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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MELANIE O'REILLY,

Plaintiff,

v.

VALLEY ENTERTAINMENT, INC., et al.,

Defendants.

No. C-09-03580-CW (DMR)

**ORDER RE SUPPLEMENTAL  
EVIDENCE**

This Court is in receipt of Plaintiff's Supplemental Brief and Declaration in Support of Request for Entry of Default Judgment Against St. Clair Entertainment Group, Inc. ("St Clair"). *See* Docket No. 49 ("Supplemental Brief and Declaration"). At the hearing on September 9, 2010, the Court ordered Plaintiff to submit, *inter alia*, supplemental briefing and evidentiary support regarding ownership of the works at issue and the foundational facts triggering protection under the U.S. Copyright Act. In her Supplemental Brief and Declaration, Plaintiff appears to claim her songs at issue are foreign works, and cites 17 U.S.C. § 104(b)(1), (2), and (3) in her Supplemental Brief.

"[N]ecessary facts not contained in the pleadings, and claims which are legally insufficient, are not established by default." *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992). Neither Plaintiff's complaint nor her Supplemental Brief and Declaration appear to set forth all the necessary facts to establish protection as a foreign work under 17 U.S.C. § 104(b)(1), (2), or

1 (3). Plaintiff will be permitted one more opportunity to provide a further supplemental declaration  
2 that contains *all* the facts necessary to establish protection under 17 U.S.C. § 104(b)(1), (2), or (3).  
3 Accordingly, **by no later than November 3, 2010**, Plaintiff shall file and serve a further  
4 supplemental declaration on this point.

5 Because “facts which are not established by the pleadings...or claims which are not well-  
6 pleaded, are not binding and cannot support the [default] judgment,” *see Danning v. Lavine*, 572  
7 F.2d 1386, 1388 (9th Cir. 1978), any additional facts attested to in Plaintiff’s further supplemental  
8 declaration shall be subject to further examination by the Court at the hearing on this matter.

9 To allow Plaintiff the opportunity to submit her further supplemental declaration as ordered  
10 herein, and due to the fact that Plaintiff’s counsel represents he is double-set for arbitration and trial  
11 on other matters starting on November 15, 2010, the previously scheduled date of November 3, 2010  
12 for further hearing on Plaintiff’s Motion for Default as to Defendant St. Clair has been  
13 CONTINUED to **December 9, 2010 at 11:00 a.m.**, in Courtroom 4, 3rd Floor, U.S. District Court,  
14 1301 Clay Street, Oakland, California 94612.

15 **Immediately upon receipt of this order, Plaintiff shall serve a copy of this order on**  
16 **Defendant St. Clair, and file a proof of service with the Court. At the same time Plaintiff’s**  
17 **further supplemental declaration as ordered herein is submitted to the Court, Plaintiff shall**  
18 **serve Defendant St. Clair with a copy and file a proof of service with the Court.** Service by  
19 Plaintiff may be made by mail. The Court notes that Plaintiff has failed to comply with the Court’s  
20 previous order to file a proof of service with the Court, *see* Docket No. 48, and Plaintiff is therefore  
21 ordered to immediately comply with the Court’s previous order.

22 IT IS SO ORDERED.

23  
24 Dated: October 20, 2010

  
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DONNA M. RYU  
United States Magistrate Judge