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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

MALIBU MEDIA, LLC,  
  
Plaintiff,  
  
v.  
  
CHRISTIAN SIANTURI,  
  
Defendant.

Case No. 1:16-cv-01059-AWI-SKO  
  
**FINDINGS AND  
RECOMMENDATIONS THAT  
PLAINTIFF’S MOTION FOR ENTRY  
OF DEFAULT JUDGMENT BE  
GRANTED IN PART AND DENIED IN  
PART**  
  
(Doc. No. 28)

**OBJECTIONS DUE: 21 DAYS**

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**I. INTRODUCTION**

On May 25, 2017, Plaintiff Malibu Media, LLC filed Motion for Entry for Default Judgment against Defendant Christian Sianturi (the “Motion”). (Doc. 28.) No opposition to the Motion was filed. After having reviewed Plaintiff’s papers and all supporting material, the matter was deemed suitable for decision without oral argument pursuant to Local Rule 230(g), and the hearing was vacated on July 31, 2017. (Doc. 31.)

For the reasons set forth below, the undersigned RECOMMENDS that Plaintiff’s Motion for Entry of Default Judgment be GRANTED IN PART and DENIED IN PART.

**II. BACKGROUND**

Plaintiff Malibu Media, LLC, doing business as “X-Art.com” (“Plaintiff”), is a California

1 limited liability company that is the registered owner of copyrights to adult films. (Doc. 18 (“Am.  
2 Compl.”) ¶¶ 3, 8.) Defendant Christian Sianturi is an individual allegedly residing in Fresno,  
3 California. (Am. Compl. ¶ 9.)

4 Plaintiff hired investigators IPP International UG (“IPP”) and Excipio GmbH (“Excipio”)  
5 to investigate unauthorized copies of its works on the BitTorrent file distribution network and to  
6 trace the infringing distributors. (*Id.* ¶¶ 5–6, 17–25.) BitTorrent is a peer-to-peer file sharing  
7 system used for distributing large amount of data, including digital copies of movies. (*Id.* ¶ 10)  
8 To distribute a large digital file, BitTorrent breaks a file into many small pieces. (*Id.* ¶ 12) These  
9 pieces are exchanged among users in the network, and then once the recipient receives all of the  
10 pieces of a file, the BitTorrent software will reassemble the pieces so that the file can be opened  
11 and used. (*Id.* ¶¶ 12–13.) Each piece of a BitTorrent file is assigned a unique cryptographic hash  
12 value (“piece hash”) that identifies the piece and ensures that it is properly routed. (*Id.* ¶¶ 14–15.)  
13 The entire digital file is also given a hash value (“file hash”), which acts as an identifier and is  
14 used by the BitTorrent software to determine when the file is complete and accurate. (*Id.* ¶ 16.)

15 IPP and Excipio allegedly downloaded “one or more pieces” at 32 different times through  
16 a direct connection with internet protocol (“IP”) address 50.173.4.30. (*Id.* ¶¶ 17–18, Ex. A) IPP  
17 and Excipio allegedly downloaded pieces at the following times and from media files with the  
18 following file hashes:

File #	Hit Date	File Hash
1	06/10/2016 08:22:40	16B716D190DE14ED20A84FF664189C550B50748A
2	05/29/2016 05:55:41	3CD4FFAF5440DFE6A6E9BE4946542C08ECB5C417
3	05/22/2016 03:24:43	48D8C9C07B500EFB0DDE9914C9781EAD32EDE068
4	05/20/2016 04:46:14	065338DB17BE8DB45AC608FED6E0D89A91C018B3
5	05/20/2016 03:31:55	1A44F938F9E34A86F83E4AD47EDB272E0B9AF2A3
6	05/06/2016 06:46:11	DB8E65EA5C58D475257E9AF17FAF0F658041E176
7	04/13/2016 06:47:01	F953C506467360C00755868B4FFF1615E65B8D89
8	04/11/2016 06:45:12	4A417B96F8A1F98861B8A25FF3F0CE4E03119D92

9	04/11/2016 05:11:42	F712820D91B282CB138D7524795C24D407EC947C
10	04/04/2016 05:27:38	73B88A9B713DFC6084C683487AAEAF743AA93289
11	04/04/2016 03:56:28	AE7A1B3E5D98275212826E9184C2BCDA7F63650B
12	04/04/2016 03:56:21	2C53E442069C3D23F3DFE70C817AEFD5B0B1D854
13	03/23/2016 04:00:58	1A17A4EE38D289D43F64ADB8D8D694A33CAE574F9
14	02/10/2016 00:41:55	6BE2169D7F4771B91A820211F6D6CD6346F2BA64
15	02/10/2016 00:27:02	74538C81BB43F501334963E3648FCC043754150F
16	02/09/2016 08:46:02	AC25BCAF1E7FE4D2F84E4FFCB420CA861C36DE9F
17	01/17/2016 09:05:00	DD27C23938B719166309DA7593FC76FB48A4B741
18	10/25/2015 07:34:48	88880BA49BE6AECD218F30F515D301C1527CF1D2
19	10/14/2015 06:04:32	3C51F17B5DEAC60CFC27949687BDB98FA9A2259C
20	09/22/2015 07:23:20	4A3630F4DC5E33576CEBA61591886392A7521943
21	09/15/2015 07:31:43	D1938508B57B1953E3CB1905052DA996C5AF823B
22	09/12/2015 06:46:01	137D2AC45D2B7D690622CA9FCB18B0B214CF68F6
23	09/12/2015 02:45:00	10D7125FBBDE277A225D5E790B33297F69A36E68

18 (*Id.* at Ex. A, ¶ 25.) They then downloaded full copies of each media file associated with the file  
19 hash from BitTorrent and confirmed that each of those files contained a digital copy of a movie  
20 that is Plaintiff’s copyrighted work. (*Id.* ¶ 20; *see* Ex. B) Files #4 and 5 are “siterip” files that  
21 contain zip folders. (*Id.* ¶ 21.) These zip folders contain 6 and 5 of Plaintiff’s works, respectively.  
22 (*Id.* ¶ 21; *see* Ex. C.) The other files contain a single work each. (*Id.* Ex. A.)

23 Plaintiff filed its original complaint on July 24, 2016, essentially against the IP address,  
24 using a fictitious name for the defendant. (Doc. 1.) To determine in which jurisdiction it should  
25 file suit, Plaintiff alleges it used “proven” geolocation technology to trace the IP address to a  
26 physical address in this district. (Am. Compl. ¶ 5.) Plaintiff then moved under Federal Rule of  
27 Civil Procedure 26(d)(1) to serve a subpoena on Comcast Cable, the provider of the IP address, to  
28 force it to reveal the identity of the owner of the allegedly infringing IP address. (Doc. 8.) The

1 Court permitted Plaintiff to serve a third-party subpoena, but imposed several restrictions  
2 “intended to provide additional safeguards to Defendant’s privacy interests,” and noted that the  
3 Court “takes very seriously the concerns noted by Judge Hellerstein of the Southern District of  
4 New York and Judge Wright of the Central District of California, among many others, regarding  
5 the potential for abuse in cases such as this . . . . [Plaintiff] is cautioned that any abuses of the  
6 judicial system or the discovery process will not be taken lightly. (Doc. 13.)

7 On March 8, 2017, Plaintiff filed the Amended Complaint naming Mr. Sianturi as the  
8 defendant and owner of the IP address and claiming that Defendant used BitTorrent to infringe on  
9 its exclusive rights by copying, reproducing, and redistributing 32 movies, despite the fact that  
10 Plaintiff held a registered copyright for each. (Am. Compl.) Plaintiff alleged one claim for relief  
11 against Defendant: direct infringement of Plaintiff’s right to reproduce, redistribute, perform, or  
12 display copyrighted works, in violation of 17 U.S.C. §§ 106 and 501. (Am. Compl. ¶ 33) Plaintiff  
13 requested a permanent injunction against Defendant from continuing to infringe its works, an  
14 order that Defendant delete all digital media files relating to Plaintiff’s works, an award of  
15 statutory damages for each infringed work, and an award of attorney’s fees and costs. (*Id.* at 6.)

16 A summons was issued and Defendant was served on March 18, 2017. (Docs. 19, 24.) On  
17 April 27, 2017, Plaintiff requested that the Clerk enter default against Defendant. (Doc. 25.) The  
18 Clerk filed an entry of default on the same day. (Doc. 26.) Plaintiff filed its Motion for Entry for  
19 Default Judgment on May 25, 2017. (Doc. 28.) Plaintiff proposes that the Court order Defendant  
20 to pay \$24,000 in statutory damages under 17 U.S.C. § 504(a) and (c) and \$1,647 in attorney’s  
21 fees and costs under 17 U.S.C. § 505 for a total of \$25,647.00, as well as enjoin further  
22 infringement of its copyrighted works. (Doc. 28-4 (“Proposed Order”).)

### 23 III. DISCUSSION

#### 24 A. Legal Standard

25 Federal Rule of Civil Procedure 55(b) permits a court-ordered default judgment following  
26 the entry of default by the clerk of the court under Rule 55(a). It is within the sole discretion of  
27 the court as to whether default judgment should be entered. *See Aldabe v. Aldabe*, 616 F.2d 1089,  
28 1092 (9th Cir. 1980). A defendant’s default by itself does not entitle a plaintiff to a court-ordered

1 judgment. *See Draper v. Coombs*, 792 F.2d 915, 924-25 (9th Cir. 1986). Instead, the Ninth  
2 Circuit has determined a court should consider seven discretionary factors, often referred to as the  
3 “*Eitel* factors,” before rendering a decision on default judgment. *See Eitel v. McCool*, 782 F.2d  
4 1470, 1471-72 (9th Cir. 1986). The *Eitel* factors include (1) the possibility of prejudice to the  
5 plaintiff, (2) the merits of the plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4)  
6 the sum of money at stake in the action (5) the possibility of a dispute concerning material facts,  
7 (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the  
8 Federal Rules of Civil Procedure favoring decisions on the merits. *See id.*

9 “In applying this discretionary standard, default judgments are more often granted than  
10 denied.” *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003)  
11 (quoting *PepsiCo, Inc. v. Triunfo–Mex, Inc.*, 189 F.R.D. 431, 432 (C.D. Cal. 1999)). As a general  
12 rule, once default is entered, the factual allegations of the complaint are taken as true, except for  
13 those allegations relating to damages. *TeleVideo*, 826 F.2d at 917-18 (9th Cir. 1987). However,  
14 although well-pleaded allegations in the complaint are admitted by the defendant’s failure to  
15 respond, “necessary facts not contained in the pleadings, and claims which are legally insufficient,  
16 are not established by default.” *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir.  
17 1992).

## 18 **B. Analysis**

### 19 **1. The *Eitel* Factors Favor Entry of a Partial Default Judgment**

#### 20 **a. Possibility of Prejudice to Plaintiff**

21 The first *Eitel* factor considers whether Plaintiff would suffer prejudice if default is not  
22 entered. Defendant was properly served on March 18, 2017, but has failed to appear and defend  
23 himself. If default judgment is not entered, Plaintiff will effectively be denied a remedy until  
24 Defendant participates and makes an appearance in the litigation—which may never occur.  
25 Denying Plaintiff a means of recourse is, by itself, sufficient to meet the burden imposed by this  
26 factor. *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003)  
27 (“prejudice” exists where the plaintiff has no “recourse for recovery” other than default judgment).  
28 Therefore, Plaintiff would be prejudiced if the Court were to deny its application for default

1 judgment. This factor weighs in favor of default judgment. *See Maxum Indem. Co. v. Court*  
2 *Servs., Inc.*, No. 2:11-cv-2014 GEB EFB, 2012 WL 2090473, at \*2 (E.D. Cal. June 8, 2012);  
3 *Burlington Ins. Co. v. Diamond Partners, Inc.*, No. 1:10-cv-00100-LJO-SKO, 2011 WL 284490,  
4 at \*3 (E.D. Cal. Jan. 25, 2011).

5 **b. Merits of Plaintiff’s Substantive Claim and Sufficiency of the**  
6 **Complaint**

7 The next relevant *Eitel* factors include the merits of the substantive claims pleaded in the  
8 complaint as well as the general sufficiency of the complaint. In weighing these factors, courts  
9 evaluate whether the complaint is sufficient to state a claim that supports the relief sought. *See*  
10 *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978); *see also DirecTV, Inc. v. Huynh*, 503  
11 F.3d 847, 854 (9th Cir. 2007) (“[A] defendant is not held to admit facts that are not well-pleaded  
12 or to admit conclusions of law.”) (internal quotation marks omitted).

13 The Amended Complaint asserts a cause of action for direct copyright infringement, in  
14 violation of 17 U.S.C. §§ 106 and 501. (Am. Compl. ¶ 33.) To establish a claim for copyright  
15 infringement, a plaintiff must show “(1) ownership of a valid copyright, and (2) copying of  
16 constituent elements of the work that are original.” *Feist Pubs., Inc. v. Rural Tel. Serv. Co.*, 499  
17 U.S. 340, 361 (1991). Plaintiff sufficiently alleges that it owns valid copyrights in the 32 movies  
18 by attaching as Exhibit B to the Amended Complaint a spreadsheet documenting the registration  
19 status of the movies with the United States Copyright Office. (Am. Compl. Ex. B). The movies  
20 are either registered or pending registration, and the spreadsheet documents the registration  
21 numbers and dates of registration of the movies. (*Id.*) These allegations are sufficient to show  
22 ownership of valid copyrights. *See Clifton v. Pearson Educ., Inc.*, No. 5:11-CV-03640-EJD, 2012  
23 WL 1565236, at \*4 (N.D. Cal. May 2, 2012). As to the second element, Plaintiff’s allegations are  
24 sufficient to establish that Defendant had unauthorized copies of the single movies in each of files  
25 #1–3 and 6–23, but not the 11 movies in files #4 and 5.

26 Plaintiff alleges that its investigators, IPP and Excipio, identified the allegedly infringing  
27 files through establishing a direct connection with Defendant’s IP address and downloading “one  
28 or more pieces” of the 23 files at 23 different times. (Am. Compl. ¶¶ 17–18, Ex. A) Plaintiff does

1 not explain its investigators’ process for determining that the downloaded “pieces” came from a  
2 specific file. Plaintiff alleges that the pieces have “piece hashes” to identify them and that when  
3 the pieces are assembled into a file there are “file hashes” to identify the complete digital media  
4 file. (Am. Compl. ¶¶ 14–16.) But how they identify the file origin of the few pieces they  
5 downloaded from Defendant is not explicitly pleaded. That said, it is easy to imagine that a  
6 downloaded piece can be matched to one work as it contains information taken from that work.  
7 Thus, the allegations that IPP and Excipio downloaded one piece each from files #1–3 and 6–23,  
8 which each contain a single copyrighted movie, and identified that piece as part of an unauthorized  
9 copy of their copyrighted work suffices to establish a plausible claim of copyright infringement as  
10 to those works. *See Malibu Media, LLC v. Nowobilski*, No. 15-cv-2250 (KM)(MAH), 2016 WL  
11 4059651, at \*4 (D.N.J. July 26, 2016).

12 But the allegation that the same size piece also establishes that 11 separate unauthorized  
13 copies were on Defendant’s computer within files # 4 and 5 requires more factual allegations to  
14 explain how one piece can identify separate works. It has not been alleged whether the piece that  
15 Plaintiff contends identifies the 6 works in file #4, for example, is a piece of any one work or  
16 pieces of all 6 (or if there is some other method of identification). As to these 11 movies in files  
17 #4 and 5, the Court is not satisfied that the Amended Complaint establishes that Plaintiff is entitled  
18 to judgment. *See id.* at \*5 (finding that the plaintiff did not establish entitlement to default  
19 judgment as to 127 videos contained in a single zip folder because it did not specifically plead  
20 how “one or more bits” identified 127 separate videos on the defendant’s computer).

21 **c. The Sum of Money at Stake in the Action**

22 The fourth *Eitel* factor, the sum of money at stake, weighs in favor of granting default  
23 judgment. Default judgment is disfavored when a large amount of money is involved or is  
24 unreasonable in light of the defendant’s actions. *See Truong Giang Corp. v. Twinstar Tea Corp.*,  
25 No. C 06-03594-JSW, 2007 WL 1545173 at \*12 (N.D. Cal. May 29, 2007). Here, Plaintiff is  
26 seeking a default judgment in the amount of \$25,647.00, which includes attorney’s fees and costs.<sup>1</sup>

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiff requests statutory damages in the amount of \$24,000.00, attorney’s fees in the amount of \$1,182.00, and costs in the amount of \$465.00, for a total of \$25,647.00. (Doc. 28-2 (Declaration of Henrik Mosesi in Support of Mot. for Entry of Default J. (“Mosesi Decl.”) ¶¶ 8–9); Doc. 28-3 at 10.)

1 This is not a relatively large sum of money, nor does it appear unreasonable, subject to the  
2 deductions set forth below.

3 **d. The Possibility of a Dispute Concerning the Material Facts**

4 Here, there is some doubt as to whether the individual named as the defendant is indeed the  
5 culpable party. He is identified essentially as the person who corresponds to a certain IP address.  
6 Electronically, of course, an IP address connects to a device, not a person, and it is impossible to  
7 determine the identity of the device user from subscriber information. It could be, for example,  
8 that someone else in the household (or for that matter someone pirating wireless service) is the  
9 actual infringer.<sup>2</sup>

10 That said, there seems to be a good faith basis for naming the particular individual, and the  
11 limited knowledge possessed by Plaintiff corresponds to the balanced, carefully limited discovery  
12 permitted by the Court. (Doc. 13.) Defendant could have responded with a denial to contradict  
13 the well-pleaded allegations in the Amended Complaint—which are taken as true, *see Televideo*  
14 *Sys.*, 826 F.2d at 917–18—but defaulted instead.

15 On balance, this factor generally, if not strongly, weighs in favor of default.

16 **e. Whether Default Was Due to Excusable Neglect**

17 Defendant failed to file a responsive pleading or oppose Plaintiff’s Motion for Entry of  
18 Default Judgment. The Court has no evidence before it establishing that Defendant’s failure to  
19 participate in the litigation is due to excusable neglect. Thus, this factor weighs in favor of  
20 granting default judgment.

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24 <sup>2</sup> Recognizing this potential for misidentification, Judge William Alsup of the United States District Court for the  
25 Northern District of California, who was assigned all Malibu Media cases in that district, *see Order Reassigning*  
26 *Cases, Malibu Media, LLC, v. Doe*, Civ. No. 15–4195 (Doc. 7) (N.D. Cal. Sept. 29, 2015), stayed a subpoena over  
27 “Malibu Media’s failure to include a sworn record on the reliability of its IP address geolocation methodology” and  
28 applied the ruling to future and pending requests. *Malibu Media, LLC v. Doe*, Civ No. 16-1006, 2016 WL 3383830,  
at \*3–4 (N.D. Cal. June 20, 2016). In the United States District Court for the Eastern District of New York,  
Magistrate Judge Steven Locke stayed all of Malibu Media actions in that district pending the resolution of a motion  
to quash based on, among other reasons, serious questions about the method for identifying allegedly infringing users  
and about Malibu Media’s abusive litigation practices. *E.g.*, Order Staying Cases, *Malibu Media, LLC v. Doe*, Civ  
No. 15–3504 (Doc. 12) (E.D.N.Y. October 6, 2015).

1                                   **f.       Strong Policy Favoring Decisions on the Merits**

2           This factor weighs against entry of default judgment in every case, but this policy factor is  
3 not dispositive, particularly when a defendant fails to appear and defend the action. *PepsiCo, Inc.*,  
4 238 F. Supp. 2d at 1177. Although a decision on the merits is preferable, this policy factor alone  
5 does not preclude the entry of default judgment.

6                                   **2.       Terms of the Judgment and Proof of Damages**

7           While analysis of the *Eitel* factors supports a default judgment, the Court also considers the  
8 proof of the damages and the terms of the judgment sought by Plaintiff.

9                                   **a.       Statutory Damages**

10          Plaintiff elects statutory damages under 17 U.S.C. § 504(c)(1). (Doc. 28-3 at 9.) That  
11 section provides:

12           [T]he copyright owner may elect, at any time before final judgment is rendered, to  
13 recover, instead of actual damages and profits, an award of statutory damages for all  
14 infringements involved in the action, with respect to any one work, for which any one  
15 infringer is liable individually, or for which any two or more infringers are liable  
jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court  
considers just.

16 17 U.S.C § 504(c)(1). The Court has broad discretion in setting the amount of statutory damages  
17 under the Act. *Reno-Tahoe Specialty, Inc., v. Mungchi, Inc.*, No. 2:12-cv-01051-GMN-VC,  
18 2014 WL 7336082, at \*10 (D. Nev. Dec. 19, 2014).

19          Plaintiff requests the minimum of \$750.00 per work in damages, multiplied by 32 works,  
20 for a requested total of \$24,000. (Doc. 28-3 at 10–11.) The minimum statutory award is  
21 appropriate here. “Courts considering similar infringement actions regarding unauthorized online  
22 distribution of copyrighted material have found statutory damages between \$750.00 and \$2,250.00  
23 per infringing work to be reasonable.” *Malibu Media, LLC v. Tsao*, Civ No. 15–6672, 2016 WL  
24 3450815, at \*4 (D.N.J. June 20, 2016) (collecting cases). Further, courts routinely award  
25 minimum statutory damages as part of default judgments in copyright infringement actions.  
26 *Warner Bros. Records v. Paahau*, No. CV 06-00320 SPK-KSC, 2007 WL 704586, at \*3 (D. Haw.  
27 Feb. 28, 2007). With respect to this specific plaintiff, other courts have detailed its “unscrupulous  
28 use of the courts as a profit generating business.” *Nowobilski*, 2016 WL 4059651, at \*6 (citing

1 *Malibu Media, LLC v. Powell*, Civ No. 15–1211, 2016 WL 26068, at \*1 (M.D. Pa. Jan. 4, 2016)  
2 (noting “the troubling trend of copyright trolls in this particular film industry, who file mass  
3 infringement lawsuits against Doe defendants not to be made whole, but rather as a primary or  
4 secondary revenue stream” (internal quotation marks and citations omitted)). Courts throughout  
5 the country have granted Plaintiff the minimum statutory damages even when it has requested  
6 more. See, e.g., *id.*; *Malibu Media, LLC v. Redacted*, Civ No. 15–0750, 2016 WL 3668034, at \*3–  
7 4 (D. Md. July 11, 2016) (collecting cases); *Malibu Media, LLC v. Funderburg*, Civ No. 13–  
8 02614, 2015 WL 1887754, at \*3–4 (N.D. Ill. Apr. 24, 2015) (\$2,250 requested); *Malibu Media,*  
9 *LLC v. Cui*, Civ No. 13–5897, 2014 WL 5410170, at \*4 (E.D. Pa. Oct. 24, 2014) (same); *Malibu*  
10 *Media, LLC v. Schelling*, 31 F. Supp. 3d 910, 912 (E.D. Mich. 2014) (same). Accordingly, this  
11 Court will not grant Plaintiff any more money than the statute mandates. Plaintiff is therefore  
12 awarded statutory damages of \$750 for each of the 21 infringed works contained in files #1–3 and  
13 6–23, totaling \$15,750.

14 **b. Injunctive Relief**

15 In addition to monetary damages, Plaintiff seeks injunctive relief pursuant to 17 U.S.C. §  
16 502(a) and 17 U.S.C. § 503(b). Specifically, Plaintiff requests the Court permanently enjoin  
17 Defendant from continuing to infringe Plaintiff’s copyrights, order Defendant to delete and forever  
18 remove digital media files relating to Plaintiff’s copyrights from all of Defendant’s computers, and  
19 order Defendant to delete and forever remove the infringing copies of the copyrights Defendant  
20 has on his computers. (*See Proposed Order.*)

21 As to Plaintiff’s first request, § 502(a) provides that “[a]ny court having jurisdiction of a  
22 civil action arising under this title may . . . grant temporary and final injunctions on such terms as  
23 it may deem reasonable to prevent or restrain infringement of a copyright.” 17 U.S.C. § 502(a).  
24 As to Plaintiff’s second and third requests, § 503(b) provides further relief, stating that “the court  
25 may order the destruction . . . of all copies . . . found to have been made or used in violation of the  
26 copyright owner’s exclusive rights . . . [.]” 17 U.S.C. § 503(b). To obtain a permanent injunction,  
27 a plaintiff must demonstrate that: (1) it has suffered an irreparable injury; (2) remedies available at  
28 law, such as monetary damages, are inadequate to compensate for that injury; (3) considering the

1 balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4)  
2 the public interest would not be disserved by a permanent injunction. *eBay Inc. v. MercExchange,*  
3 *LLC*, 547 U.S. 388, 391 (2006).

4 Plaintiff has sufficiently demonstrated that injunctive relief is appropriate in this action.  
5 Plaintiff will likely suffer irreparable harm absent an injunction, and monetary relief would be  
6 inadequate compensation. (Doc. 283 at 12–13.) The nature of the BitTorrent system means the  
7 Plaintiff’s works can continue to circulate the internet at a fast rate and reach many users. (*See*  
8 *Am. Compl.* at ¶¶ 10–13; Doc. 28-4 at 6.) Should this distribution persist, Plaintiff would likely  
9 be without legal recourse in regard to the copyrights implicated in the current case. As to the  
10 balance of hardships, Defendant suffers no injury due to an injunction other than what would “be a  
11 result of [Defendant] ceasing the allegedly infringing conduct.” *Malibu Media, LLC*, 2016 WL  
12 3668034 at \*5 (quoting *Medias & Co., Inc. v. Ty, Inc.*, 106 F. Supp. 2d 1132, 1140 (D. Colo.  
13 2000)). Finally, the prevention of copyright infringement serves the public interest. *See*  
14 *Nowobilski*, 2016 WL 4059651, at \*7. Accordingly, the court will grant Plaintiff’s request for  
15 permanent injunction and destruction of digital media files and infringing copies of Plaintiff’s  
16 work pursuant to 17 U.S.C. § 502(a) and 17 U.S.C. § 503(b) of the Copyright Act.

17 **c. Attorney’s Fees and Costs of Litigation**

18 Plaintiff requests an award of attorney's fees of \$1,182, consisting of 1.9 attorney hours  
19 billed at \$300 per hour and 7.2 paralegal hours billed at \$85 per hour. (Mosesi Decl. ¶ 9.) “In any  
20 action under this title, the court in its discretion may allow the full recovery of costs . . . the court  
21 may also award a reasonable attorney's fee to the prevailing party as part of the costs.” 17 U.S.C.  
22 § 505. Attorney’s fee awards are calculated using the lodestar method whereby the hours  
23 reasonably spent in the litigation are multiplied by a reasonable hourly rate. *Ferland v. Conrad*  
24 *Credit Corp*, 244 F.3d 1145, 1146–48 (9th Cir. 2001). The Ninth Circuit has explained the  
25 lodestar approach as follows:

26 The lodestar/multiplier approach has two parts. First a court determines the  
27 “lodestar” amount by multiplying the number of hours reasonably expended on the  
28 litigation by a reasonable hourly rate. [*See D’Emanuele v. Montgomery Ward &*  
*Co., Inc.*, 904 F.2d 1379, 1383 (9th Cir. 1990); *Hensley v. Eckerhart*, 461 U.S.  
424,] 461 (1983)]. The party seeking an award of fees must submit evidence

1 supporting the hours worked and the rates claimed. *See Hensley*, 461 U.S. at 433.

2 A district court should exclude from the lodestar amount hours that are not  
3 reasonably expended because they are “excessive, redundant, or otherwise  
4 unnecessary.” *Id.* at 434. Second, a court may adjust the lodestar upward or  
5 downward using a “multiplier” based on factors not subsumed in the initial  
6 calculation of the lodestar. [Footnote omitted] *See Blum v. Stenson*, 465 U.S. 886,  
7 898-901 (1984) (reversing upward multiplier based on factors subsumed in the  
8 lodestar determination); *Hensley*, 461 U.S. at 434 n.9 (noting that courts may look  
9 at “results obtained” and other factors but should consider that many of these  
10 factors are subsumed in the lodestar calculation). The lodestar amount is  
11 presumptively the reasonable fee amount, and thus a multiplier may be used to  
adjust the lodestar amount upward or downward only in “‘rare’ and ‘exceptional’  
cases, supported by both ‘specific evidence’ on the record and detailed findings by  
the lower courts” that the lodestar amount is unreasonably low or unreasonably  
high. *See Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*,  
478 U.S. 546, 565 (1986) (quoting *Blum*, 465 U.S. at 898-901); *Blum*, 465 U.S. at  
897; *D’Emanuele*, 904 F.2d at 1384, 1386; *Cunningham v. County of Los Angeles*,  
879 F.2d 481, 487 (9th Cir. 1989).

12 *Van Gerwin v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000).

13 Some courts addressing Malibu Media as a plaintiff have pointed out that their “case is one  
14 of hundreds filed . . . across the country, using nearly identical complaints and motions for default  
15 judgment” and reduced or denied the requested attorney's fees. *Schelling*, 31 F. Supp. 3d at 912  
16 (reducing attorney's fees to \$555); *see also Nowobilski*, 2016 WL 4059651, at \*8; *Malibu Media,*  
17 *LLC v. Johnson*, Civ No. 12–1117, 2013 WL 3895265, at \*2 (S.D. Ind. July 29, 2013). Reviewing  
18 the itemized bill of Plaintiff’s counsel, there are two “catchall” miscellaneous categories, one each  
19 for the attorney and the paralegal(s). The itemized statement block-bills 1 hour of “Case  
20 management, managing paralegals and reviewing approximately 10 e-mails; miscellaneous” by  
21 the attorney, over a 10-month period. (Mosesi Decl. ¶ 9.) It also lists 2.1 hours of “Case tracking  
22 and management; miscellaneous” by paralegals, over the same 9-month period.<sup>3</sup> (*Id.*) The Court  
23 finds this block-billing to be improper, *see Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th

24 <sup>3</sup> Notably, it appears that this itemized chart, down to the tenths of hours and descriptions of the work, was simply  
25 copied from other cases. Except for the dates, it is precisely identical to two declarations filed by different attorneys  
26 in entirely different Malibu Media cases in New Jersey and Indiana, respectively. *See* Declaration of Patrick J.  
27 Cerillo, *Malibu Media, LLC v. Nowobilski*, No. 15-cv-2250 (KM)(MAH) (Doc. 15-5 ¶9) (D.N.J. Dec. 14, 2015);  
28 Declaration of Paul J. Nicoletti, *Malibu Media, LLC v. Saari*, Civ. No. 14-860 (Doc. 33-4 ¶ 9) (S.D. Ind. July 14,  
2015). The only possibilities seem to be (a) copying or (b) a truly remarkable coincidence. There is reason to be  
skeptical that these numbers reflect anything that happened in *this* case. However, like Judge McNulty of the District  
of New Jersey, this Court will not—at this time—act on that skepticism and require Mr. Mosesi to appear to testify  
under oath. Further such coincidences may strain credulity to point where the Court is left with no choice but to do  
so.

1 Cir. 2007), and reduces the request by 1 hour of attorney time and 2.1 hours of paralegal time, for  
2 a total reduction of \$478.50.<sup>4</sup> See *Nowobilski*, 2016 WL 4059651, at \*8; *Saari*, 2015 WL  
3 5056887, at \*4.

4 Plaintiff also seeks \$465.00 for costs incurred, \$400.00 for a statutory filing fee and \$65.00  
5 for process server fees. (Mosesi Decl. ¶ 8.) The Copyright Act authorizes courts to award “full  
6 costs” to the prevailing party in a copyright infringement action. 17 U.S.C. § 505. This includes  
7 otherwise non-taxable costs that lie outside the scope of 28 U.S.C. § 1920. *Twentieth Century Fox*  
8 *Film Corp. v. Entmt't Distrib.*, 429 F.3d 869, 884-85 (9th Cir. 2005). Here, the requested costs are  
9 reasonable. See *Penpower Tech. Ltd. v. S.P.C. Tech.*, 627 F. Supp. 2d 1083, 1095 (N.D. Cal.  
10 2008) (awarding costs of \$2,005 for filing fee and for costs of process server, in copyright and  
11 trademark infringement default judgment, where costs were reasonably incurred).

12 Accordingly, the Court recommends Plaintiff be awarded attorney’s fees in the amount of  
13 \$703.50 and costs in the amount of \$465.00, for a total of \$1,168.50.

#### 14 IV. CONCLUSION AND RECOMMENDATIONS

15 Based on consideration of the declarations, pleadings, and exhibits to the present motion,  
16 the Court RECOMMENDS that:

- 17 1. Plaintiff’s Motion for Entry of Default Judgment (Doc. 28) be GRANTED IN  
18 PART and DENIED in part, as specified below;
- 19 2. Judgment be entered in Plaintiff’s favor and against Defendant Christian Sianturi;
- 20 3. Plaintiff be awarded statutory damages under 17 U.S.C. § 504(c)(1) in the amount  
21 of \$15,750.00;
- 22 4. Plaintiff be awarded reasonable attorney’s fees in the amount of \$270.00 (.9 hour at  
23 \$300 per hour), paralegal fees in the amount of \$433.50 (5.1 hours at \$85 per hour),  
24 and costs of suit in the amount of \$465.00, for a total of \$1,168.50; and  
25

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26 <sup>4</sup> The Court finds the requested hourly rates of \$300 for Attorney Mosesi and \$85 for his paralegal(s) are reasonable.  
27 See *Silvester v. Harris*, No. 1:11-CV-2137 AWI SAB, 2014 WL 7239371, at \*4 (E.D. Cal. Dec. 17, 2014) (concluding  
28 that “the current reasonable hourly rates in the Fresno Division are between \$175 and \$380, depending on the  
attorney’s experience and expertise, with \$300 being the upper range for attorneys with 10 years or less experience,”  
and “[t]he current reasonable hourly rate for paralegal work in the Fresno Division ranges from \$75 to \$150,  
depending on experience.”) (internal citations omitted).

