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8 **United States District Court**
9 **Central District of California**
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11 DUFFY ARCHIVE LIMITED,

12 Plaintiff,

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14 v.

15 CLUB LOS GLOBOS CORPORATION,
16 et al.,

17 Defendants.
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Case No. 2:20-cv-10791-ODW (JCx)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT [15]**

19 **I. INTRODUCTION**

20 Plaintiff Duffy Archive Limited (“Duffy”) moves for default judgment against
21 Defendant Club Los Globos Corporation (“CLG”). (Mot. Default J. (“Motion” or
22 “Mot.”), ECF No. 15.) For the reasons discussed below, the Court **GRANTS** Duffy’s
23 Motion.¹

24 **II. BACKGROUND**

25 Duffy initiated this action against CLG for copyright infringement. Duffy owns
26 an original photograph of David Bowie (“Photograph”) and alleges that CLG used the
27

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

1 Photograph in violation of the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* (Compl.
2 ¶¶ 1, 8, 9, ECF No. 1.) Specifically, Duffy alleges that CLG used, distributed, and
3 exploited the Photograph for commercial purposes on its websites and social media
4 pages such as <https://www.instagram.com/losglobos/?hl=en>, without Duffy’s
5 authorization. (*Id.* ¶¶ 9, 13.) According to Duffy’s Complaint, Duffy registered the
6 Photograph with the United States Copyright Office on June 12, 2009, Registration
7 Number of VA 1-428-937. (*Id.* ¶ 8.) Duffy is the sole owner of the exclusive rights in
8 the Photograph. (*Id.*)

9 On January 25, 2021, Duffy served a Summons and Complaint on CLG. (*See*
10 Proof of Service, ECF No. 10.) CLG failed to respond to the Summons and Complaint,
11 and, on February 18, 2021, Duffy requested entry of default. (*See* Req. Entry Default,
12 ECF No. 12.) The Clerk of the Court entered default the next day. (*See* Default by
13 Clerk, ECF No. 13.) Duffy now moves for entry of default judgment and seeks statutory
14 damages, costs, and attorneys’ fees. (Mot. 1.)

15 III. LEGAL STANDARD

16 Federal Rule of Civil Procedure (“FRCP”) 55(b) authorizes a district court to
17 grant a default judgment after the Clerk enters default under Rule 55(a). Fed. R. Civ.
18 P. 55(b). However, “a defendant’s default does not automatically entitle the plaintiff to
19 a court-ordered judgment.” *PepsiCo, Inc., v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172,
20 1174 (C.D. Cal 2002). Rather, if the plaintiff has satisfied certain procedural
21 requirements, a district court has discretion to enter default judgment, based on
22 consideration of the “*Eitel* Factors.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.
23 1980); *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). Generally, after the
24 Clerk enters default, a defendant’s liability is conclusively established, and the
25 well-pleaded factual allegations in the complaint are accepted as true, except those
26 pertaining to damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18
27 (9th Cir. 1987) (per curiam) (quoting *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560
28 (9th Cir. 1977)).

1 **IV. DISCUSSION**

2 The Court first considers whether Duffy satisfies the procedural requirements,
3 then whether the *Eitel* Factors weigh in favor of entering default judgment, and finally
4 what damages, if any, are appropriate.

5 **A. Procedural Requirements**

6 Before a court can enter a default judgment against a defendant, the plaintiff must
7 satisfy the procedural requirements set forth in FRCP 54(c) and 55, as well as Local
8 Rules 55-1 and 55-2. Duffy satisfies these requirements. It has submitted a declaration
9 supporting that: (1) the Clerk entered default against CLG on February 18, 2021;
10 (2) default was entered based on the Complaint Duffy filed on November 25, 2020;
11 (3) CLG is neither an infant nor an incompetent; (4) CLG is not covered under the
12 Servicemembers Civil Relief Act, 50 U.S.C. § 3931, and (5) although not required
13 under FRCP 55(b)(2) because CLG has not appeared in any capacity, Duffy mailed a
14 copy of this Motion to CLG on March 22, 2021. (*See* Decl. of Stephen M. Doniger
15 (“Doniger Decl.”) ¶¶ 3, 4, 7, ECF No. 15.) Thus, the procedural requirements do not
16 preclude entry of default judgment.

17 **B. *Eitel* Factors**

18 Once the procedural requirements have been met, district courts consider the
19 seven *Eitel* Factors: (1) the possibility of prejudice to the plaintiff; (2) the merits of the
20 plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4) the sum of money
21 at stake in the action; (5) the possibility of a dispute concerning material facts;
22 (6) whether the default was due to excusable neglect, and (7) the strong policy
23 underlying the [FRCP] favoring decisions on the merits. *Eitel*, 782 F.2d at 1471–72.
24 For the reasons discussed below, the Court finds that the *Eitel* Factors weigh in favor
25 of granting default judgment.

26 *1. Possibility of Prejudice to Plaintiff*

27 The first *Eitel* Factor asks whether the plaintiff will suffer prejudice if a default
28 judgment is not entered. *Id.* at 1471. Denial of default leads to prejudice when it leaves

1 a plaintiff without a remedy or recourse to recover compensation. *Landstar Ranger,*
2 *Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal. 2010) (citing *PepsiCo,*
3 238 F. Supp. 2d at 1177). Here, absent entry of default judgment, Duffy would suffer
4 prejudice because it would be left without a remedy due to CLG’s failure to appear or
5 participate in this action despite being properly notified. (*See Proof of Service.*)
6 Accordingly, this factor weighs in favor of default judgment.

7 2. *Substantive Merits & 3. Sufficiency of the Complaint*

8 The second and third *Eitel* Factors “require that a plaintiff state a claim on which
9 the [plaintiff] may recover.” *Philip Morris USA, Inc. v. Castworld Prods., Inc.*,
10 219 F.R.D. 494, 499 (C.D. Cal. 2003) (alteration in original) (quoting *PepsiCo*, 238 F.
11 Supp. 2d at 1175). Here, Duffy has alleged facts sufficient to establish that CLG
12 violated the Copyright Act. (*See generally* Compl.)

13 To establish a claim for copyright infringement, Duffy must prove:
14 “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work
15 that are original.” *Great Minds v. Office Depot, Inc.*, 945 F.3d 1106, 1110 (9th Cir.
16 2019) (citing *Feist Pub’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991)).

17 First, “[a] copyright registration is ‘prima facie evidence of the validity of the
18 copyright.’” *United Fabrics Int’l, Inc. v. C&J Wear, Inc.*, 630 F.3d 1255, 1257 (9th Cir.
19 2011) (first citing 17 U.S.C. § 410(c); and then citing *S.O.S., Inc. v. Payday, Inc.*,
20 886 F.2d 1081, 1085 (9th Cir. 1989)). Duffy alleges that it is the sole owner of the
21 exclusive rights to the Photograph, which was registered with the United States
22 Copyright Office on June 12, 2009, Registration Number VA 1-428-937. (Compl. ¶ 8.)
23 Taking these allegations as true, Duffy sufficiently alleges that it is the exclusive owner
24 of the rights of a valid copyright.

25 Second, Duffy can establish copying of constituent elements by showing:
26 (1) CLG had access to the Photograph, and (2) the Photograph and the image that appear
27 on CLG’s website are “substantially similar.” *Folkens v. Wyland Worldwide, LLC*,
28 882 F.3d 768, 774 (9th Cir. 2018). Duffy alleges that CLG had access to the Photograph

1 through Duffy’s website and social media accounts, or through third-party websites
2 such as Tumblr and Pinterest. (Compl. ¶ 12.) Duffy also provides an image of its
3 registered Photograph and a screen capture of CLG’s Instagram page displaying an
4 identical image. (*Id.* ¶ 10.) Thus, taking these allegations as true, Duffy sufficiently
5 alleges that CLG copied the constituent elements of the Photograph.

6 In sum, Duffy sufficiently alleges both that it is the owner of the valid copyright
7 in the Photograph and that CLG copied the Photograph. Therefore, Duffy has alleged
8 a valid copyright claim on which it may recover. Accordingly, the second and third
9 *Eitel* Factors favor default judgment.

10 4. *Amount at Stake*

11 The fourth *Eitel* Factor balances the amount of money at stake with the
12 “seriousness of Defendant’s conduct.” *PepsiCo*, 238 F. Supp. 2d at 1176; *Eitel*,
13 782 F.2d at 1471. The amount at stake must be proportionate to the harm alleged.
14 *Landstar*, 725 F. Supp. 2d at 921. “Default judgment is disfavored where the sum of
15 money at stake is too large or unreasonable in light of defendant’s action.” *Truong*
16 *Giang Corp. v. Twinstar Tea Corp.*, No. C 06-03594 JSW, 2007 WL 1545173, at *12
17 (N.D. Cal. May 29, 2007).

18 Here, Duffy seeks \$30,000 in statutory damages, the maximum amount permitted
19 for non-willful infringement. (*See* Mot. 8 (citing 17 U.S.C. § 504(c)(1)).) As this
20 amount falls within the range permitted for the alleged harm under § 504(c)(1), the
21 amount at stake appears proportionate to the harm alleged. Accordingly, this factor
22 favors of entry of default judgment.

23 5. *Possibility of Dispute*

24 The fifth *Eitel* Factor considers the possibility that material facts are in dispute.
25 *PepsiCo*, 238 F. Supp. 2d at 1177. Because the allegations in Duffy’s Complaint are
26 presumed true, CLG’s failure to appear in this action results in a finding that “no factual
27 disputes exist that would preclude the entry of default judgment.” *Vogel v. Rite Aid*
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1 *Corp.*, 992 F. Supp. 2d 998, 1013 (C.D. Cal. 2014). Accordingly, this factor favors
2 entry of default judgment.

3 6. *Possibility of Excusable Neglect*

4 The sixth *Eitel* Factor considers the possibility that a defendant’s default is the
5 result of excusable neglect. *PepsiCo*, 238 F. Supp. 2d at 1177. No facts before the
6 Court indicate that CLG’s default is due to excusable neglect. On January 25, 2021,
7 Duffy served the Summons and Complaint on CLG. (*See* Proof of Service.)
8 Furthermore, on March 23, 2021, Duffy served CLG notice of this Motion. (*See*
9 Doniger Decl ¶ 7; Certificate of Service, ECF No. 16.) CLG thus was on notice of this
10 action and failed to respond to either document. Accordingly, this factor favors entry
11 of default judgment.

12 7. *Policy Favoring Decisions on the Merits*

13 “[D]efault judgments are ordinarily disfavored. Cases should be decided upon
14 their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. However, where
15 the defendant fails to answer the plaintiff’s complaint, “a decision on the merits [is]
16 impractical, if not impossible.” *PepsiCo*, 238 F. Supp. 2d at 1177. As CLG failed to
17 appear or otherwise respond, a determination on the merits is impossible. Accordingly,
18 this factor does not preclude entry of default judgment.

19 In sum, the *Eitel* Factors weigh in favor of entering default judgment against
20 CLG. Therefore, the Court **GRANTS** Duffy’s Motion for Default Judgment.

21 **C. Damages**

22 After finding entry of default judgment appropriate, courts must next determine
23 the terms of the judgment. The Copyright Act provides that a copyright owner may
24 elect to recover statutory damages in lieu of actual damages any time before a final
25 judgment is entered. 17 U.S.C. § 504(c)(1). The Act allows for damages of not less
26 than \$750 nor more than \$30,000 with respect to any one work. *Id.* Moreover, where
27 the court finds that the infringement was committed willfully, it has discretion to
28 heighten the award to a sum no greater than \$150,000. 17 U.S.C. § 504(c)(2); *Harris*

1 v. *Emus Recs. Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984) (stating that courts have
2 “wide discretion in determining the amount of statutory damages to be awarded,
3 constrained only by the specified maxima and minima”).

4 “[S]tatutory damages are appropriate [on] default judgment . . . because the
5 information needed to prove actual damages is within the infringers’ control and is not
6 disclosed.” *Microsoft Corp. v. Nop*, 549 F. Supp. 2d 1233, 1238 (E.D. Cal. 2008);
7 *Barcroft Media, Ltd. v. Soc. Trends Media, Inc.*, No. CV 17-5277-R, 2018 WL 4745305,
8 at *2 (C.D. Cal. May 1, 2018). In determining statutory damages, courts often use
9 estimates of actual damages or licensing fees. *See Michaels v. Nohr*, No. CV
10 15-06353-AB (JEMx), 2015 WL 12532177, at *9 (C.D. Cal. Dec. 17, 2015) (actual
11 damages); *Nat’l Photo Grp., LLC v. Pier Corp.*, No. SACV 13-1165-DOC (JPRx),
12 2014 WL 12576641, at *4 (C.D. Cal. Mar. 10, 2014) (licensing fees). Courts are guided
13 by “what is just in the particular case,” specifically considering “the nature of the
14 copyright [and] the circumstances of the infringement.” *Peer Int’l Corp. v. Pausa Recs.,*
15 *Inc.*, 909 F.2d 1332,1336 (9th Cir. 1990) (quoting *F.W. Woolworth Co. v. Contemp.*
16 *Arts, Inc.*, 344 U.S. 228, 232 (1952)).

17 Duffy seeks \$30,000 in statutory damages for CLG’s act of infringement.
18 (Mot. 8.) It argues that \$30,000 is reasonable because it is significantly less than the
19 heightened statutory maximum of \$150,000 for a single act of willful infringement.
20 (Mot. 9.) Duffy asserts that any award less than \$30,000 would “effectively reward”
21 CLG for refusing to participate in this litigation and would likewise encourage other
22 defendants to do the same. (*Id.*)

23 However, Duffy presents no evidence to which the Court might anchor such an
24 award, for instance the amount of actual damages or the licensing fee for the
25 Photograph. (*See generally id.*) Duffy argues CLG used the Photograph for the
26 commercial purpose of promoting its nightclub, but because CLG defaulted, Duffy
27 cannot ascertain CLG’s profits. (*Id.* at 7, 9–10.) In the absence of this (or any) number,
28 Duffy merely speculates that it would have won \$30,000 at trial and asks the Court to

1 make the unsupported leap to that statutory maximum. (*See id.* at 10.) The Court is
2 unpersuaded. Duffy does not allege that CLG used the Photograph multiple times or
3 offer facts indicating a duration for CLG’s use of the Photograph—the Court is left in
4 the dark. Given that Duffy has failed to provide the Court with estimates of the actual
5 damages or the licensing fee, an award of \$30,000 is not warranted.

6 This conclusion finds support in similar copyright claims in this district where
7 courts granted default judgment and awarded much lower statutory damages. For
8 instance, in *Durant v. REP Publishing, Inc.*, the court awarded \$750 each for two
9 photographs posted on the defendant’s website where one photograph was used in
10 support of an article and the other was used for “unclear” purposes. No. CV
11 17-08077-AB (SSx), 2018 WL 6137156, at *4 (C.D. Cal. Aug. 13, 2018); *see also*
12 *Barcroft Media, Ltd.*, 2018 WL 4745305, at *3 (awarding statutory minimum of \$750
13 each for two infringing photographs that were posted on defendants’ website).

14 Accordingly, considering the nature of the copyright and the circumstances of
15 the infringement, the Court finds that an award of \$750 sufficiently compensates Duffy
16 while effectively deterring those who might engage in similar unlawful conduct.

17 **D. Attorneys’ Fees and Costs**

18 Duffy requests litigation costs of \$555.74 and attorneys’ fees of \$2,400.00.
19 (Doniger Decl. ¶¶ 5–6.) A party who has violated the Copyright Act may be liable for
20 attorneys’ fees and costs under 17 U.S.C. § 505. On default judgment, the Court
21 determines attorneys’ fees pursuant to the Schedule of Attorneys’ Fees provided in
22 Local Rule 55-3. The Schedule provides that an amount of Judgment between \$0.01
23 and \$1000 warrants an award of attorneys’ fees of thirty percent with a minimum of
24 \$250. C.D. Cal. L.R. 55-3. As thirty percent of \$750 is less than \$250, the Court awards
25 the minimum of \$250 in attorneys’ fees. Additionally, the Court accepts Duffy’s
26 representation regarding litigation costs and awards costs in the amount of \$555.74.
27 (*See* Doniger Decl. ¶ 6.)

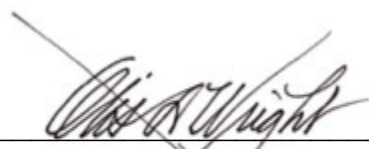
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V. CONCLUSION

For the reasons discussed above, the Court **GRANTS** Plaintiff's Motion for Entry of Default Judgment and **awards \$750.00 in statutory damages, \$250.00 in attorneys' fees, and \$555.74 in costs.** (ECF No. 15.)

IT IS SO ORDERED.

June 22, 2021



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE