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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

STAR FABRICS INC.,  
Plaintiffs,  
vs.  
KARMA; PROFILE INDUSTRIES,  
INC.; MY STORY BOUTIQUE  
Defendants.

**CASE NO. 2:17-cv-03693-SVW-E**

**ORDER AND JUDGMENT  
GRANTING PLAINTIFFS' MOTION  
FOR DEFAULT JUDGMENT [23]**

**JS-6**

**I. INTRODUCTION**

On May 16, 2017, plaintiff Star Fabrics, Inc. (“Plaintiff” or “Star”), filed this action against defendants Karma, Profile Industries, Inc., and My Story Boutique (collectively “Defendants”) for copyright infringement of a proprietary textile design owned by Plaintiff. Presently before the Court is Plaintiff’s Motion for Default Judgement against Defendant My Story Boutique (“My Story”). (Dkt. 21). For the reasons stated below, the Court GRANTS the motion.

**II. FACTS AND PROCEDURAL HISTORY**

Plaintiff is a Los Angeles-based textile company. Haroni Decl. ¶ 3. As part of its business practices, it creates or purchases the exclusive rights to two-dimensional works of art and files and receives copyright registrations for these works. *Id.* Star invests heavily in the development

1 and purchase of original artwork for such uses. *Id.* at ¶ 4. Star attracts customers to itself as the  
2 exclusive source of those designs. *Id.*

3 Plaintiff's ongoing and potential customers obtain design samples from the company with  
4 the understanding and agreement that they will use only Star to reproduce the designs should  
5 they wish to do so, and will not seek to print the designs elsewhere or make minor changes to  
6 Star's proprietary work to reproduce them elsewhere. Haroni Decl. ¶ 5. Despite this agreement  
7 and Star's exclusive ownership of the copyrights in its designs, parties still exploit and print its  
8 exclusive designs through third parties domestically and abroad. *Id.* at ¶ 6.

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10 In this case, My Story purchased and sold, without permission, garments bearing Star's  
11 proprietary and registered 68088 design, identified herein as the Subject Product. Haroni Decl.  
12 ¶11, Ex. 4.

### 13 14 **III. ANALYSIS**

#### 15 **a. Default Judgment**

16 Before a Court may rule on a Motion for Default Judgment, it first must determine  
17 whether the Motion complies with Rule 55 of the Federal Rules of Civil Procedure and Local  
18 Rule 55-1. *See Pepsico, Inc. v. California Security Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal.  
19 2002). The Motion must set forth: (1) when and against which party the default was entered; (2)  
20 the identification of the pleading to which default was entered; (3) whether the defaulting party is  
21 an infant or incompetent person, and if so, whether that person is adequately represented; (4) that  
22 the Solders' and Sailors' Civil Relief Act of 1940 does not apply; and (5) that notice of the  
23 application has been served on the defaulting party, if required. *Id.*; *see also Landstar Ranger,*  
24 *Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 919 n.19 (C.D. Cal. 2010) (holding that service  
25 on defaulting party is required only if the party has appeared in the action).  
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1           Once these procedural requirements are met, “[g]ranting or denying a motion for default  
2 judgment is a matter within the court’s discretion.” *Landstar*, 725 F. Supp. 2d at 919. Entry of  
3 default does not automatically entitle the non-defaulting party to a court-ordered judgment. *See*  
4 *Pepsico*, 238 F. Supp. 2d at 1174. In fact, default judgments are ordinarily disfavored. *Eitel v.*  
5 *McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986). Accordingly, the Ninth Circuit has instructed  
6 courts to consider the following factors in deciding whether to grant default judgment: (1) the  
7 possibility of prejudice to the plaintiff; (2) the merits of the plaintiff’s substantive claim; (3) the  
8 sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a  
9 dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7)  
10 the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the  
11 merits. *Eitel*, 782 F.2d at 1471-72.

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14           Upon entry of default, the well-pleaded allegations of the complaint, except those  
15 concerning damages, are deemed true. Fed. R. Civ. P. 8(b)(6). The court, however, must assure  
16 itself that “the unchallenged facts constitute a legitimate cause of action, since a party in default  
17 does not admit mere conclusions of law.” *Landstar*, 725 F. Supp. 2d at 920. Further, the  
18 plaintiff must provide evidence of its damages, and the damages sought must not be different in  
19 kind or exceed the amount demanded in the pleadings. Fed. R. Civ. Pro. 54(c) (“A judgment by  
20 default shall not be different in kind from, or exceed in amount, what is demanded in the  
21 pleadings.”).

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23           **b. Procedural Requirements**

24           Plaintiffs have satisfied the procedural requirements for default judgment under Local  
25 Rule 55-1. Plaintiffs provided the Declaration of Howard S. Han, the attorney representing the  
26 Plaintiffs. Mr. Han avers that (1) Plaintiffs’ Request of Default on the Complaint was entered  
27 against My Story on September 29, 2017 (Dkt. 19); (2) My Story is a business entity and,  
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1 therefore, not a minor, incompetent person, soldier in military service, or otherwise exempted  
2 under the Soldier's and Sailor's Civil Relief Act of 1940; and (3) that Notice of the Application  
3 for Default judgment was served upon My Story on November 16, 2017. As the procedural  
4 requirements are met, the Court turns to examine the merits of the Request.  
5

6 c. **Application of the Eitel Factors**

7 i. **Possibility of Prejudice to the Plaintiff**

8 Plaintiffs would suffer prejudice if default judgment is not entered because Plaintiffs  
9 would be without other recourse. My Story's failure to respond to Plaintiff's Complaint has  
10 delayed relief to Plaintiffs. Additionally, Plaintiffs have already incurred litigation expenses in  
11 serving My Story, which has fallen on deaf ears. If a default judgment is not entered, Plaintiffs  
12 will continue to suffer harm from My Story's continued infringement. Therefore, this factor  
13 weighs in favor of granting default judgment.  
14

15 ii. **Merits of Plaintiffs' Claim and Sufficiency of the Complaint**

16 Upon entry of default, all well-pleaded facts in the complaint are taken as true, except  
17 those relating to damages. *TeleVideo Sys., Inc.*, 826 F.2d at 917-18. The second and third *Eitel*  
18 factors assess the substantive merit of plaintiff's claim and the sufficiency of its pleadings. These  
19 factors "require that a plaintiff state a claim on which [it] may recover." *Pepsico*, 238 F.Supp.2d  
20 at 1175; *Landstar Ranger, Inc.*, 725 F. Supp. 2d 916 at 920.  
21

22 My Story does not dispute the Plaintiff's assertions of copyright infringement. To  
23 properly allege a copyright infringement claim, a plaintiff "must demonstrate '(1) ownership of a  
24 valid copyright, and (2) copying of constituent elements of the work that are original.'" *Twentieth Century Fox Film Corp. v. Streeter*, 438 F. Supp. 2d 1065, 1071 (D. Ariz. 2006)  
25 (quoting *Feist Pubs., Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991)).  
26 "Because, in most cases, direct evidence of copying is not available, a plaintiff may establish  
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1 copying by showing that the infringer had access to the work and that the two works are  
2 substantially similar.” *Shaw v. Lindheim*, 919 F.2d 1353, 1356 (9th Cir. 1990). When  
3 determining relief for a copyright violation, there is a presumption that infringements are  
4 committed willfully. See 17 U.S.C. § 504(c)(3)(A).  
5

6 Here, Star is the undisputed owner of the registered copyright in the 68088 design.  
7 (Complaint ¶14).<sup>1</sup> The Complaint alleges substantial similarity between the 68088 design and the  
8 designs on My Story’s Subject Products (Complaint ¶16) and My Story’s access to Star’s  
9 designs through Star’s ongoing distribution of design samples to potential customers through its  
10 regular course of business (Complaint ¶15) Because well-pleaded facts in the complaint are  
11 taken as true, My Story’s unauthorized reproduction of Star’s 68088 design, as well as the sale  
12 and distribution of garments bearing such unauthorized substantially similar reproductions or  
13 derivative versions, are violations of Star’s copyrights. See 17 U.S.C § 106. Thus, the Complaint  
14 properly alleges the constituent elements of a cause of action for copyright infringement, which  
15 weighs in favor of default judgment.  
16

### 17 **Sum of Money at Stake**

18 The fourth *Eitel* factor balances “the amount of money at stake in relation to the  
19 seriousness of the [d]efendant's conduct.” *Pepsico*, 238 F.Supp.2d at 1176; *Landstar Ranger*,  
20 *Inc.*, 725 F. Supp. 2d 916 at 921. This requires that the Court assess whether the recovery sought  
21 is proportional to the harm caused by the defendant's conduct. See *Walters v. Statewide Concrete*  
22 *Barrier, Inc.*, No. C 04–2559 JSW, 2006 WL 2527776, \*4 (N.D.Cal. Aug. 30, 2006) (“If the sum  
23 of money at issue is reasonably proportionate to the harm caused by the defendant's actions, then  
24 default judgment is warranted”); *Landstar Ranger, Inc.*, 725 F. Supp. 2d 916 at 921.  
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27 <sup>1</sup> Courts have consistently held that “registration is prima facie evidence of the validity of a  
28 copyright.” *Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 488-89 (9th Cir. 2000).

1 In this case, the Plaintiffs elected to seek statutory damages instead of actual damages.  
2 The Statutory damages here equal the maximum statutory damages allowed for non-willing  
3 infringement—\$30,000. 17 U.S.C. §§ 504(c)(1); *see Peer Int’l Corp. v. Pausa Records, Inc.*, 909  
4 F.2d 1332, 1336 (9th Cir. 1990). When determining an amount of statutory damages in the  
5 context of default judgment in a copyright infringement action, the Court is guided by “the  
6 nature of the copyright, the circumstances of the infringement and the ... express qualification  
7 that in every case the assessment must be within the prescribed maximum or minimum.” *Peer*  
8 *Int’l Corp.*, 909 F.2d at 1336 (9th Cir. 1990); *see also Elektra Entertainment Group, Inc. v.*  
9 *Crawford*, 226 F.R.D. 388, 393 (C.D. Cal. 2005) (“[T]he amount of statutory damages and costs  
10 requested consists of discretionary awards and statutory minimums.”).

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13 Given that the court has found defendants infringed plaintiffs' copyrights, the court  
14 concludes that statutory damages are appropriate. Statutory damages should be proportional to  
15 the damages suffered by the copyright holder. For instance, in *Spencer Promotions Inc. v. 5th*  
16 *Quarter Enterprises Inc.*, No. C-94-0988 CW, 1996 WL 438789 (N.D. Cal. Feb. 21, 1996), the  
17 court found that defendants had committed a single act of willful copyright infringement by  
18 broadcasting plaintiff's copyrighted prizefight in their establishment. At the time, the viewing  
19 area was crowded and at least two television sets were operating. *Id.* at \*3. Plaintiff sought the  
20 maximum statutory damage award, but the court found that \$25,000 was appropriate. *Id.* at \*6. It  
21 reasoned that although the violation was willful, it had occurred only once. *Id.* The court noted  
22 that “[t]o award the maximum penalty mechanistically, without engaging in some proportionality  
23 analysis, would be unconscionable.” *Id.*

24  
25 The maximum statutory damage requested by Plaintiff here is within the range provided  
26 for by statute. The maximum amount is appropriate because the plaintiff’s primary business is to  
27 purchase pattern designs and unlike *Spencer Promotions*, My Story infringed Plaintiff’s  
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1 copyrighted work multiple times. Any unauthorized use of the Plaintiff's copyrighted 68088  
2 design threatens the very nature of the Plaintiff's business practice. Similarly, "because awards  
3 of statutory damages serve both compensatory and punitive purposes, a plaintiff may recover  
4 statutory damages whether or not there is adequate evidence of the actual damages suffered by  
5 plaintiff or the profits reaped by defendant." *Los Angeles News Service v. Reuters Television*  
6 *Intern, Ltd.*, 149 F.3d 987, 996 (9th Cir. 1998); *Columbia Pictures Television, Inc. v. Krypton*  
7 *Broadcasting of Birmingham, Inc.*, 259 F.3d 1186 (9th Cir. 2001). Here, Plaintiff has shown  
8 multiple unauthorized uses of Star's 68088 copyrighted design, but is only asking for damages  
9 for one of those instances. (Complaint, ¶ 21-23). Thus, Plaintiff's request for statutory damages  
10 is reasonable.  
11

12 In addition to statutory damages, Plaintiff is entitled to costs pursuant to 17 U.S.C § 101,  
13 which equal \$716.22, and attorneys' fees pursuant to Local Rule 55-1, which equal \$2,400.  
14 Because there appears to be merit to the plaintiff's claims, this factor weighs in favor of granting  
15 default judgment.  
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17 **iii. Possible Dispute of Material Facts**

18 The fifth *Eitel* factor considers the possibility that material facts may be in dispute.  
19 *Pepsico*, 238 F.Supp.2d at 1177; *Landstar Ranger, Inc.*, 725 F. Supp. 2d 916 at 921. Here, there  
20 would likely be a reasonable dispute over the material facts regarding substantial similarity  
21 between Stars' 68088 design and the infringing Subject Products. However, because My Story  
22 has failed to appear in the action or to contest the material facts alleged in Plaintiffs' complaint,  
23 this factor weighs in favor of entering default judgment.  
24

25 **iv. Whether Default was Due to Excusable Neglect**

26 As to factor six, there is no evidence that My Story's failure to appear is the result of  
27 excusable neglect. My Story was properly served with the Complaint on September 19, 2017.  
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1 (Dkt. 14). To date, My Story has not filed anything that could be construed as an attempt to set  
2 aside the entry of default for this claim. Therefore, this factor weighs in favor of entering default  
3 judgment.

4  
5 v. **Policy Favoring Decisions on the Merits**

6 Finally, as to factor seven, although cases should be decided on the merits whenever  
7 possible, “this preference, standing alone, is not dispositive.” *Pepsico*, 238 F.Supp.2d at 1177  
8 (quoting *Klopping v. Fireman's Fund*, 1996 WL 75314 at \*3 (N.D.Cal.1996)). Rule 55(a)  
9 allows a court to decide a case before the merits are heard if a defendant fails to appear and  
10 defend. Therefore, this factor does not preclude the entry of default judgment.

11 Accordingly, the *Eitel* factors in this case weigh in favor of granting default judgment.

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13 **IV. REMEDY**

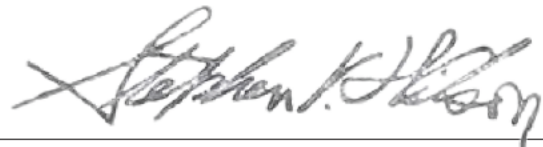
14 Here, the Court finds ample evidence that Plaintiff sustained monetary damages in the  
15 amount of \$33, 116.22. The statutory damages here equal \$30,000, costs equal \$716.22, and  
16 attorney fees equal \$2,400.00.

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18 **V. CONCLUSION**

19 For the foregoing reasons, the Court GRANTS Plaintiff’s motion for default judgment and  
20 awards monetary damages worth \$33,116.22 to Plaintiff.

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22 **IT IS SO ORDERED**

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24 Date: December 19, 2017

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HON. STEPHEN V. WILSON  
UNITED STATES DISTRICT JUDGE