9 providing particular records from which to assess the
10 value of the infringing material produced; and (7) the
11 potential for discouraging the defendant." Columbia
12 Pics. Film Prod. Asia Ltd. v. Uth, CIV S-06-1054 FCD
13 DAD, 2007 WL 36283, at *3 (E.D. Cal. Jan. 4, 2007).

14 Plaintiff's proposed statutory damages of \$10,000
15 for twenty-four infringements, totaling \$240,000, is a
16 reasonable request. Although the Court lacks evidence
17 of Defendant's profits reaped—as he failed to appear in
18 the Action—or Plaintiff's lost profits, the Complaint
19 adequately pleads that Defendant's conduct was willful
20 to justify the \$10,000 per infringement. Compl. ¶¶ 3,
21 12-14. For instance, Plaintiff began settlement
22 discussions with Defendant, even allowing him an
23 extension to respond to the Complaint. Wang Decl. re
24 Stip. ¶¶ 5, 6. But Defendant did not respond to the
25 Complaint even after these negotiations and after
26 providing incomplete preliminary records. Id. at ¶ 7.
27 Although Defendant is only an individual infringer,
28 several facts suggest that he was operating more of a

1 sophisticated business than the average individual
2 infringer. Specifically, he has set up a Paypal
3 account to receive payments, and he has solicited his
4 consumers to leave positive feedback on his eBay
5 account, as it is "crucial to [his] business." Mot.
6 Ex. B, at 35. While the Court lacks evidence as to how
7 many infringing DVDs were sold or at what price, the
8 Court recognizes that Plaintiff did not have the
9 opportunity to conduct full discovery regarding damages
10 due to Defendant's default. Considering the degree of
11 Defendant's willfulness, \$10,000 is a more modest sum
12 to request per infringement than, say, \$25,000. Thus,
13 the Court does not disturb Plaintiff's request for
14 \$240,000 statutory damages, with \$10,000 per each
15 copyright infringement.

16 c. *Attorneys' Fees & Post-Judgment Interest*

17 The Court, in its discretion, may award costs and
18 reasonable attorneys' fees to the prevailing party,
19 pursuant to section 505 of the Copyright Act. 17
20 U.S.C. § 505. Central District Local Rule 55-3
21 provides a schedule of attorneys' fees applicable to a
22 default judgment in the event that an applicable
23 statute provides for the recovery of attorneys' fees;
24 as previously mentioned, 17 U.S.C. § 505 of the
25 Copyright Act allows for attorneys' fees. For
26 judgments over \$100,000, like the \$240,000 the Court
27 has awarded in statutory damages, the total is "\$5,600
28 plus 2% of the amount over \$100,000;" that is, \$8,400.

