

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**United States District Court
Central District of California**

SOUTH SEAS PICTURES LTD., a
Limited New Zealand Corporation,
Plaintiff,

v.

KEN'S ISLAND FOOD, entity unknown,
et al.,
Defendants.

Case No. 2:18-cv-00887-ODW
(AFMx)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT [28]**

I. INTRODUCTION

Plaintiff South Seas Pictures LTD ("South Seas") brought suit against Defendants Ken's Island Food, El Rubios Jr. Market, Kumar's Island Market, Le Fala Island Market, Poasa Imports, and Polynesian Favorites ("Defendants") for copyright infringement and unfair business practices. (Compl., ECF No. 1.) Despite being served, Defendants did not respond to South Seas' Complaint. South Seas then requested, and the Clerk entered, default as to all Defendants. (ECF Nos. 21, 23, 26.) South Seas now moves for default judgment against Defendants. (ECF No. 28.) For the following reasons, the Court **GRANTS** South Seas' Motion, and awards South Seas \$15,000 in

1 statutory damages, \$1,500 in attorneys’ fees, and enjoins Defendants from further
2 violating South Seas’ copyright.¹

3 II. BACKGROUND

4 A. Factual Background

5 South Seas is a film company that specializes in films that involve the Samoan
6 culture. (Compl. ¶ 13.) In 2017, it marketed and exhibited one of its films entitled,
7 “MATAI THE CHIEF: PART 6” (hereinafter, “Protected Work”). (*Id.* ¶ 19.) The
8 Protected Work is registered with the United States Copyright Office, Registration No.
9 PA-2-066-286. (*Id.* ¶ 19.) South Seas contracts with Lagi Manu d/b/a Motu Tutasi
10 Productions, as the exclusive North American distributor. (*Id.* ¶ 15.)

11 In summer 2017, South Seas discovered that “Defendants marketed and sold
12 unauthorized counterfeit copies of the [Protected Work] for sale in their retail stores.”
13 (*Id.* ¶ 17.) South Seas, through its exclusive distributor, learned that Defendants were
14 selling DVD copies of MATAI THE CHIEF: PART 6 at their retail stores. (Declaration
15 of Lagi Manu (“Manu Decl.”) ¶ 8.) Manu purchased some of these infringing DVDs at
16 Defendants’ stores. (*Id.* ¶¶ 9–12.)

17 South Seas’ counsel sent cease and desist letters in July and September 2017, to
18 which Defendants, at that point, did not respond. (*Id.* ¶¶ 20–23.) South Seas alleges
19 that “Defendants knowingly, deliberately, intentionally and willfully copied and
20 exploited the Protected Work in violation of 15 U.S.C. § 501.” (*Id.* ¶ 24.)

21 III. LEGAL STANDARD

22 A. Default judgment

23 Under Federal Rule of Civil Procedure 55(a), the Clerk of the Court must enter a
24 party’s default “[w]hen a party against whom a judgment for affirmative relief is sought
25 has failed to plead or otherwise defend, and that failure is shown by affidavit or
26 otherwise.” Fed. R. Civ. P. 55(a). After a default has been entered by the Clerk of the

27
28 ¹ After carefully considering the papers filed in support of the Motion, the Court deems the matter
appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 Court, a court may enter a default judgment pursuant to Rule 55(b). Fed. R. Civ.
2 P. 55(b). However, “a defendant’s default does not automatically entitle the plaintiff to
3 a court-ordered judgment.” *PepsiCo, Inc., v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172,
4 1174 (C.D. Cal. 2002).

5 Before the Court can award a default judgment, the requesting party must satisfy
6 the procedural requirements established under the Local Rules of this district and Rule
7 55 of the Federal Rules of Civil Procedure. *PepsiCo*, 238 F. Supp. 2d at 1174. Central
8 District of California Local Rule 55-1 requires that the movant submit a declaration
9 establishing: (1) when and against whom default was entered; (2) identification of the
10 pleading to which default was entered; (3) whether the defaulting party is a minor, an
11 incompetent person, or exempt under the Servicemembers’ Civil Relief Act; and (4)
12 that the defaulting party was served with notice, if required by Fed. R. Civ. P. 55(b)(2).
13 *Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998, 1006 (C.D. Cal. 2014); C.D. Cal. Local
14 Rule 55-1.

15 After satisfying the procedural requirements, the decision to grant default
16 judgment is determined by the discretion of the district court. *Aldabe v. Aldabe*, 616
17 F.2d 1089, 1092 (9th Cir. 1980). When moving for default judgment, the well-pleaded
18 factual allegations in the complaint are accepted as true, with the exception that
19 allegations as to the amount of damages must be proved by the plaintiff. *Televideo Sys.,*
20 *Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987). Along with the complaint,
21 the Court looks “to affidavits and declarations to determine whether default judgment
22 is appropriate.” *Title Design Collection Inc. v. Ross Stores Inc.*, No. CV 13-8899 GAF
23 (ASX), 2014 WL 12773909, at *2 (C.D. Cal. June 5, 2014) (citing William W.
24 Schwarzer et al., *California Practice Guide: Federal Civil Procedure Before Trial*
25 § 6:91 (2010)).

26 In exercising discretion to award a default judgment, courts in the Ninth Circuit
27 consider a number of factors (the “*Eitel* factors”), including (1) the possibility of
28 prejudice to plaintiff; (2) the merits of plaintiff’s substantive claim; (3) the sufficiency

1 of the complaint; (4) the sum of money at stake; (5) the possibility of a dispute
2 concerning material facts; (6) whether defendant’s default was due to excusable neglect;
3 and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring
4 decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

5 **B. Copyright infringement**

6 To prove copyright infringement, a plaintiff must show (1) ownership of a valid
7 copyright and (2) copying of constituent elements of the work that are original. *Feist*
8 *Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). A plaintiff bringing suit
9 under the Copyright Act “may elect, at any time before final judgment is rendered, to
10 recover, instead of actual damages and profits, an award of statutory damages for all
11 infringements involved in the action, with respect to any one work.” 17 U.S.C.
12 § 504(c)(1). This election is available to a plaintiff “regardless of the adequacy of the
13 evidence offered as to . . . actual damages or the amount of the defendant’s profits.”
14 *Columbia Pictures Television v. Krypton Broad. of Birmingham, Inc.*, 259 F.3d 1186,
15 1195 (9th Cir. 2001) (quoting Melville B. Nimmer & David Nimmer, *Nimmer on*
16 *Copyright* § 14.04[A]).

17 Statutory damages range from \$750 to \$30,000 per work infringed. 17 U.S.C.
18 § 504(c)(2). A single statutory award is available for each copyrighted work that has
19 been copied. *See Louis Vuitton Malletier, S.A. v. Akanoc Sols., Inc.*, 658 F.3d 936, 946–
20 47 (9th Cir. 2001) (quoting 18 C.J.S. *Copyright* § 127 (2011)) (“Only a single award of
21 statutory damages within the statutory limits may be made for all infringements
22 involved in the action with respect to any one work . . .”). If the copyright holder
23 proves that the infringement was “willful,” the Court may, in its discretion, increase
24 statutory damages up to \$150,000 per work. 17 U.S.C. § 504(c)(2). Conversely, if an
25 infringer is innocent, the Court may decrease statutory damages to \$200 per work. *Id.*
26 An innocent infringer is one who “was not aware and had no reason to believe that his
27 or her acts constituted an infringement of copyright.” *Id.* The burden of proving
28

1 innocent infringement falls on the infringer. *See D.C. Comics, Inc. v. Mini Gift Shop*,
2 912 F.2d 29, 35 (2nd Cir. 1990).

3 “The court has wide discretion in determining the amount of statutory damages
4 to be awarded, constrained only by the specified maxima and minima.” *Harris v. Emus*
5 *Records Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984). In making its determination, the
6 Court is guided by “what is just in the particular case, considering the nature of the
7 copyright, the circumstances of the infringement and the like.” *Peer Int’l Corp. v.*
8 *Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990) (quoting *F.W. Woolworth Co.*
9 *v. Contemporary Arts, Inc.*, 344 U.S. 228, 232 (1952)). “Even for uninjurious and
10 unprofitable invasions of copyright the court may, if it deems it just, impose a liability
11 within [the] statutory limits to sanction and vindicate the statutory policy” of
12 discouraging infringement. *Woolworth Co.*, 344 U.S. at 233.

13 IV. DISCUSSION

14 A. Procedural Requirements

15 South Seas satisfies the procedural requirements for default judgment pursuant
16 to Fed. R. Civ. P. 55(a) and Local Rule 55-1. By declaration, South Seas’ attorney
17 identified the Complaint and established that the Clerk of the Court entered default
18 against Defendants. (Declaration of Joshua Eichenstein (“Eichenstein Decl.”) ¶¶ 12–
19 16, ECF No. 28-2.) The Declaration further confirms that Defendants are not infants,
20 incompetent persons, nor are they exempt under the Servicemembers’ Civil Relief Act.
21 (*Id.* ¶ 22.) Finally, South Seas provided the Court with notice that Defendants have not
22 appeared in this action, and, as such, written notice of default judgment under Federal
23 Rule of Civil Procedure 55(b)(2), as referenced by Local Rule 55-1(e), is not required.
24 (*Id.*) Even so, South Seas served its Motion on Defendants via mail with the filing of
25 its Motion. (*Id.* ¶ 23.)

26 ///

27 ///

28 ///

1 **B. *Eitel* Factors**

2 In determining if default judgment is appropriate, the Court considers in turn each
3 of the seven factors articulated in *Eitel*, 782 F.2d at 1471–72. The Court finds that the
4 *Eitel* factors weigh in favor of granting this Motion.

5 1. *Without default judgment, South Seas will suffer prejudice.*

6 The first *Eitel* factor considers the prejudice that would be suffered by the
7 plaintiff, if default is not entered. *Eitel*, 782 F.2d at 1471. Denial of default leads to
8 prejudice when it leaves a plaintiff without a remedy or recourse for recovery of
9 compensation. *Landstar Ranger, Inc. v. Parth Enter., Inc.*, 725 F. Supp. 2d 916, 920
10 (C.D. Cal. 2010); *PepsiCo*, 238 F. Supp. 2d at 1177. “[P]ast misconduct and current
11 failure to litigate [a] case indicate that [a defendant] is highly unlikely to correct past
12 behavior or otherwise compensate [p]laintiffs without a default judgment by the Court.”
13 *Kerr Corp. v. Tri Dental, Inc.*, No. SACV 12–0891–DOC–CWx, 2013 WL 990532, at
14 *3 (C.D. Cal. Mar. 11, 2013).

15 As discussed below, Defendants had sufficient time to appear in this suit, but
16 have not done so. At this point, it appears that default judgment is the only way for
17 South Seas to vindicate its rights. Indeed, Kumar’s Island Market specifically said it
18 would not appear and defend this action. (Eichenstein Decl. ¶¶ 19–21, Ex. 6.) On the
19 whole, the first *Eitel* factor weighs in favor of granting default judgment.

20 2. *South Seas pleads sufficient and meritorious claims.*

21 “Under an *Eitel* analysis, the merits of plaintiff’s substantive claims and the
22 sufficiency of the complaint are often analyzed together.” *Universal Music-MGB NA*
23 *LLC v. Quantum Music Works, Inc.*, No. CV 16–3397 FMO (AJWx), 2017 WL
24 2350936, at *3 (C.D. Cal. May 30, 2017). Together, the two factors “require that a
25 plaintiff state a claim on which [it] may recover.” *Philip Morris USA, Inc. v. Castworld*
26 *Prods., Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003). To state a claim for copyright
27 infringement, South Seas must demonstrate (1) ownership of a valid copyright and
28

1 (2) copying of the protected elements of the work. *Feist Publ'ns*, 499 U.S. at 361; *L.A.*
2 *Printex Indus., Inc. v. Aeropostale, Inc.*, 676 F.3d 841, 846 (9th Cir. 2012).

3 South Seas has met the first requirement for copyright infringement by
4 demonstrating ownership of a valid copyright in the Protected Work. A copyright
5 registration certificate constitutes *prima facie* evidence of the validity of the copyright
6 and the facts stated on the certificate, including the fact that the plaintiff owns a
7 copyright. *Lamps Plus, Inc. v. Seattle Lighting Fixture Co.*, 345 F.3d 1140, 1144 (9th
8 Cir. 2003) (internal citations omitted); *see also Entm't Research Grp., Inc. v. Genesis*
9 *Creative Grp., Inc.*, 122 F.3d 1211, 1217 (9th Cir. 1997); 9th Circuit Model Jury
10 Instruction 17.5. South Seas presents a Certificate of Registration from the United
11 States Copyright Office demonstrating registration of the Protected Work, and the
12 photographic elements therein. (Eichenstein Decl. Ex. 1, ECF No. 28-3.) Therefore,
13 South Seas has made a *prima facie* showing of ownership. Since Defendants have not
14 appeared to rebut this showing, the Court concludes that South Seas owns a valid
15 copyright in the Protected Work.

16 South Seas has also met the second requirement for copyright infringement by
17 demonstrating copying through circumstantial evidence that (1) the defendant had
18 access to the copyrighted work prior to the creation of defendant's work and (2) there
19 is substantial similarity between the copyrighted work and the defendant's work. *See*
20 *Unicolors, Inc. v. Urban Outfitters*, 853 F.3d 980, 984–85 (9th Cir. 2017). First, South
21 Seas alleges copying by asserting that Defendants had access to the Protected Work.
22 (Compl. ¶¶ 29, 39.) South Seas also provided photographs of the infringing DVDs
23 accompanied by receipts identifying the Defendants' respective retail stores. (Manu
24 Decl. ¶¶ 10–11, 17–20, Exs. 2–4.) Thus, even though Defendants' exact method of
25 copying is unclear, the substantial similarity of the infringing DVDs coupled with
26 Defendants' access to the Protected Work is sufficient to demonstrate that Defendants
27 copied the protected elements of the Protected Work. The Court therefore finds that the
28 well-pleaded allegations in the Complaint state a claim for copyright infringement.

1 The Court notes, however, that many of the Complaint’s allegations are
2 conclusory assertions that lack a specific factual underpinning. (See Compl. ¶¶ 24, 36,
3 41.) In determining if a complaint states a claim upon which relief can be granted, the
4 Court need not accept as true “conclusory allegations of law and unwarranted
5 inferences.” *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996). For
6 example, South Seas alleges that Defendants “knowingly, deliberately, intentionally
7 and willfully copied and exploited the Protected Work,” but provided no specific facts
8 showing willfulness. (Compl. ¶ 24.) In ruling on this Motion, the Court disregards such
9 conclusory allegations and instead looks only to the well-pleaded factual allegations in
10 the Complaint, along with affidavits and documentary evidence in the record. *See Title*
11 *Design Collection*, 2014 WL 12773909, at *2. Considering only these sources, the
12 Court cannot find that Defendants *willfully* infringed the Protected Work.

13 South Seas also asserts a claim under California’s Unfair Competition Law
14 (“UCL”). California’s UCL prohibits “any unlawful, unfair or fraudulent business act
15 or practice.” Cal. Bus. & Prof. Code § 17200. “By proscribing any unlawful business
16 practice, section 17200 borrows violations of other laws and treats them as unlawful
17 practices that the unfair competition law makes independently actionable.” *Cel-Tech*
18 *Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999)
19 (quotations omitted). The “unlawful” prong is separate from the “unfair” and
20 “fraudulent” prongs of the UCL, making unlawful conduct independently actionable
21 even if it is not unfair or fraudulent. *Id.* Here, because the Court finds that South Seas
22 sufficiently pleaded a claim under the Copyright Act, that violation of the law also
23 serves as a basis for South Seas’ UCL claim.

24 On the balance, the second and third *Eitel* factors support default judgment.

25 ///

26 ///

27 ///

28 ///

1 3. *Gaps and inconsistencies in the record do not present the possibility of*
2 *disputed material facts.*

3 The next *Eitel* factor considers the possibility of disputed material facts.
4 *PepsiCo*, 238 F. Supp. 2d at 1177. The general rule is that a defaulting party admits the
5 facts alleged in the complaint to be taken as true. *Televideo*, 826 F.2d at 917–19. Thus,
6 this *Eitel* factor often weighs strongly in favor of default judgment. Here, after taking
7 the facts alleged in the Complaint as true, the Court finds no substantial gaps or
8 inconsistencies in the record that indicate disputes of material facts.

9 South Seas clearly explains that Defendants lacked authorization to copy or
10 distribute the Protected Work because Manu was the exclusive North American
11 distributor of South Seas. (Manu Decl. Ex. 1, ECF No. 28-10 (distribution agreement)).
12 Since Defendants did not have authorization to copy or distribute the Protected Work
13 in any capacity, they do not have a right to copy the Protected Work. *Cf. Sony Corp. v.*
14 *Universal City Studios, Inc.*, 464 U.S. 417, 433 (1984) (“[A]nyone who is authorized
15 by the copyright owner to use the copyrighted work in a way specified in the statute . .
16 . is not an infringer of the copyright with respect to such use.”).

17 In sum, the record does not contain substantial inconsistencies, which would
18 preclude default judgment. Since South Seas addresses the key factual inquiries
19 necessary to find that Defendants infringed its copyright, this *Eitel* factor weighs in
20 favor of granting default judgment.

21 4. *The sum of money awarded to South Seas weighs in favor of default*
22 *judgment.*

23 The fourth *Eitel* factor balances the sum of money at stake with the “seriousness
24 of the action.” *Lehman Bros. Holdings Inc. v. Bayporte Enters., Inc.*, No. C 11–0961–
25 CW (MEJ), 2011 WL 6141079, at *7 (N.D. Cal. Oct. 7, 2011). The amount at stake
26 must not be disproportionate to the harm alleged. *Id.* Default judgments are disfavored
27 where the sum of money requested is too large or unreasonable in relation to a
28

1 defendant's conduct. *Truong Giang Corp. v. Twinstar Tea Corp.*, No. C 06-03594
2 JSW, 2007 WL 1545173, at *12 (N.D. Cal. May 29, 2007).

3 Although South Seas asks for \$750,000 in statutory damages, the Court awards
4 it \$15,000, for the reasons discussed below. Therefore, this factor presents no barrier
5 to default judgment in this case.

6 5. *The remaining Eitel factors support default judgment.*

7 South Seas served Defendants with notice of this suit, and Defendants' failure to
8 defend can no longer be described as excusable neglect. (*See* ECF Nos. 10-14, 16-17.)
9 Moreover, one of the defendants specifically declined to defend this suit, despite South
10 Seas telling it of the consequences. (Eichenstein Decl. ¶¶ 19-21, Ex. 6.) Finally,
11 although the Federal Rules of Civil Procedure favor decisions on the merits, when a
12 defendant has failed to appear, "a decision on the merits [is] impractical, if not
13 impossible," and default judgment is warranted. *PepsiCo*, 238 F. Supp. 2d at 1177.

14 For these reasons, the Court finds that the *Eitel* factors favor granting a default
15 judgment against Defendants.

16 **C. Remedies**

17 South Seas requests statutory damages, an injunction, and attorneys' fees. (Mot.
18 16-21.) The Court addresses each request in turn.

19 1. *Statutory damages.*

20 Because Defendants have not appeared or shown that their infringement was
21 innocent, the Court can award no less than \$750 in statutory damages, per violation.
22 *See* 17 U.S.C. § 504(c)(1). Conversely, the Court may grant statutory damages up to
23 \$150,000 per violation, if the Court finds that Defendants are willful infringers. *See id.*
24 As discussed above, the Court finds that South Seas' allegations of willful infringement
25 are conclusory, and not supported by facts warranting a statutory award of \$150,000.
26 Instead, the Court considers the purposes of statutory damages, as applied to the facts
27 of this case. *See Peer Int'l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir.
28 1990) (quoting *Woolworth*, 344 U.S. at 232) ("In measuring the damages, the court is

1 to be guided by ‘what is just in the particular case, considering the nature of the
2 copyright, the circumstances of the infringement and the like. . . .’”).

3 While statutory damages do not necessarily have to be tied to lost profits related
4 to infringement, the Court enjoys wide latitude in fashioning an appropriate remedy
5 within the parameters of the statute. *See Harris*, 734 F.2d at 1335. Here, the distribution
6 agreement provides some insight into what South Seas anticipated making on its
7 movies. The agreement provides:

8 UNITS	COST/UNITS	SALES TARGET	COST'S	DISTRIBUTOR Commission	AMOUNT DUE to Supplier
9 500	\$20.00	\$10,000.00	\$525.00	\$ 3795.00	\$ 5680.00
10 600	\$20.00	\$12,000.00	\$630.00	\$ 4548.00	\$ 6822.00
11 700	\$20.00	\$14,000.00	\$735.00	\$ 5360.00	\$ 7959.00
12 800	\$20.00	\$16,000.00	\$840.00	\$ 6064.00	\$ 9096.00
13 900	\$20.00	\$18,000.00	\$945.00	\$ 6822.00	\$10,233.00
14 1000	\$20.00	\$20,000.00	\$1050.00	\$18,950.00	\$11,730.00

15 (Manu Decl. Ex. 1, ECF No. 28-10.) The modest costs associated with the production
16 of 500 units of the film (\$525) and anticipated sales targets, lead the Court to believe an
17 award of the statutory maximum of \$30,000 per violation, without a willfulness finding,
18 would be excessive. Instead, a statutory award of \$3,000 per violation per Defendant,
19 will serve the purposes of statutory damages—to compensate South Seas, and punish
20 Defendants. *See Harris*, 734 F.2d at 1335. Furthermore, South Seas’ interests will be
21 protected by the injunction it seeks, which the Court addresses below.

22 2. Injunctive relief.

23 “As a general rule, a permanent injunction will be granted when liability has been
24 established and there is a threat of continuing violations.” *MAI Sys. Corp. v. Peak
25 Computer*, 991 F.2d 511, 520 (9th Cir.1993). To be entitled to an injunction, a plaintiff
26 must demonstrate that: 1) it has suffered an irreparable injury; 2) remedies available at
27 law, such as monetary damages, are inadequate to compensate for that injury; 3) the
28 equities tip in the plaintiff’s favor; and 4) the injunction serves the public interest. *eBay
Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

1 **Irreparable Harm:** South Seas suffered irreparable harm because Defendants
2 copied, displayed, and sold the Protected Work in their retail stores. Defendants’
3 actions affect South Seas’ reputation, as well as its marketing and distribution plans.
4 As owner of the Protected Work, South Seas has the right to choose how, when, and
5 where it is displayed; Defendants violated that right. *Metro-Goldwyn-Mayer Studios*
6 *Inc. v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1218 (C.D. Cal. 2007).

7 **Inadequate Remedy at Law:** Although South Seas is entitled to damages, only
8 an injunction will adequately prevent future violations of its copyright. *See Apple, Inc.*
9 *v. Pystar Corp.*, 673 F. Supp. 2d 943, 949–50 (N.D. Cal. 2009).

10 **Balance of Equities & Public Interest:** South Seas tried to resolve its dispute
11 with Defendants first by reaching out via letter, and second by filing this lawsuit.
12 Defendants have not responded, nor otherwise established any defense. Defendants
13 have no legitimate interest in continuing to violate South Seas’ copyright by using the
14 Protected Work. *See Cadence Design Sys., Inc. v. Avant! Corp.*, 125 F.3d 824, 830 (9th
15 Cir. 1997) (quoting *Triad Sys. Corp. v. Southeastern Exp. Co.*, 64 F.3d 1330, 1338 (9th
16 Cir. 1995), *superseded by statute on other grounds as recognized in Apple Inc. v.*
17 *Psystar Corp.*, 658 F.3d 1150, 1158 (9th Cir. 2011)) (“Where the only hardship that the
18 defendant will suffer is lost profits from an activity which has been shown likely to be
19 infringing, such an argument in defense merits little equitable consideration....”). For
20 these reasons, the public interest is served by entering an injunction, and the equities tip
21 in South Seas’ favor. Accordingly, the Court **GRANTS** South Seas’ request for an
22 injunction and enjoins Defendants from further violating South Seas’ copyright.

23 3. *Attorneys’ fees.*

24 South Seas asks the Court to award \$18,600 in attorneys’ fees associated with
25 this Motion. (Mot. 21.) The Central District Local Rules provide a schedule for
26 attorneys’ fees awarded in default judgments. L.R. 55–3. Yet, the Court is free to
27 render a judgment for a fee that it deems reasonable. *Id.*; *see also Kirtsaeng v. John*
28 *Wiley & Sons, Inc.*, 136 S.Ct. 1979, 1985 (2016) (holding that, in copyright action, the

1 court must exercise its discretion to award attorneys' fees by weighing factors such as
2 "frivolousness, motivation, objective unreasonableness and the need in particular
3 circumstances to advance considerations of compensation and deterrence."). South
4 Seas calculated its requested attorneys' fees assuming a statutory damage award of
5 \$750,000, and therefore the Court must adjust the award to align with the statutory
6 damages of \$15,000.

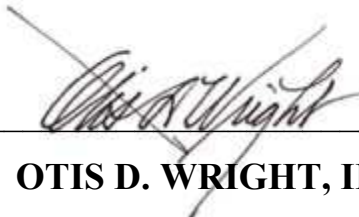
7 The Central District Local Rules schedule provides that for a default judgment
8 award of \$10,000, the plaintiff is entitled to \$1,200 plus 6% of the amount over \$10,000
9 of the awarded sum. In light of the above discussion, the Court awards \$1,500 in
10 attorneys' fees ($\$1,200 + (\$5,000 * 6\%)$).

11 **V. CONCLUSION**

12 For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion for Default
13 Judgment and awards \$15,000 in statutory damages, \$1,500 in attorneys' fees, and
14 enjoins Defendants from further violating South Seas' copyright. The Court will issue
15 a judgment.

16 **IT IS SO ORDERED.**

17
18
19 August 6, 2018

20
21 

22 **OTIS D. WRIGHT, II**
23 **UNITED STATES DISTRICT JUDGE**