

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

‘O’

Case No.	2:18-cv-00215-CAS-Ex	Date	October 3, 2019
Title	BARRY ROSEN v. HOLLYWOOD SHOW, LLC ET AL.		

Present: The Honorable CHRISTINA A. SNYDER

Catherine Jeang

Not Present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) - PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT MYRON ROSS DBA HEROES AND LEGENDS (Dkt.[99], filed September 9, 2019)

I. INTRODUCTION AND BACKGROUND

The Court finds this motion appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7–15. Accordingly, the hearing date of October 7, 2019 is **VACATED**.

On January 9, 2018, plaintiff Barry Rosen filed the instant action against defendants Hollywood Show, LLC (“Hollywood”), Myron Ross d/b/a “Heroes & Legends” (“Ross”), and Does 1 through 10 (collectively, “defendants”). Dkt. 1. Plaintiff filed the operative First Amended Complaint on April 30, 2018.¹ Dkt. 21 (“FAC”). The FAC alleges that plaintiff is the photographer and owner of a copyrighted photograph of actress Gena Lee Nolin and that defendants unlawfully reproduced and distributed an identical or substantially similar copy of the photograph. See generally FAC. Accordingly, the FAC asserts claims against defendants for: (1) copyright infringement; and (2) vicarious and/or contributory copyright infringement. Id. Pursuant to a joint stipulation between plaintiff and Hollywood, the Court dismissed plaintiff’s claims against Hollywood on July 25, 2019.

The Clerk entered default against Ross on July 18, 2018, pursuant to Federal Rule of Civil Procedure 55(a). Dkt. 33, 34. Plaintiff subsequently moved for default

¹ Pursuant to an agreement between plaintiff and his counsel, the Court allowed plaintiff’s counsel to withdraw on January 17, 2019. Dkt. 39. Plaintiff thereafter elected to proceed *pro se*.

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judgment against Ross on September 9, 2019, also submitting a declaration in support of his motion. Dkt. 99 (“Mot.”); Dkt. 100 (“Rosen Decl.”).

II. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 55, when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and plaintiff does not seek a sum certain, plaintiff may apply to the court for a default judgment. Fed. R. Civ. P. 55. Granting or denying a motion for default judgment is a matter within the court’s discretion. Elektra Entm’t Grp. Inc. v. Crawford, 226 F.R.D. 388, 392 (C.D. Cal. 2005). The Ninth Circuit has directed that courts consider the following factors in deciding whether to enter default judgment: (1) the possibility of prejudice to plaintiff; (2) the merits of plaintiff’s substantive claims; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning the material facts; (6) whether defendant’s default was the product of excusable neglect; and (7) the strong policy favoring decisions on the merits. See Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986); see also Elektra, 226 F.R.D. at 392.

“Before a court can enter a default judgment against a defendant, the plaintiff must satisfy the procedural requirements set forth in Federal Rules of Civil Procedure 54(c) and 55, as well as Local Rule 55–1 and 55–2.” Harman Int’l Indus., Inc. v. Pro Sound Gear, Inc., No. 2:17-cv-06650-ODW-FFM, 2018 WL 1989518, at *1 (C.D. Cal. Apr. 24, 2018). Where a movant is seeking unliquidated damages, Local 55–2 requires that “[n]otice be given to the defaulting party of the amount requested.” C.D. Cal. L.R. 55–2. “Unliquidated damages” are “damages that cannot be determined by a fixed formula.” First Home Bank v. Hershey Interests, Inc., No. 2:18-cv-01584-ODW-AS, 2018 WL 3460148, at *2 (C.D. Cal. July 16, 2018) (citing Unliquidated Damages, Black’s Law Dictionary (10th ed. 2014)). In contrast, “liquidated damages” are damages in “[a]n amount contractually stipulated as a reasonable estimation of actual damages to be recovered by one if the other party breaches.” Liquidated Damages, Black’s Law Dictionary (11th ed. 2019).

III. DISCUSSION

Plaintiff contends that “Ross willfully infringed Rosen’s copyrights and profited from that infringement.” Mot. at 6. Accordingly, plaintiff requests

