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

IO GROUP, INC. d/b/a TITAN MEDIA, a
California corporation,

Plaintiff,

No. C 10-03647 WHA

v.

MARIUSZ PRALAT, CAROL B. PEAL,
YUNSHU KANG, CHUN RONG ZHENG,
ZHI NENG WU, RUBEN MORENO, HAO
XU, CHIAFEN LIN, SANG YEOL KIM, and
MALGORZATA FRACZYK, individuals,

**ORDER GRANTING
PLAINTIFF’S MOTION
FOR DEFAULT JUDGMENT**

Defendants.

INTRODUCTION

In this copyright-infringement action, plaintiff moves for default judgment against the two remaining defendants. For the following reasons, plaintiff’s motion is **GRANTED**.

STATEMENT

Plaintiff commenced this action against 244 Doe defendants in August 2010. Plaintiff produces, markets, and distributes adult entertainment products, including videos. “Plaintiff operates and maintains a website by and through which customers paying a monthly subscription fee may view Plaintiff’s photographic and audiovisual works.” In 2007, plaintiff created the movie *Breakers*, which allegedly is of high production value and is “easily discernible

1 as a professional work.” Plaintiff holds a copyright registration certificate from the United States
2 Copyright Office for *Breakers* (First Amd. Compl. ¶¶ 5, 22, 33; Ruoff Decl. Exh. A).

3 Defendants are allegedly participants in the eDonkey2000 network, a “peer-to-peer” file
4 sharing system. The “eDonkey2000 Network allows users simultaneously to download and
5 upload pieces of a file from multiple peers.” Plaintiff alleges that defendants used this network
6 to engage in a copyright infringement scheme together. “During the months of April, May, and
7 June 2010, they all reproduced, shared, distributed, and republished the same file . . . containing
8 Plaintiff’s motion picture, *Breakers* (First Amd. Compl. ¶¶ 10, 24).

9 Defendants Mariusz Pralat and Malgorzata Fraczyk were served with the first amended
10 complaint and summons on May 25, 2011, alleging (1) copyright infringement, (2) contributory
11 copyright infringement, (3) vicarious copyright infringement, (4) negligence, and (5) civil
12 conspiracy. Pralat and Fraczyk failed to answer the complaint or to otherwise make appearances
13 in this action. On July 20, 2011, the Clerk of the Court entered default as to defendants Pralat
14 and Fraczyk, the last two defendants remaining in this action (Dkt. Nos. 52, 55).

15 Plaintiff now moves for default judgment against Pralat and Fraczyk, jointly and severally,
16 for the maximum statutory damages of \$30,000 for infringing its copyright in *Breakers*.
17 Defendants were served with copies of this motion, but neither defendant filed an opposition.
18 A hearing on the instant motion was held on October 6. Defendants did not appear at the hearing,
19 either personally or through counsel. At the hearing, plaintiff’s counsel said after serving the
20 defendants with this motion, one packet was returned to him as undeliverable. Counsel also
21 stated that he previously spoke on the phone with that defendant, and that defendant was made
22 aware of the present action by service of the summons and the complaint.

23 **ANALYSIS**

24 Pursuant to FRCP 55(a), a default judgment can be entered “[w]hen a party against
25 whom a judgment for affirmative relief is sought has failed to plead or otherwise defend.”
26 Although there is a “general rule that default judgments are ordinarily disfavored,” the factors to
27 consider when exercising discretion as to the entry of a default judgment are: (1) the possibility
28 of prejudice to the plaintiff; (2) the merits of the plaintiff’s substantive claim; (3) the sufficiency

1 of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute
2 concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong
3 policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel v.*
4 *McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). In the present action, these factors weigh in
5 favor of the entry of default judgment against defendants Pralat and Fraczyk.

6 **1. MERITS OF PLAINTIFF’S SUBSTANTIVE CLAIMS**
7 **AND SUFFICIENCY OF THE COMPLAINT.**

8 “The general rule is that upon default the factual allegations of the complaint, except those
9 relating to the amount of damages, will be taken as true.” *Geddes v. United Fin. Group*, 559 F.2d
10 557, 560 (9th Cir. 1977). Thus, this order considers the merits of plaintiff’s substantive claims,
11 the sufficiency of the complaint, and the possibility of a dispute concerning the material facts
12 together. All three of these factors weigh in favor of entering default judgment against the two
13 remaining defendants. Because plaintiff only addresses and seeks damages for direct copyright
14 infringement in its brief, this order too only reaches plaintiff’s claim for direct infringement.

15 Plaintiff alleges that defendants infringed its copyright in the movie *Breakers* in violation
16 of Section 501 of Title 17 of the United States Code. Section 501(a) states: “Anyone who
17 violated any of the exclusive rights of the copyright owner as provided by sections 106 through
18 122 . . . is an infringer of the copyright.” In order to state a claim for copyright infringement,
19 plaintiff must show (1) that it owns a valid copyright in the allegedly infringed material, and
20 (2) that defendants violated an exclusive right granted to the copyright owner. The exclusive
21 rights of the copyright owner are enumerated in Section 106 and include “to reproduce the
22 copyrighted work in copies or phonorecords” and “to distribute copies or phonorecords of the
23 copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or
24 lending.” 17 U.S.C. 106(1), (3).

25 The operative complaint alleges that plaintiff holds a copyright registration certificate
26 from the United States Copyright Office for the 2007 movie *Breakers*. The registration certificate
27 is also attached as exhibit A to the Ruoff declaration. Under our copyright laws, a registration
28 certificate constitutes prima facie evidence of a valid copyright, and shifts the burden to the
opposing party to prove the invalidity of the copyright. *Entm’t Research Group, Inc. v. Genesis*

1 *Creative Group, Inc.*, 122 F.3d 1211, 1217 (9th Cir. 1997). Defendants have not offered any
2 evidence to rebut the presumption created by plaintiff’s copyright registration certificate that
3 plaintiff’s copyright in *Breakers* is valid.

4 Plaintiff further asserts that defendants reproduced and distributed its copyrighted work,
5 *Breakers*, by and through the eDonkey2000 peer-to-peer network without authorization (First
6 Amd. Compl. ¶¶ 33–34). Plaintiff has pled facts to demonstrate defendants violated its exclusive
7 rights as the copyright owner of *Breakers*. Taking the factual allegations of the complaint as true,
8 plaintiff has sufficiently pled facts establishing a copyright infringement claim against defendants.
9 These factors weigh in favor of entering default judgment against defendants.

10 **2. FOUR REMAINING *EITEL* FACTORS.**

11 The remaining *Eitel* factors — the possibility of prejudice to the plaintiff, the sum of
12 money at stake, whether the default was due to excusable neglect, and the strong policy
13 underlying the FRCP favoring decisions on the merits — also favor entry of default judgment
14 against defendants Pralat and Fraczyk. *First*, plaintiff would be prejudiced if default judgment
15 were not entered against defendants. This would allow their alleged infringing conduct to
16 continue undeterred and leave plaintiff without recourse against them or a way to recoup lost
17 profits. *Second*, the maximum amount of damages sought by plaintiff is \$30,000. This is
18 substantially less than the \$3 million in damages at stake in *Eitel*. *Third*, defendants have been
19 served with the complaint and summons, as well as numerous other documents in this action, but
20 have failed to make an appearance. No oppositions to this motion were filed, and defendants did
21 not appear at the hearing. Excusable neglect is thus unlikely. *Fourth*, FRCP 55(a) provides for a
22 default judgment to be entered in circumstances where the defendants fail to appear, such as here.
23 The fact that defendants refuse to participate in the judicial process renders a decision on the
24 merits virtually impossible. Accordingly, the seven *Eitel* factors all weigh in favor of granting
25 default judgment against the two remaining defendants.
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1 **3. DAMAGES.**

2 The owner of a copyright is entitled to recover the actual damages suffered as a result of a
3 copyright infringement in addition to any profits earned by the copyright infringer. 17 U.S.C.
4 504(a). In the alternative,

5 the copyright owner may elect, at any time before final judgment is
6 rendered, to recover, instead of actual damages and profits, an
7 award of statutory damages for all infringements involved in the
8 action, with respect to any one work, for which any one 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.

9 17 U.S.C. 504(c)(1). Plaintiff requests \$30,000 in damages, the maximum statutory damages
10 award permissible for the copyright infringement of one work, when willfulness is not
11 established.

12 District courts have “wide discretion in determining the amount of statutory damages to be
13 awarded, constrained only by the specified maxima and minima.” *Harris v. Emus Records Corp.*,
14 734 F.2d 1329, 1335 (9th Cir. 1984). The maximum statutory damages award for the
15 infringement of *Breakers* is \$30,000 and the minimum is \$750. In determining the amount of
16 damages to award, the court is guided by

17 what is just in the particular case, considering the nature of the
18 copyright, the circumstances of the infringement and the like, . . .
19 but with the express qualification that in every case the assessment
 must be within the prescribed [maximum or minimum]. Within
 these limitations the court's discretion and sense of justice are
 controlling.

20 *Peer Int’l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990) (internal citation
21 omitted). Moreover, the statutory rule is designed to discourage wrongful conduct. *F. W.*
22 *Woolworth Co. v. Contemporary Arts*, 344 U.S. 228, 233 (1952). “Even for uninjurious and
23 unprofitable invasions of copyright the court may, if it deems it just, impose a liability within
24 statutory limits to sanction and vindicate the statutory policy.” *Ibid.*

25 Plaintiff seeks the maximum statutory damages because its works are valuable and
26 defendants’ acts harmed and continue to harm the value of its works. Plaintiff alleged that its
27 works, including *Breakers*, are of high quality, and plaintiff has won numerous awards for its
28 productions. Attachments to the Ruoff declaration show that the suggested retail price of a

1 “3-Disc Combo Pack” of *Breakers* retails on its website for \$49.95. In addition, a monthly
2 subscription to plaintiff’s website costs \$29.95. As plaintiff’s exhibits demonstrate, the prices for
3 plaintiff’s films and website featuring adult content are higher than the prices for non-erotic films.
4 Furthermore, plaintiff considers online piracy to be the “single greatest threat” to the continued
5 viability of its business because it threatens to reduce future sales and memberships to its website
6 (Ruoff Decl. ¶ 11, Exhs. B–E).

7 Moreover, “Defendants caused Plaintiff harm by reproducing and distributing Plaintiff’s
8 works with no digital protection systems, thereby making it possible for the unending and
9 continual distribution of *Breakers*, by and through peer-to-peer networks” (Br. 5; Ruoff
10 Decl. ¶ 10). Due to the type of infringement committed by defendants, there could be an infinite
11 number of potential customers of plaintiff who are instead viewing *Breakers* without any
12 compensation to plaintiff.

13 There is no evidence, however, that defendants profited from their infringement in any
14 way. Nor were defendants the creators or owners of the eDonkey2000 network used to infringe
15 plaintiff’s works; they were mere users of the infringing website. Although the conduct of
16 defendants was damaging to plaintiff’s business, it was not so egregious as to warrant the
17 maximum damages award under the statute.

18 This order finds that the extensiveness and continuity of the infringement of *Breakers* has
19 caused substantial harm to plaintiff, and an award of \$20,000 against defendants jointly and
20 severally is appropriate.

21 **CONCLUSION**

22 For the foregoing reasons, plaintiff’s motion for default judgment against defendants
23 Pralat and Fraczyk, jointly and severally for the amount of \$20,000, is **GRANTED**.

24
25 **IT IS SO ORDERED.**

26 Dated: October 7, 2011.

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE