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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NATURAL FASHIONS, INC., a
California corporation,

Plaintiff,

v.

BEST OF KASHMIR aka BOK STYLE
aka BOK, a business entity form
unknown; SHAH NAWAZ FARASH aka
SHAH, an individual; SHANU, an
individual; and DOES 1-10, inclusive,

Defendants.

No. 2:15-cv-00033-MCE-CMK

MEMORANDUM AND ORDER

Through this action, Plaintiff Natural Fashions, Inc., a corporation (“Plaintiff”), alleges that Defendants Best of Kashmir, Shah Nawaz Farash, and Shanu (collectively “Defendants”) are in violation of this Court’s Order and final judgment of permanent injunction in this underlying matter. Presently before the Court is Plaintiff’s Motion for Civil Contempt, filed August 12, 2020. ECF No. 42 (“Motion”). Defendants Shanu and Shah Nawaz Farash, acting pro se, filed an opposition to the motion two days after a court-imposed deadline. Opp’n, ECF No. 47; see ECF No. 46 (minute order denying a request for extension); ECF No. 45 (motion to continue). Plaintiff timely filed a reply. Reply, ECF No. 48. For the reasons set forth below, Plaintiff’s Motion for Contempt, Sanctions, and Attorney’s Fees is GRANTED in part, DEFERRED in part.

BACKGROUND

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2
3 Plaintiff initiated this underlying suit on January 6, 2015, claiming that Defendants
4 were infringing copyrights on three of Plaintiff's fabric designs. ECF No. 1. After
5 receiving findings and recommendations from Magistrate Judge Kellison on February 25,
6 2016 (ECF No. 23), this Court signed an Order adopting the findings and
7 recommendations in part and rejecting them in part. ECF No. 25. Of note, this Court
8 rejected the magistrate judge's finding of a failure to state a claim for copyright
9 infringement, holding that "it is clear that the allegedly infringing prints are similar enough
10 to Plaintiff's copyrights to support Plaintiff's allegations of infringement." ECF No. 25, at
11 2. This Court ordered judgment in favor of Plaintiff and enjoined Defendants "from
12 selling, advertising, licensing, or using in any way fabric that infringes Copyright
13 Registration Nos. VA-1-827-152, VA-1-856-153, and VA VA-1-827-155." ECF No. 25, at
14 3.

15 This Court further ordered Defendants by September 28, 2016, to provide "a
16 complete inventory list of all product in their possession and on order using the
17 copyrighted patterns identified by the foregoing Copyright Registration Numbers," among
18 other details, and to file with this Court a writing as to how Defendants complied with the
19 terms of the Order. ECF No 25, at 3. Plaintiff was "awarded the maximum statutory
20 damages of \$35,000 for each of the three infringements . . . plus costs of \$685." ECF
21 No. 25, at 3. The Ninth Circuit Court of Appeals affirmed this Court's decision on
22 August 12, 2017. ECF Nos. 40, 41.

23 On May 31, 2018, Defendants entered chapter 7 bankruptcy proceedings in the
24 Northern District of Texas. See Motion, Exs. 29 and 30. On June 12, 2020, after
25 extensive review of the record, the bankruptcy court found that Defendants were on
26 notice of copyright infringement as early as 2014. Motion, Ex. 30, at 20. The court went
27 on to find that the Defendants' copyright infringement was done in a "willful and
28 malicious" manner, holding the judgment debt non-dischargeable. Motion, Ex. 30, at 27.

ANALYSIS

As an initial matter, it is undisputed that Defendants untimely filed their Opposition brief. See Opp'n, ECF No. 47; ECF No. 46 (minute order denying a request for extension); ECF No. 45 (motion to continue). In light of Defendants' pro se status and this Court's preference to resolve matters on the merits, that brief will nonetheless be considered. See Lacayo v. Donahoe, No. 14-CV-04077-JSC, 2015 WL 3866070, at *2 (N.D. Cal. June 22, 2015). On the merits, Defendants' response is unavailing because they simply seek to relitigate copyright infringement matters already decided by this Court and affirmed on appeal. See generally Opp'n. Indeed, Defendants failed to address any other deficiencies, such as why they have not complied with this Court's Order to provide Plaintiff "a complete inventory list," among other details, and to file with this Court a writing as to how Defendants complied with the terms of the Order. Compare Opp'n, with ECF No 25, at 3. Accordingly, as explained below, the Court concludes that Plaintiffs are entitled to relief.

A. Contempt

This Court finds the Second Circuit's approach to contempt influential and in accord with this Circuit's precedent, considering a party "in contempt if (1) the order the party failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the party has not diligently attempted to comply in a reasonable manner." CBS Broad. Inc. v. FilmOn.com, Inc., 814 F.3d 91, 98 (2d Cir. 2016). Here, this Court's March 29, 2016, Order was clear and unambiguous as to instructions to the Defendants. Defendants were enjoined from infringing Plaintiff's copyright. ECF No. 25, at 3. Defendants were instructed to provide Plaintiff an inventory, recall from trade any infringing goods or advertisements, and to file with this Court a writing as to their compliance with these instructions. ECF No. 25. To this Court's knowledge, Defendants have followed none of these unequivocal instructions. See Reply, at 2. As provided in the several declarations offered by Plaintiff, Defendants

1 continue to willfully flout this Court's injunction by selling infringing products. See, e.g.,
2 Motion, Ex. 9 (Chopra declaration), Ex. 10 (Holland declaration); see also Regents of the
3 Univ. of California v. Aisen, No. 15-CV-1766-BEN (BLM), 2016 WL 4680261, at *3 (S.D.
4 Cal. Sept. 7, 2016) (noting that a "strong case [for contempt] would present declarations
5 from knowledgeable disinterested persons"). This conclusion was further confirmed by
6 the findings of the bankruptcy court. See Motion, Ex. 30. In other words, the proof of
7 noncompliance is clear and convincing.

8 Finally, Defendants have not made a good faith effort to comply with any of the
9 above commands. As noted above, Defendants simply desire to relitigate matters
10 already decided by multiple federal courts. See generally Opp'n.

11 Plaintiff has thus provided clear and convincing evidence that Defendants have
12 violated this Court's Orders. The burden therefore shifts to Defendants to demonstrate
13 why this Court should not hold them in contempt. See FTC v. Affordable Media, LLC,
14 179 F.3d 1228, 1239 (9th Cir.1999). While some courts may here consider an order to
15 show cause, this Court recognizes the futility of such an assignment to Defendants, who
16 already failed in their (late) Opposition to meaningfully address their ongoing, years-long
17 defiance of this Court's injunction. See generally Opp'n. Indeed, for all practical
18 purposes, Plaintiff's noticed motion serves the same purpose as an order to show cause,
19 and the Court concludes no additional procedural protections are warranted.

20 Based on the foregoing, Defendants Best of Kashmir AKA Bok Style AKA Bok;
21 Shah Nawaz Farash AKA Shah; and Shanu are found to be in contempt of court.

22 **B. Sanctions**

23 Plaintiff has recommended sanctions of \$300,000 based on willful and malicious
24 infringement of two copyrights (\$150,000 each). Plaintiff determined this amount with
25 citation to 17 U.S.C. § 504(c), which provides a statutory framework for infringement
26 remedies. Plaintiff also requests attorney's fees in the amount of \$24,180, as incurred
27 with the instant motion. Motion at 12-14.

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1 Civil contempt sanctions of the requested sort must be compensatory and
2 remedial, not punitive. “Moreover, a district court acting under its inherent authority to
3 impose compensatory sanctions must apply a ‘but-for’ causation standard,” meaning that
4 the compensation must be limited to harm caused by the sanctionable misconduct. See
5 Am. Unites for Kids v. Rousseau, 985 F.3d 1075, 1089 (9th Cir. 2021). While support
6 either way is limited, at least one district court has held that “a statutory damages
7 provision for copyright infringement is not the proper guide for determining a civil
8 contempt fine.” Dula v. Amereon, Ltd., No. 00 CIV. 8156 (RCC), 2004 WL 1586410, at
9 *2 (S.D.N.Y. July 15, 2004) (citing 17 U.S.C. § 504(c)).

10 Plaintiff requests compensatory payment directly instead of to the Court, so there
11 must be a causal relationship between Plaintiff’s loss and the sanction amount. See,
12 e.g., Shuffler v. Heritage Bank, 720 F.2d 1141, 1148 (9th Cir. 1983). Plaintiff may
13 consider Defendants’ ill-gained profits and Plaintiff’s own lost income. See Toyo Tire &
14 Rubber Co. v. Hong Kong Tri-Ace Tire Co., 281 F. Supp. 3d 967, 988-89 (C.D. Cal.
15 2017). The Court is sympathetic to the fact that these numbers may be difficult to
16 calculate with certainty, and such considerations will be factored upon determination of
17 an equitable sanction. See id. The Court does not doubt that Plaintiff has suffered
18 pecuniary loss due to Defendants’ ongoing infringement. See, e.g., Motion, Ex. 10
19 (Holland Declaration), at 1-2 (discussing a customer alerting the retailer that Defendants’
20 infringing products were for sale nearby at a cheaper price). However, the Court rejects
21 the \$300,000 figure as arbitrary on its face. See Lavatec Laundry Tech. GmbH v. Voss
22 Laundry Sols., No. 3:13-CV-00056 (SRU), 2018 WL 2426655, at *13 (D. Conn. Jan. 9,
23 2018) (“I will not allow [the complainant] to reap a windfall of speculative profits that it
24 has not proved.”). Therefore, the Court DEFERS a determination of the compensatory
25 sanction amount pending a written declaration by Plaintiff demonstrating an appropriate
26 and equitable damages sum. Such declaration shall be filed not later than thirty (30)
27 days following the date this Memorandum and Order is electronically filed.

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1 As to attorney's fees, a district court may order payment of attorney's fees and
2 costs associated with a contempt motion, so long as they are fair and reasonable. See
3 Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y, 774 F.3d 935, 958
4 (9th Cir. 2014); Reno Air Racing Ass'n., Inc. v. McCord, 452 F.3d 1126, 1130 n.5
5 (9th Cir. 2006). Plaintiff here requests \$24,180 based on a fair and reasonable
6 calculation provided under penalty of perjury by Plaintiff's counsel. See Motion, Ex. 29.
7 Based on the provided documentation, Defendants are ordered to pay Plaintiff's
8 attorney's fees in the amount of \$24,180 within thirty (30) days of this Order.

9 IT IS SO ORDERED.

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11 Dated: April 6, 2021

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14 MORRISON C. ENGLAND, JR.
15 SENIOR UNITED STATES DISTRICT JUDGE
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