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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DANIEL M. MILLER,

Plaintiff,

vs.

FACEBOOK, INC. and YAO WEI YEO,

Defendants.

CASE NO.: CV-10-264 (WHA)

PLAINTIFF DANIEL M. MILLER'S RESPONSE IN OPPOSITION TO DEFENDANT YAO WEI YEO'S MOTION TO SET ASIDE DEFAULT

Date: June 9, 2011
Time: 2:00 P.M.
Court: Courtroom 9, 19th Floor
Judge: Honorable William Alsup

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COMES NOW Plaintiff Daniel M. Miller ("Plaintiff"), by and through undersigned counsel, and Responds in Opposition to Defendant Yao Wei Yeo's Motion to Set Aside Default ("Yeo's Motion") (Dkt. No. 141) as follows:

I. INTRODUCTION

Defendant Yao Wei Yeo ("Yeo") was properly served with the Second Amended Complaint ("SAC") on July 8, 2010, pursuant to Rule 4(e)(1), F.R.C.P., and §415.40 of the California Code (2009). *See* Dkt. No. 65. The Court so held in its Order dated September 21, 2010 (Dkt. No. 80), and the Plaintiff's proper effectuation of service on Yeo cannot be disputed. On September 22, 2010, upon application brought by the Plaintiff (Dkt. No. 81), the Clerk of the Court entered a default against Yeo (Dkt. No. 82). Despite Yeo's knowledge of the suit against him, he chose to ignore this lawsuit and took no action of any kind while continuing to infringe the Plaintiff's copyright for financial gain. Only now, approximately ten (10) months from the entry of default and with the possibility of the Plaintiff obtaining monetary and equitable relief against him, does he make an appearance in this action seeking to set aside the entry of default. As "good cause" for his deliberate and willful failure to answer or otherwise respond to the Plaintiff's SAC for a full ten months, he argues, in essence, that he lives in Singapore and never once checked the Manhattan UPS mailbox that he opened on March 21, 2010 until April 18, 2011 when in New York on holiday after corresponding with undersigned counsel on April 13, 2011. Likewise, the inconvenient fact that Yeo's *first and only* communication with Defendant Facebook, Inc. ("Facebook") about this lawsuit took place on July 2, 2010, four (4) days after the SAC was served via certified mail to Yeo's New York mailbox on June 28, 2010, is conveniently explained away as nothing more than mere coincidence. Yeo's "explanation" for his failure to comply with the Federal Rules of Civil Procedure is not credible and should not be permitted to stand without

consequence. Accordingly, Yeo's deliberate and willful inaction in this matter should operate to preclude the award of relief he seeks, and Yeo's Motion should be denied.

II. BACKGROUND

On June 4, 2010, the Plaintiff served a subpoena *duces tecum* on Media Temple, Inc., a website hosting and software application services company in Culver City, California, that provides domain hosting services for Yeo d/b/a Zwigglers Apps, seeking all information in its possession pertaining to Yeo. *See* Hancock Declaration, ¶ 3 (filed contemporaneously herewith as Plaintiff's Exhibit "A"). Media Temple responded on June 8th by providing information showing that the address for Yeo listed with Media Temple is 353 Third Avenue, Suite 246, New York, NY 10010. *See* Hancock Decl., ¶ 3. This is the address for UPS Store 5865 in Manhattan. *Id.* at ¶ 4. The "Suite" number is a mailbox number. *Id.* at ¶ 4. On June 10, 2010, the Plaintiff served a subpoena *duces tecum* on UPS Store 5865 to which UPS responded on June 18th by providing documents showing that Mailbox #246 was obtained by Yeo on or about March 21, 2010. *Id.* at ¶ 4.

On June 18, 2010, the Plaintiff served the Summons and SAC via Certified Mail to "Yao Wei Yeo, 353 3rd Avenue, Suite 246, New York, NY 10010". *Id.* at ¶ 5. On June 28, 2010, the Summons and SAC were delivered to that address and the certified mail receipt was signed by "Alex", an employee of UPS Store 5865. *Id.* at ¶ 5. A copy of the "Track & Confirm" information from the United States Postal Service's website evidencing the June 28th delivery as well as a copy of the certified mail receipt has previously been filed with the Court. *See* Dkt. Nos. 65-3 and 65-4.

On July 2, 2010, undersigned counsel received a voicemail from Craig Clark, in-house counsel for Facebook, stating that Yeo had called Facebook that same day inquiring about the case

to which Mr. Clark had given him a brief status update.[1] *See* Hancock Decl., ¶ 6. In his Declaration filed with this Court on September 2, 2010, Mr. Clark testified that he and another Facebook lawyer had explained to Yeo that they could not offer him legal advice and that "[o]ther than this short call, Facebook has had no communications with Mr. Yeo since this case was filed." *See* Clark Declaration (Dkt. No. 76), ¶ 4 (attached hereto as Plaintiff's Exhibit "B".) Contrary to Yeo's statements regarding the content of this call, nowhere in Mr. Clark's voicemail message to undersigned counsel, or in his Declaration filed with the Court, does he corroborate Yeo's claim that Yeo was told that he "didn't need to get involved" in this lawsuit if he hadn't received any papers. *See* Dkt. No. 144, ¶ 7; referred to herein as the "Yeo Declaration".

Commenting upon this call in its Order dated September 21, 2010, (Dkt. No. 80, p. 5), the Court stated as follows: "Indeed, it appears that defendant Yeo *did* in fact receive notice of this action. Four days after the summons and complaint were served upon defendant Yeo's authorized agent for receipt of his mail, Yeo contacted in-house counsel for Facebook and discussed the case with him." Yeo, however, states in his Declaration that this was just a coincidence, and that he had not once checked his mailbox to collect accumulated mail between March 21, 2010 (when he opened the mailbox) and April 18, 2011 (when he first checked the mailbox while "visiting New York City" following electronic correspondence with undersigned counsel dated April 13, 2011). *See* Yeo Decl., ¶ 9, 14.

In his Declaration, Yeo states that he first learned of this lawsuit from a review of the Justia website (www.justia.com) and that he would periodically review the status of the case using this website. *See* Yeo Decl., ¶ 5. The Plaintiff's Proof of Service, filed on July 8, 2010 (Dkt. No.

[1] The voicemail message for undersigned counsel left by Mr. Clark on July 2, 2010, consists of the following in its entirety: "Hey Brian, it's Craig Clark over at Facebook. I wanted to give you a heads-up that Yeo actually called us today. We spoke to him and gave him a brief status on the case and told him that we would be passing on the number we got from his phone call to you, so that number is 917-345-4543; 917-345-4543. Ok, thanks." *See* Hancock Decl., ¶ 6.

65), the Court's September 21, 2010, Order wherein the Court specifically ruled that service on the UPS mailbox in New York was proper and effective (Dkt. No. 80), the Plaintiff's September 22, 2010, Application for Entry of Default (Dkt. No. 81), and the Clerk of Court's Entry of Default on September 22, 2010 (Dkt. No. 82) have all been available and easily accessible to the public on www.justia.com throughout the pendency of this litigation, and yet Yeo claims he was not aware of properly being served at his UPS mailbox in Manhattan until April 18, 2011. *See* Yeo Decl., ¶¶ 2, 16.

On August 4, 2010, Facebook filed the last of its numerous motions to dismiss in this action alleging that the Plaintiff had failed to properly serve Yeo within the deadline set by the Court, and, therefore, the entire case should be dismissed with prejudice pursuant to Rule 41(b), F.R.C.P. (Dkt. No. 70). The Court denied this motion on September 21, 2010, after a full briefing and hearing before the Court. (Dkt. No. 80). Such a motion almost certainly would never have been filed by Facebook, with the attendant costs in time and money incurred by the Plaintiff to have his attorneys fully brief the issue and fly cross-country to attend the hearing, if Yeo had complied with Rule 12, F.R.C.P., and responded to the SAC in the prescribed 21-day period.

From a review of thousands of documents first produced by Facebook in December, 2010, two companies were identified who contractually provided advertising services and revenue to Yeo for Yeo's infringing application, *ChainRxn*, when it was available on Facebook's website: RockYou, Inc. and SocialCash, Inc. (now doing business as Spruce Media, Inc.). RockYou, Inc. is headquartered in Redwood City, California, and from April, 2009, to June, 2010, paid $48,435.86 to Yeo in advertising revenue related to *ChainRxn*. *See* Plaintiff's Exhibit "C" attached hereto; *see also* Kajikami Declaration (Dkt. No. 136-3), ¶¶ 3-6 (previously filed with the Court on April 12, 2011.) Upon information and belief, SocialCash, Inc., was headquartered in

San Francisco, California, in the April, 2009, to February, 2010, time period during which it paid to Yeo $98,667.16 in advertising revenue related to *ChainRxn*. *See* Plaintiff's Exhibit "D" attached hereto; *see also* Green Declaration (Dkt. No. 136-2), ¶¶4-6 (previously filed with the Court on April 12, 2011). Upon information and belief, Yeo has also contracted with Apple, Inc. regarding the on-line sale of *ChainRxn* for which he received revenue. *See* Hancock Decl., ¶ 7. As the Court is surely aware, Apple, Inc. is headquartered in Cupertino, California. Additionally, there is evidence, cited to *infra*, that in the recent past Yeo was employed by and worked at CourseHero, Inc., a company located in Sunnyvale, California, approximately ten miles from Facebook's headquarters in Palo Alto.

On April 12, 2011, after receiving the signed Declarations of Robert Kajikami and Bradley Green necessary to prove damages against Yeo, the Plaintiff filed his Motion for Default Judgment. (Dkt. No. 136). This Motion, along with all attachments and exhibits, was served on Yeo on April 12th via certified mail at the UPS Mailbox in Manhattan as well as emailed to him at zwigglers@gmail.com and yeoyaowei@gmail.com. The deadline for Yeo to file an opposition to the Motion for Default Judgment was April 28th, and yet Yeo failed to file anything by that date. On May 5th, Yeo's Motion to Set Aside Default was filed with the Court.

III. ARGUMENT

A. Yeo Has Not Provided a Credible, Good Faith Explanation for his Failure to Take Action in Response to the Plaintiff's Second Amended Complaint so as To Establish Good Cause Under Rule 55(c), F.R.C.P.

Rule 55(c) of the Federal Rules of Civil Procedure provides that a court may set aside a default for "good cause shown." The good cause analysis considers three factors: (1) whether the defaulting party has engaged in culpable conduct that led to the default; (2) whether the defaulting party had a meritorious defense; or (3) whether reopening the default judgment would prejudice

the plaintiff. *See TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001). As these factors are disjunctive, the Court is free to deny Yeo's Motion if any of the three factors is true. *American Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000). If a defendant "has received actual or constructive notice of the filing of the action and failed to answer," its conduct is culpable. *Franchise Holding II, LLC v. Huntington Restaurants Group, Inc.*, 375 F.3d 922, 926 (9th Cir. 2004). As stated in *Knoebber*:

> Neglectful failure to answer as to which the defendant offers a credible, good faith explanation negating any intention to take advantage of the opposing party, interfere with judicial decision-making, or otherwise manipulate the legal process is not "intentional" under our default cases, and is therefore not necessarily- although it certainly may be, once the equitable factors are considered- culpable or inexcusable....

Knoebber, 244 F.3d at 697.

It is the absence of a credible, good faith explanation for Yeo's ten-month non-appearance in this action that renders his conduct culpable and, therefore, inexcusable. Yeo has provided an "explanation"; however, it is premised on two claims that stretch the bounds of credulity.

First, that Yeo opened a UPS mailbox account in Manhattan on March 21, 2010 while visiting New York and then never once checked that mailbox until April 18, 2011, while again visiting New York (from a review of Yeo's Declaration, it appears that he visits New York and California quite frequently), even though this is the mailing address he provided to Media Temple, the California company that hosts his *ChainRxn* website, and it was set up "for the purpose of collecting any miscellaneous U.S. mail sent to me." *See* Yeo Decl., ¶¶14. By his own admission, Yeo periodically reviewed the status of this action on the website www.justia.com, from which he should have had no trouble discovering the Plaintiff's Proof of Service, filed on July 8, 2010, specifically listing the UPS mailbox as the proper service address (Dkt. No. 65), the Court's Order, dated September 21, 2010, wherein the Court specifically ruled that service on the UPS

mailbox in New York was proper and effective (Dkt. No. 80), the Plaintiff's Application for Entry of Default against Yeo filed on September 22, 2010 (Dkt. No. 81), and the Clerk of Court's Entry of Default on that same date (Dkt. No. 82). And yet, Yeo argues, he did not once think to check this mailbox and that his failure to do so was in good faith.

Second, that he just so happened to be in California visiting friends on July 2, 2010, when he thought to call Facebook's lawyers to inquire as to the status of this case even though this was a mere four (4) days after the SAC and summons was served on his UPS mailbox in New York. If Facebook's lawyers told him, as he states in his Declaration, that he should hire a lawyer if he had questions about his rights (something he did not do until mid-April, 2011, at the earliest), it stands to reason that he called Facebook seeking legal advice as to what to do. Craig Clark, in-house counsel for Facebook, testified in his declaration filed with this Court on September 2, 2010, that it was explained to Yeo that Facebook's attorneys could not offer him legal advice. That he did nothing for ten full months until he became aware of the monetary and equitable judgment being sought against him speaks volumes as to his intentional failure to answer or otherwise respond.

Furthermore, in light of the following: (1) the May 27, 2010, Court-imposed deadline of July 30, 2010 (*see* Dkt. No. 56 (which is also available on www.justia.com)), by which the Plaintiff was required to serve Yeo or face dismissal of the case in its entirety; (2) Facebook's Rule 41(b) motion to dismiss, filed on August 4, 2010, (and likewise available on www.justia.com), wherein Facebook sought dismissal of this case on the grounds that the Plaintiff had failed to properly serve Yeo by this date (Dkt. No. 70); and (3) Yeo's conversation with a Facebook attorney on July 2, 2010, during which Yeo claims he was informed that if he hadn't received "any papers about the lawsuit", he "didn't need to get involved" (*see* Yeo's Decl., ¶ 7), there's every reason to believe that Yeo, acting alone or with encouragement by Facebook,

intentionally and deliberately failed to make an appearance in this action in the hopes that by doing so, the case would be dismissed in its entirety.[2] Such action on the part of Yeo would constitute culpable conduct done with an "intention to take advantage of the opposing party, interfere with judicial decisionmaking, or otherwise manipulate the legal process." *See Knoebber*, 244 F.3d at 697.

Lastly, due to Yeo's intentional refusal to appear in this action, the Plaintiff had to expend time and money responding to Facebook's Rule 41(b) motion to dismiss and attending the hearing in August-September, 2010, as well as incurring costs in time and money having default entered, having a motion for default judgment prepared and filed, responding to Yeo's Motion to Set Aside Default, and attending the hearing on same (should the hearing not be vacated at the Court's discretion). If the default is set aside, the Plaintiff will also undoubtedly incur additional expense in motion practice (with concomitant hearings requiring travel and lodging expenditures) that the Plaintiff would not otherwise be forced to incur had Yeo entered an appearance in this action in the time period prescribed by the Federal Rules of Civil Procedure. The imposition of costs borne by the Plaintiff that are directly attributable to Yeo's inaction is prejudicial.[3]

For all of these reasons, Yeo's Motion to Set Aside Default should be denied.

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[2] Clearly, there is a discrepancy between Mr. Clark and Mr. Yeo's account of the July 2nd phone call. Mr. Clark unequivocally states, in his Declaration filed with the Court on September 2, 2010, that it was explained to Yeo that he and the other Facebook attorney present on the call could not offer him legal advice. In Yeo's Declaration, however, he unequivocally states that the Facebook lawyer he spoke to (whose name he cannot recall) did just that- he told Yeo that if he had not received any papers about the lawsuit, he didn't need to get involved. Without further discovery, this discrepancy casts doubt on the credibility and good faith of both parties. After contacting Neel Chatterjee, outside counsel of record for Facebook in this matter, to inform him of this discrepancy and inquire as to Facebook's position, undersigned counsel was informed by Mr. Chatterjee, via e-mail on May 12, 2011, that Facebook's position was that this matter was settled and that it had no further comments to make. *See* Hancock Decl., ¶ 9. Facebook was dismissed from this action by stipulation of the parties on March 18, 2011. (Dkt. No. 134).

[3] Should the default be set aside, the Plaintiff anticipates filing a motion with the Court seeking attorneys' fees and costs incurred in connection with the default. *See Sosa v. Mejia*, 2011 WL 1337428 (E.D.Cal. April 7, 2011) (citing *Nilsson, Robbins, et al. v. Louisiana Hydrolec*, 854 F.2d 1538, 1546-1547 (9th Cir. 1988)).

B. The Court Does Not Lack Personal Jurisdiction Over Yeo.

Although Yeo's Motion is styled as a "Motion to Set Aside Default", it is, in actuality, both a motion to set aside default and a motion to dismiss for lack of personal jurisdiction. As a preliminary matter, Yeo's motion to dismiss for lack of personal jurisdiction should be stricken since it was filed after the Clerk of Court entered a default against him. The Clerk of Court's entry of default cuts off a defendant's right to appear in an action, present a defense, or present evidence. *See Great Am. Ins. Co. v. M.J. Menefee Constr., Inc.*, 2006 WL 2522408 at *2 (E.D.Cal. 2006); *Cohen v. Murphy*, 2004 WL 2779942 at *1 (N.D.Cal. 2004); Schwarzer et al., FEDERAL CIVIL PROCEDURE BEFORE TRIAL, ¶ 6:42 (2004). A defendant's remedy, if a defendant wants to set aside default and defend an action, is for the defendant to file a motion to set aside default pursuant to Rule 55(c), F.R.C.P., which Yeo has done. *See M.J. Menefee Constr., Inc.*, at *2. Absent a ruling by the Court on Yeo's Motion to Set Aside Default, Yeo's attempt to move this Court to dismiss the Plaintiff's copyright infringement claim for lack of personal jurisdiction is premature and should not be allowed.

Acknowledging, however, that the Ninth Circuit in *In re Tuli*, 172 F.3d 707 (9th Cir. 1999), held that when a court is considering whether to enter a default judgment, it may dismiss an action *sua sponte* for lack of personal jurisdiction (rather than upon motion by the defaulting party as Yeo is improperly attempting), and seeing as the Plaintiff's Motion for Default Judgment will be heard at the same date and time as Yeo's Motion to Set Aside Default, the Plaintiff believes it prudent to set forth the following contacts between Yeo and the State of California that support the exercise of this Court's *in personam jurisdiction* over Yeo:

(1) As stated in the Declaration of Yvonne P. Greer filed with the United States District Court for the Northern District of Georgia on December 2, 2009 (Dkt. No. 13-5, ¶ 3), based on

research performed on October 27, 2009, and again, on December 2, 2009, by the head research librarian of Facebook's outside counsel in this matter, Orrick, Herrington, & Sutcliffe, "it appears that Mr. Yeo recently was employed by and worked at CourseHero, Inc., a company located in Sunnyvale, California, approximately ten miles from Facebook's headquarters in Palo Alto." However, according to Yeo, he has never been an employee for any company or otherwise worked for anyone in the United States. *See* Yeo Decl., ¶ 1.

(2) Media Temple, Inc., a website hosting and software application services company, that provides domain hosting services for Yeo d/b/a Zwigglers Apps, including the website upon which Yeo's infringing application, *ChainRxn*, is hosted (chainrxn.zwigglers.com), is located in Culver City, California. *See* Hancock Decl., ¶ 3; *see also* Yeo Decl., ¶ 17. As averred in Paragraph 18 of the SAC, the "*ChainRxn* canvas page was a webpage sent from Facebook that provided information related to *ChainRxn*, advertisements from Facebook, and an embedded iFrame in the users' browser. The Facebook canvas iFrame caused the users' browser to retrieve information from a website designated by Defendant Yeo while making it appear to the user that the user was receiving information hosted on, or provided by, the Facebook website." Upon information and belief, the website so designated by Yeo, as averred in the SAC, is hosted by Media Temple seeing as Yeo's Declaration does not mention any other websites hosting *ChainRxn*. *See* Yeo Decl., ¶ 17, 28.

(3) As averred in Paragraphs 14, 16, 21, and 22 of the SAC, Yeo created and published the infringing application, *ChainRxn*, utilizing the Facebook Developer Platform and has agreed to the Facebook Statement of Rights and Responsibilities ("SSR").[4] Upon information and belief, the

[4] Upon entry of default, the well-pleaded allegations of the complaint relating to a defendant's liability are taken as true, with the exception of the allegations as to the amount of damages. *See Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Facebook SSR agreed to by Yeo contained a forum selection clause by which Yeo would have agreed to the exclusive jurisdiction and venue of the federal and state courts of Santa Clara County, California, for all disputes about or involving the Facebook website and/or service and would have waived all defenses of lack of personal jurisdiction and forum non conveniens. This belief is based on the fact that another Facebook Platform game developer, Plaintiff Daniel Miller, agreed to the Facebook SSR in February, 2006, (then titled the "Facebook Terms of Use) when first creating a Facebook account. *See* Dkt. No. 13. It was the enforcement of this same forum selection provision against Mr. Miller that resulted in the transfer of this case from the Northern District of Georgia to the Northern District of California.

Furthermore, as stated in the Declaration of Julio C. Avalos filed with the United States District Court for the Northern District of Georgia (Dkt. No. 16-1, ¶ 5) on January 7, 2010, in order to make third-party applications available to Facebook users through the Facebook website, third-party application developers, such as Yeo, are required to agree to a "Developer Terms of Service". Upon information and belief, the Facebook Developer Terms of Service agreed to by Yeo, like the Developer Terms of Service agreed to by the Plaintiff, incorporates the Facebook SSR by reference. *See* Dkt. No. 16-4, p. 2.

Thus, Yeo has previously agreed to, and made himself amenable to, the jurisdiction of this Court.

(4) RockYou, Inc. and SocialCash, Inc. (now d/b/a Spruce Media, Inc.) contractually provided advertising services and revenue to Yeo for Yeo's infringing application, *ChainRxn*, when it was available on Facebook's website. *See* Kajikami Decl., ¶¶ 3-6; *see also* Green Decl., ¶¶ 4-6. RockYou, Inc. is headquartered in Redwood City, California, and from April, 2009, to June, 2010, paid $48,435.86 to Yeo in advertising revenue related to *ChainRxn*. *See* Plaintiff's

Exhibit "C"; *see also* Kajikami Declaration (Dkt. No. 136-3), ¶¶ 3-6. Upon information and belief, SocialCash, Inc., was headquartered in San Francisco, California, in the April, 2009, to February, 2010, time period during which it paid to Yeo $98,667.16 in advertising revenue related to *ChainRxn*. *See* Plaintiff's Exhibit "D"; *see also* Green Declaration (Dkt. No. 136-2), ¶¶ 4-6.

Thus, but for Yeo's contractual dealings with Facebook (as set forth *supra* in Paragraph #3), RockYou, Inc., and SocialCash, Inc., the *ChainRxn* application would not have been available on Facebook's website and would not have generated the aforementioned $147,103.02 in advertising revenue that was paid to Yeo as a result of his infringement.

(5) Yeo has also contracted with Apple, Inc., regarding the sale of the *ChainRxn* application, for which he received revenue. *See* Hancock Decl., ¶ 7; *see also* DMCA notification letter to Apple, Inc., from undersigned counsel attached hereto as Plaintiff's Exhibit "E". As the Court is surely aware, Apple, Inc. is headquartered in Cupertino, California. Additionally, the *ChainRxn* website hosted by Media Temple has a link entitled "on the IPhone/iPod Touch". *See* *ChainRxn* Website Screenshot attached hereto as Plaintiff's Exhibit "F". When the user clicks on that link, however, he is taken to a Facebook webpage that states "[t]he page you requested was not found." *See* Hancock Decl., ¶ 8. Although the Plaintiff has no information, at present, as to why this occurs, it appears that Yeo was using the *ChainRxn* website to commercially advertise the *ChainRxn* application available for the Apple IPhone and/or iPod Touch devices. The Plaintiff can also represent to the Court that following Apple's receipt of the August 30, 2010, DMCA notice, the *ChainRxn* application was removed from the Apple Store. *See* Hancock Decl., ¶ 7.

(6) Yeo continued to make *ChainRxn* available on Facebook, and receive payments from California companies for this infringement, for many months after the Plaintiff, and his attorney, Rob Madayag, notified Yeo of the infringing activity, in April and May of 2009, and demanded

that it cease. *See* Yeo Decl., ¶¶ 3-4; *see also* Kajikami Decl. (Dkt. No. 136-3), ¶¶ 3-6; Green Decl. (Dkt. No. 136-2), ¶¶ 4-6.

In closing, the Plaintiff states that in the event Yeo's Motion to Set Aside Default is granted, and Yeo subsequently moves this Court, in a procedurally proper manner, to dismiss the Plaintiff's claim for lack of personal jurisdiction, the Plaintiff should be afforded the opportunity to conduct jurisdictional discovery to ascertain the extent and breadth of Yeo's contacts with California and/or the United States, specifically, Yeo's employment history with U.S. and/or California employers, Yeo's contractual dealings with U.S. and/or California entities or individuals, Yeo's dealings with Facebook relating to *ChainRxn*, whether "Zwigglers Apps" is an alter ego of Yeo, and all sources of revenue received by Yeo related to the *ChainRxn* application. The Plaintiff contends that the enumerated contacts above more than adequately support an exercise of this Court's *in personam* jurisdiction over Yeo, and, at the very least, establish a "colorable" showing of personal jurisdiction entitling the Plaintiff to discovery on this issue, if necessary. *See eMag Solutions, LLC v. Toda Kogyo Corp.*, 2006 WL 3783548 (N.D.Cal. 2006).

WHEREFORE PREMISES CONSIDERED, the Plaintiff respectfully moves this Court to DENY Yeo's Motion and for all further and additional relief deemed appropriate and just by the Court.

Dated: May 19, 2011

Respectfully submitted,

s/ Brian D. Hancock
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