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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SONY BMG MUSIC ENTERTAINMENT,  
et al.,  
Plaintiffs,

No. CIV S- 08-1520 MCE GGH

vs.

YOCONDA REZABALA,  
Defendant.

FINDINGS & RECOMMENDATIONS

\_\_\_\_\_ /

Plaintiffs' amended motion for entry of default judgment against defendant Rezabala, filed July 21, 2009, was submitted on the record. Local Rule 78-230(h). Upon review of the motion and the supporting documents, and good cause appearing, the court issues the following findings and recommendations.

BACKGROUND

On July 1, 2008, plaintiffs filed the underlying complaint in this action against defendant Rezabala, alleging defendant was using the internet to illegally download various copyrighted sound recordings and distribute them. The summons and complaint were personally served on defendant Rezabala on August 11, 2008. Fed. R. Civ. P. 4(e)(2). Pacific Atlantic Trading Co. v. M/V Main Express, 758 F.2d 1325, 1331 (9th Cir. 1985) (default judgment void

1 without personal jurisdiction). Defendant has failed to file an answer or otherwise appear in this  
2 action. On September 26, 2008, the clerk entered default against defendant Rezabala.

3 Notice of entry of default and the instant motion for default judgment and  
4 supporting papers were served by mail on defendant at her last known address. Defendant filed  
5 no opposition to the motion for entry of default judgment. Plaintiffs seek an entry of default  
6 judgment in the amount of \$5,250.00 in statutory damages, \$420.00 in costs, and a permanent  
7 injunction.

#### 8 DISCUSSION

9 Entry of default effects an admission of all well-pleaded allegations of the  
10 complaint by the defaulted party. Geddes v. United Financial Group, 559 F.2d 557 (9th Cir.  
11 1977). The court finds the well pleaded allegations of the complaint state a claim for which  
12 relief can be granted. Anderson v. Air West, 542 F.2d 1090, 1093 (9th Cir. 1976).

13 To prevail on a claim for copyright infringement, plaintiff must establish  
14 ownership of a valid copyright and unauthorized copying of original elements of the work by the  
15 defendant. Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991). Plaintiffs  
16 have alleged ownership of valid copyright registrations in the sound recordings that defendant  
17 allegedly downloaded illegally from the Internet. See Complaint (“Compl.”), at ¶¶ 9-10; Ex. A.  
18 Plaintiffs have also alleged unauthorized reproduction and distribution of the protected works.  
19 Compl., at ¶ 13. The complaint is sufficiently pled and states a claim for copyright infringement.

20 Plaintiffs need not prove actual damages to recover the statutory damages they  
21 seek. Columbia Pictures Television, Inc. v. Krypton Broad. of Birmingham, Inc., 259 F.3d 1186,  
22 1194 (9th Cir. 1997). Plaintiffs seek statutory damages as authorized by 17 U.S.C. § 504(c), in  
23 the amount of \$5,250.00. Compl., at ¶ 17; Motion for Entry of Default Judgment (“Motion”), at  
24 7-8. The court notes that defendant did not bother to respond to this action in any way, and  
25 thereby forfeited any argument she may have had to contest the amount of damages. The court  
26 deems defaulting defendant, by her failure to appear or defend this action, to have waived any

1 objections to the statutory source of the damages prayed for in the instant motion. The  
2 memorandum of points and authorities and affidavits filed in support of the motion for entry of  
3 default judgment supports the finding that plaintiffs are entitled to the relief requested. There are  
4 no policy considerations which preclude the entry of default judgment of the type requested. See  
5 Eitel v. McCool, 782 F.2d 1470, 1471-1472 (9th Cir. 1986).

6 Remedies

7 Plaintiffs seek statutory damages in the amount of \$5,250.00, a permanent  
8 injunction and an award of costs in the amount of \$420.00 for filing fees and service of process.  
9 Plaintiffs do not seek attorneys' fees.

10 A. Injunction

11 Plaintiffs seek an injunction in the following form to enjoin defendant's wrongful  
12 conduct:

13 Defendant shall be and hereby is enjoined from directly or indirectly  
14 infringing Plaintiffs' rights under federal or state law in the Copyrighted  
15 Recordings and any sound recording, whether now in existence or later  
16 created, that is owned or controlled by Plaintiffs (or any parent, subsidiary,  
17 or affiliate record label of Plaintiffs ) ("Plaintiffs' Recordings"), including  
18 without limitation by using the Internet or any online media distribution  
19 system to reproduce (i.e., download) any of Plaintiffs' Recordings, to  
20 distribute (i.e., upload) any of Plaintiffs' Recordings, or to make any of  
21 Plaintiffs' Recordings available for distribution to the public, except  
22 pursuant to a lawful license or with the express authority of Plaintiffs.  
23 Defendant also shall destroy all copies of Plaintiffs' Recordings that  
24 Defendant has downloaded onto any computer hard drive or server without  
25 Plaintiffs' authorization and shall destroy all copies of those downloaded  
26 recordings transferred onto any physical medium or device in Defendant's  
possession, custody, or control.

21 Motion, at 8.

22 Federal copyright laws authorize injunctive relief for copyright infringement.  
23 Elektra Ent. Group, Inc. v. Crawford, 226 F.R.D. 388, 393 (C.D. Cal. 2005 (citing 17 U.S.C. §  
24 501, 502(a)). "A court may order a permanent injunction 'to prevent or restrain infringement of  
25 [the owner's] copyright.' Generally, a showing of copyright infringement liability and the threat  
26 of future violations is sufficient to warrant a permanent injunction." Sega Enterprises Ltd. v.

1 Maphia, 948 F. Supp. 923, 940 (N.D. Cal. 1996) (quoting 17 U.S.C. § 502) (finding access to  
2 equipment that allowed defendant to continue to illegally download and distribute game  
3 programs constituted a threat of continued violation); see also, MAI Systems Corp. v. Peak  
4 Computer, Inc., 991 F.2d 511, 520 (9th Cir. 1993); Twentieth Century Fox Film Corp. v.  
5 Streeter, 438 F. Supp. 2d 1065, 1073 (D. Ariz. 2006) (granting a permanent injunction upon entry  
6 of default judgment against defendant in a copyright infringement action).

7           Here, as discussed above, plaintiffs have established defendant’s liability for  
8 copyright infringement. Furthermore, in proving up their claim, plaintiffs have established  
9 defendant’s access to the online media distribution system through which the infringement  
10 occurred. Infringement by such means exposes plaintiffs to “massive, repeated, and worldwide  
11 infringement” of their copyrighted sound recordings. Twentieth Century Fox Film Corp., 438 F.  
12 Supp. 2d at 1073 (“When digital works are distributed via the internet, as in this case, every  
13 downloader who receives one of the copyrighted works from Defendant is in turn capable of also  
14 transmitting perfect copies of the works. Accordingly, the process is potentially exponential  
15 rather than linear, threatening virtually unstoppable infringement of the copyright.”) (quoting A  
16 & M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1013-14 (9th Cir. 2001)). Monetary damages  
17 cannot adequately compensate this widespread infringement.

18           Finally, defendant’s failure to respond to this lawsuit suggests an indifference to  
19 the unlawful nature of her infringing activity. Accordingly, based on the foregoing, this court  
20 finds that the requested injunctive relief is appropriate and recommends that it be granted.

#### 21           B. Statutory Damages

22           Where a plaintiff prevails in a copyright infringement case, 17 U.S.C. § 504(c)  
23 provides for an award of statutory damages in a sum of not less than \$750 or more than \$30,000  
24 for each infringement, as the court considers just. Moreover, pursuant to 17 U.S.C. § 504(c)(2), a  
25 court has discretion to increase the award of statutory damages to \$150,000 per infringement  
26 where an infringer’s conduct is found to be willful. “Statutory damages are particularly

1 appropriate in a case . . . in which defendant has failed to mount any defense or to participate in  
2 discovery, thereby increasing the difficulty of ascertaining plaintiff’s actual damages.” Jackson  
3 v. Sturkie, 255 F. Supp. 2d 1096, 1101 (N.D. Cal. 2003).

4 Here, plaintiffs seek the minimum amount (\$750) for each alleged act of  
5 infringement (seven in total), for a total of \$5,250.00. See Motion, at 7-8; Compl., Ex. A. The  
6 court finds that the amount of statutory damages sought by plaintiffs is reasonable and just.

7 C. Costs

8 Pursuant to 17 U.S.C. § 505, courts have discretion to award “the recovery of full  
9 costs and reasonable attorney fees” in cases of copyright infringement. 17 U.S.C. § 505. Here,  
10 plaintiffs seek costs in the amount of \$420.00 for filing fees and service of process. The court  
11 recommends that plaintiffs’ request for an award of costs in the amount of \$420.00 be granted.

12 CONCLUSION

13 In view of the foregoing findings, it is the recommendation of this court that  
14 plaintiffs’ motion for entry of default judgment be GRANTED. Judgment should be rendered in  
15 the amount of \$5,250.00 in statutory damages and \$420.00 in costs. A permanent injunction  
16 should be granted against defendant as specified herein.

17 These findings and recommendations are submitted to the United States District  
18 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within ten  
19 days after being served with these findings and recommendations, any party may file written  
20 objections with the court and serve a copy on all parties. Such a document should be captioned  
21 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
22 shall be served and filed within ten days after service of the objections. The parties are advised

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1 that failure to file objections within the specified time may waive the right to appeal the District  
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: 09/03/09

4 /s/ Gregory G. Hollows

5 GREGORY G. HOLLOWS  
6 UNITED STATES MAGISTRATE JUDGE

7 GGH:076  
8 SonyBMG1520.def.wpd

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