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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TVB HOLDINGS (USA), INC.,

Plaintiff,

vs.

ENOM, INC., et al.

Defendants.

CASE NO. SACV 13-624-JLS (DFMx)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
SECOND AMENDED MOTION FOR
DEFAULT JUDGMENT (Doc. 44)**

1 **I. INTRODUCTION**

2 Before the Court is a Second Amended Motion for Default Judgment and
3 Permanent Injunction filed by Plaintiff TVB Holdings (USA), Inc. requesting that
4 judgment be entered against Defendant “Peter Pan.” (Second Am. Mot., Doc. 44.)
5 Having considered the briefing, and having taken the matter under submission, the
6 Court GRANTS IN PART and DENIES IN PART Plaintiff’s Motion.

7
8 **II. Background**

9 According to the First Amended Complaint, Plaintiff “owns the exclusive
10 rights to distribute within the United States and its territories the copyrighted works
11 produced by Television Broadcasts Limited” (First Am. Compl. (“FAC”) ¶ 15,
12 Doc. 9.) The copyrighted works include 1,956 individual episodes, which are part
13 of fifty-five television series with registered copyrights (“Registered Works”).
14 (Donahue Decl. ¶¶ 2-6 & Exs. A, B, Compendium of Exhibits (“COE”) Ex. 6, Doc.
15 44-2.) The copyrighted works also include programming for which copyright
16 certificates are pending but not yet issued (“Unregistered Works”). (Second
17 Elizabeth Lai Decl. ¶ 10 & Ex. G, COE Ex. 7.) The Court refers to the Registered
18 Works and Unregistered Works collectively as the “Copyrighted Works.”

19 Defendant has registered several web domains (“Unauthorized Websites”)
20 using the false alias “Peter Pan,” and has made the Copyrighted Works available on
21 the Unauthorized Websites for users to access and view. (See FAC ¶¶ 2, 8, 17, 19 &
22 at 1; Philip Tam Decl. ¶ 11, COE Ex. 1; Richard Lai Decl. ¶ 5, COE Ex. 2; First
23 Elizabeth Lai Decl. ¶¶ 5-7, COE Ex. 3.)¹

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26 ¹ As defined in Plaintiffs’ motion, which is supported by declarations, the Unauthorized Websites
27 are: ENTERHK.COM, AZDRAMA.INFO, DLDRAMA.COM, FORUM.AZDRAMA.NET,
28 WWW.AZDRAMA.NET, WWW.AZDRAMA.SX, WWW1.AZDRAMA.NET, and
WWW.1STDARAMA.COM. (Second Am. Mem. at 3 n.2)

1 On April 19, 2013, Plaintiff filed the present action for, among other things,
2 copyright infringement. (Compl., Doc. 1.) On September 27, 2013, Plaintiff served
3 Defendant by email after obtaining leave of court. (Docs. 16, 18.) Defendant
4 replied to the email by stating that one of the websites “is not available now. It was
5 blocked and I already sold!” (Lawrence J. Hilton Decl. ¶¶ 8, 10 & Ex J, COE
6 Ex. 4.)

7 On June 14, 2013, Plaintiff sent Defendant a “Notice of Copyright
8 Infringement,” which included a list of series titles and episodes Defendant was
9 allegedly infringing. (See Hilton Decl. ¶ 5 & Ex. E.) Despite the letter, Defendant
10 continues to upload multiple episodes of Plaintiff’s programming, and has created
11 new websites with infringing content in response to Plaintiff’s attempts to disable
12 the websites. (See Second Elizabeth Lai Decl. ¶¶ 4-10, Exs. C-G.)

13 On October 29, 2013, default was entered against Defendant by the Clerk of
14 Court. (Doc. 23.) Plaintiff’s present motion is its third attempt to obtain default
15 judgment on its copyright infringement claim. In prior orders, the Court found that
16 Plaintiff had established personal jurisdiction over Defendant and had satisfied the
17 requirements of Local Rule 55-1, but that Plaintiff had failed to identify with
18 specificity the allegedly copyrighted works, and had failed to demonstrate why it
19 was entitled to statutory damages for all of the allegedly copyrighted works. (Docs.
20 29, 34.)

21 On April 20, 2014, Plaintiff filed an ex parte application for a temporary
22 restraining order enjoining a non-party domain name registrar from transferring the
23 domain name for one of Defendant’s websites. (Doc. 35.) Defendant requested the
24 transfer in an attempt to circumvent a DMCA takedown notice. (*Id.* at 3-6.) The
25 Court granted the temporary restraining order, and, following an Order to Show
26 Cause hearing, granted a preliminary injunction. (Docs. 36, 37, 40, 41.)

1 On May 9, 2014, Plaintiff filed the present Second Amended Motion for
2 Default Judgment on its copyright infringement claim. (Second Am. Mot.) Plaintiff
3 seeks statutory damages against Defendant and a permanent injunction against
4 Defendant and various non-party service providers.

6 **III. Legal Standard**

7 Under Rule 55 of the Federal Rules of Civil Procedure, default judgment is a
8 two-step process. *See* Fed. R. Civ. P. 55; *see also Eitel v. McCool*, 782 F.2d 1470,
9 1471 (9th Cir. 1986). Prior to entry of default judgment, there must be an entry of
10 default. *See* Fed. R. Civ. P. 55. Upon entry of default, the factual allegations of the
11 complaint, save for those concerning damages, are deemed to have been admitted by
12 the defaulting party. Fed. R. Civ. P. 8(b)(6); *see Geddes v. United Fin. Grp.*, 559
13 F.2d 557, 560 (9th Cir. 1977).

14 A district court has discretion to grant or deny a motion for default judgment.
15 *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). The Ninth Circuit has set
16 forth seven factors to be considered by courts in reviewing a motion for default
17 judgment: “(1) the possibility of prejudice to the plaintiff, (2) the merits of
18 plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of
19 money at stake in the action[,] (5) the possibility of a dispute concerning material
20 facts[,] (6) whether the default was due to excusable neglect, and (7) the strong
21 policy underlying the Federal Rules of Civil Procedure favoring decisions on the
22 merits.” *Eitel*, 782 F.2d at 1471-72.

24 **IV. Discussion**

25 **A. Procedural Requirements**

26 The Court previously found it had personal jurisdiction over Defendant, and
27 that Plaintiff had satisfied the requirements of Local Rule 55-1. (Doc. 29 at 4-6.)
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B. Eitel Factors

For the reasons stated below, the Court finds that, on balance, the *Eitel* factors warrant entering default judgment.

1. Possibility of Prejudice to the Plaintiff

“The first *Eitel* factor considers whether a plaintiff will suffer prejudice if a default judgment is not entered.” *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal. 2010). A plaintiff suffers prejudice when denying default judgment would leave plaintiff without a remedy. *Id.* Defendant has infringed and continues to infringe Plaintiff’s Copyrighted Works on a large scale. Were the Court to deny Plaintiff’s Motion, Plaintiff would have no recourse as to the ongoing infringement. Therefore, this factor weighs in favor of entering default judgment.

2. The Merits of Plaintiff’s Substantive Claims and the Sufficiency of the Complaint

The second and third *Eitel* factors look at (1) the merits of plaintiff’s substantive claims and (2) the sufficiency of the complaint. *Eitel*, 782 F.2d at 1471. These two factors require that a plaintiff “state a claim on which the [plaintiff] may recover.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002) (alteration in original; internal quotation marks and citation omitted). “Copyright infringement claims have two basic elements: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *Seven Arts Filmed Entm’t Ltd. v. Content Media Corp. PLC*, 733 F.3d 1251, 1254 (9th Cir. 2013) (citations and internal quotation marks omitted); 17 U.S.C. § 501(a). Plaintiff alleges ownership of the Copyrighted Works and alleges that Defendant is

1 infringing the Copyrighted Works by uploading them to his websites for users to
2 access and view without Plaintiff’s permission. (FAC ¶¶ 2, 8, 13, 15, 17, 22.)
3 Plaintiff also provides evidence supporting these allegations. (See Donahue Decl.
4 Exs. A, B; Second Elizabeth Lai Decl. Ex. G; Philip Tam Decl. ¶ 3, Doc. 25-6.) In
5 light of the allegations and evidence, the Court finds that these factors weigh in
6 favor of default judgment.

7
8 **3. Amount of Money at Issue**

9 Under the fourth factor, “the court must consider the amount of money at
10 stake in relation to the seriousness of Defendant’s conduct.” *PepsiCo*, 238 F. Supp.
11 2d at 1176. Section 504(c) of the Copyright Act provides that “[a] copyright owner
12 may elect . . . to recover, instead of actual damages and profits, an award of
13 statutory damages for all infringements involved in the action.” 17 U.S.C.
14 § 504(c)(1). Plaintiff seeks \$4,251,000 in statutory damages. (Second Am. Mem.
15 at 9.) As discussed below in the Remedies section, this amount is consistent with
16 that to which Plaintiff is entitled by law. Therefore, while the amount of money at
17 issue is substantial, this factor does not significantly weigh against granting default
18 judgment.

19
20 **4. The Possibility of a Dispute Concerning Material Facts**

21 “The fifth *Eitel* factor examines the likelihood of dispute between the parties
22 regarding the material facts surrounding the case.” *Craigslist, Inc.* 694 F. Supp. 2d
23 at 1060. Where a plaintiff has filed a well-pleaded complaint, the possibility of
24 dispute concerning material facts is remote. *See id.* at 1061; *Landstar Ranger*, 725
25 F. Supp. 2d at 922 (“Since [plaintiff] has supported its claims with ample evidence,
26 and defendant has made no attempt to challenge the accuracy of the allegations in
27 the complaint, no factual disputes exist that preclude the entry of default
28

1 judgment.”). As discussed above, Plaintiff’s First Amended Complaint is well
2 pleaded and supported by evidence. Therefore, a dispute concerning material facts
3 is unlikely, and this factor weighs in favor of entering default judgment.
4

5 **5. The Possibility of Excusable Neglect**

6 “The sixth *Eitel* factor considers whether defendant’s default may have been
7 the product of excusable neglect.” *Landstar Ranger*, 725 F. Supp. 2d at 922. This
8 factor favors default judgment when the defendant has been properly served or the
9 plaintiff demonstrates that the defendant is aware of the lawsuit. *Id.* As discussed
10 above, Plaintiff’s counsel served the pleadings on Defendant by email on September
11 27, 2013, and Defendant replied to the email, indicating his awareness of this action.
12 (Hilton Decl. ¶¶ 8, 10 & Ex. J.) However, Defendant has not requested that the
13 default be set aside. The possibility of excusable neglect is therefore unlikely, and
14 this factor weighs in favor of entering default judgment.
15

16 **6. Policy Favoring Decisions on the Merits**

17 “The final *Eitel* factor examines whether the strong policy favoring deciding
18 cases on the merits prevents a court from entering default judgment.” *Craigslis*,
19 694 F. Supp. 2d at 1061. Although “[c]ases should be decided upon their merits
20 whenever reasonably possible,” *Eitel*, 782 F.2d at 1472, “Rule 55(a) allows a court
21 to decide a case before the merits are heard if defendant fails to appear and defend.”
22 *Landstar Ranger*, 725 F. Supp. 2d at 922. Notwithstanding the strong policy
23 presumption in favor of a decision on the merits, where a defendant fails to appear
24 and respond, a decision on the merits is impossible and default judgment is
25 appropriate. *See Craigslis*, 694 F. Supp. 2d at 1061. In this case, Defendant has
26 failed to appear and respond, and accordingly, this factor favors entering default
27 judgment.
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V. Remedies

A. Statutory Damages for Registered Works

Plaintiff seeks \$4,251,000 in statutory damages, based on the infringement of 1,956 episodes. The Court previously held that Plaintiff must prove the allegedly infringed episodes are protected by registered copyrights in order to receive statutory damages, that registration of a series title satisfies the registration requirement for individual episodes, and that individual episodes constitute separate “works” for computing statutory damages. (*See* Doc. 29 at 8-9; Doc. 34 at 2-3.) The Court denied without prejudice Plaintiff’s request for statutory damages because Plaintiff had not shown it was entitled to such damages for each episode under 17 U.S.C. § 412. (*See* Doc. 34 at 2-3.)

In support of its present Motion, Plaintiff has provided copyright registrations for the 55 series titles to which the 1,956 episodes belong. (Donahue Decl. ¶ 4 & Exs. A, B.) Each of the 1,956 episodes either has a corresponding certificate of copyright registration prior to the date Defendant uploaded the episode to the Unauthorized Websites, or has a corresponding certificate of copyright registration dated within three months of the series’ date of first publication. (Donahue Decl. ¶¶ 5-6 & Exs. A, B.) Thus, Plaintiff may seek statutory damages for infringement of these episodes under 17 U.S.C. § 412.

The Court may award statutory damages for copyright infringement “with respect to any one work . . . in a sum not less than \$750 or more than \$30,000 as the court considers just.” 17 U.S.C. § 504(c)(1). “In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000.” *Id.* § 504(c)(2). “[I]t shall be a rebuttable presumption that the infringement was committed willfully for purposes of

1 determining relief if the violator . . . knowingly provided or knowingly caused to be
2 provided materially false contact information to a domain name registrar, domain
3 name registry, or other domain name registration authority in registering,
4 maintaining, or renewing a domain name used in connection with the infringement.”
5 *Id.* § 504(c)(3)(A).

6 Here, Plaintiff seeks \$2,000 per episode for 1,843 episodes uploaded prior to
7 the June 14, 2013 Notice of Copyright Infringement sent to Defendant, and \$5,000
8 per episode for 113 episodes uploaded thereafter. (Second Am. Mem. at 9-11;
9 Donahue Decl. ¶¶ 6-7 & Ex. A.) In light of Defendant’s conduct, as described in the
10 Background section, the Court finds that the amount of the requested statutory
11 damages is warranted.

12

13 **B. Permanent Injunction as to Copyrighted Works**

14 Plaintiff also requests permanent injunctive relief. (*See* Second Am. Mem. at
15 11-15.) Plaintiff’s Proposed Order indicates that it seeks to permanently enjoin (1)
16 Defendant and those acting on his behalf from infringing the Copyrighted Works²
17 by operating certain web domains;³ (2) any and all registrars and resellers of the
18 web domains from transferring ownership of the domain names; and (3) any and all
19 companies providing website services for the web domains from providing such
20 services and providing access to the website domains. (*See* Proposed Order at 2-3.)

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23 ² Plaintiff may seek injunctive relief as all of the Copyrighted Works—even those that are
24 unregistered—because they are foreign works. (*Cf.* Doc. 29 at 9); *Cosmetic Ideas, Inc. v.*
IAC/Interactivecorp., 606 F.3d 612, 619 nn.9, 12 (9th Cir. 2010).

25 ³ Plaintiff’s Proposed Order seeks injunctive relief as to additional websites not included in the
26 definition of “Unauthorized Websites” listed in its Second Amended Motion. (*Compare* Second
27 Am. Mem. at 3 n.2 *with* Proposed Order at 2, Doc. 44-1.) The Court considers the request for
28 injunctive relief only as to the Unauthorized Websites addressed in Plaintiff’s briefing for its
Second Amended Motion.

1 Plaintiff has not demonstrated how it is entitled to the relief requested in (2)
2 and (3), which would entail enjoining a potentially limitless number of non-parties
3 without notice to them. Previously, when the Court granted Plaintiff's ex parte
4 request for a temporary restraining order, the Court stated:

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6 Plaintiff is warned that any request for permanent
7 injunctive relief will need to specifically and convincingly
8 demonstrate how the Court is authorized to grant such
9 relief. In addition to setting forth the statutory basis for
10 relief, Plaintiff must either provide prior notice to service
11 providers who would be enjoined, or provide a persuasive
12 argument as to why such notice is not required. Failure to
13 address these issues may result in denial in whole or in
14 part of any request for permanent injunctive relief.

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16 (Doc. 37 at 4 n.3.) *See also* 17 U.S.C. § 512(j) (setting forth specific requirements
17 and limitations on enjoining service providers). Plaintiff did not heed the Court's
18 warning. The Second Amended Motion does not even mention permanently
19 enjoining non-parties, much less explain how Plaintiff is entitled to such relief. Nor
20 did Plaintiff request such relief in its pleadings. *See* Fed. R. Civ. P. 54(c); *cf.*
21 *Liberty Media Holdings v. Vinigay.com*, No. CV 11-280-PHX-LOA, 2011 WL
22 7430062, at*12, *15, *20 (D. Ariz. Dec. 28, 2011) ("Because Plaintiff failed to
23 specifically request impoundment of Defendants' domain name in its prayer for
24 relief and provide any authority under the Copyright Act that such relief is lawful,
25 the Court will recommend this request be denied."), *report and recommendation*
26 *adopted*, 2012 WL 641579. Accordingly, the Motion is DENIED with respect to (2)
27 and (3).

1 As to the relief requested in (1), in order for the Court to grant a permanent
2 injunction against Defendant, Plaintiff must demonstrate: “(1) that it has suffered an
3 irreparable injury; (2) that remedies available at law, such as monetary damages, are
4 inadequate to compensate for that injury; (3) that, considering the balance of
5 hardships between the plaintiff and defendant, a remedy in equity is warranted; and
6 (4) that the public interest would not be disserved by a permanent injunction.” *eBay*
7 *Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

8 Defendant’s infringement of the Copyrighted Works irreparably harms
9 Plaintiff by negating its ability to control the use and transmission of those works.
10 *See A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1029 (9th Cir. 2004);
11 *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1216-
12 19 (C.D. Cal. 2007). An award of monetary damages is inadequate, because it is
13 unlikely Defendant will be able to pay the damages in full, and because monetary
14 damages alone would not prevent Defendant from continuing to infringe. *See*
15 *Metro-Goldwyn-Mayer*, 518 F. Supp. 2d at 1217, 1219-20; *Apple Inc. v. Pystar*
16 *Corp.*, 673 F. Supp. 2d 943, 949-50 (N.D. Cal. 2009). The balance of hardships
17 favors Plaintiff, as an injunction will proscribe only Defendant’s infringing
18 activities. *See Cadence Design Sys., Inc. v. Avant! Corp.*, 125 F.3d 824, 829-30 (9th
19 Cir. 1997) (collecting cases). Finally, the public interest is served by protecting
20 valid copyrights. *See Metro-Goldwyn-Mayer*, 518 F. Supp. 2d at 1223 (collecting
21 cases).

22 Accordingly, the Court finds a permanent injunction against Defendant
23 warranted, on the terms set forth in the concurrently-filed Default Judgment and
24 Permanent Injunction.

25
26 **VI. Conclusion**

27 For the reasons stated above, Plaintiff’s Motion is GRANTED IN PART and
28

1 DENIED IN PART. Default judgment is entered against Defendant on Plaintiff's
2 first cause of action for copyright infringement. Plaintiff is awarded \$4,251,000 in
3 statutory damages. The Court enters a permanent injunction against Defendant on
4 the terms set forth in the concurrently-filed default judgment and permanent
5 injunction. Plaintiff's remaining causes of action are dismissed. (*See* Second Am.
6 Mot. at 2 n.1.)

7
8 **SO ORDERED.**

9
10 DATE: July 23, 2014

11 JOSEPHINE L. STATON
12 HONORABLE JOSEPHINE L. STATON
13 UNITED STATES DISTRICT JUDGE
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