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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 TO SHOW CAUSE WHY
CERTAIN DAMAGES SHOULD BE
AWARDED**

On December 9, 2010, the Court conducted a further hearing on Plaintiff's Motion for Default Judgment Against Defendant St. Clair Entertainment Group, Inc. ("St Clair"). At the hearing, the Court took the testimony of Plaintiff regarding actual damages, including testimony about seven albums identified by Plaintiff on which she alleges four of her musical works were illegally copied and distributed by St. Clair. Plaintiff submitted to the Court compact discs of five of the allegedly infringing albums; Plaintiff did not have a copy of two of the seven albums, including one entitled *Celtic Journeys*. However, Plaintiff testified that to the best of her recollection, *Celtic Journeys* contained an unlawful reproduction by St. Clair of her musical work "Mo Bhron Ar An Bhfarrage." Thus, she seeks actual damages based in part on the distribution and sale of *Celtic Journeys*.

In support of her Motion for Default, Plaintiff submitted the individual catalog numbers identifying each of the seven albums on which her works were illegally infringed. See Docket No. 39 (Exhs. A & B to Declaration of Melanie O'Reilly in Support of Entry of Default). Because

1 Plaintiff was unable to provide the Court with an actual copy of *Celtic Journeys*, the Court
2 independently verified the songs on *Celtic Journeys* with internet resources by utilizing the catalog
3 number for that album as provided by Plaintiff. The Court’s research indicated that *Celtic Journeys*
4 contains only one song by Plaintiff, entitled “This Place.” Contrary to Plaintiff’s recollection at the
5 December 9 hearing, “Mo Bhron Ar An Bhfarrage” does not appear on *Celtic Journeys*.

6 In Plaintiff’s Second Amended Complaint (“SAC”) upon which she moves for default
7 judgment, Plaintiff alleges that another defendant (Valley Entertainment), and not St. Clair,
8 unlawfully reproduced and distributed “This Place.” Docket No. 26 (SAC ¶ 13). Accordingly,
9 Plaintiff’s Motion for Default Judgment against St. Clair does not claim liability nor seek damages
10 for infringement by St. Clair of the song “This Place.”

11 Based on this information, even if the Court were to recommend that default judgment be
12 granted, it does not appear that the Court may award actual damages against St. Clair for any alleged
13 infringement of “Mo Bhron Ar An Bhfarrage” on *Celtic Journeys* (because it is not reproduced on
14 that album), nor for “This Place” on *Celtic Journeys* (because Plaintiff does not allege in her SAC
15 that St. Clair illegally infringed on this song and thus did not move for default on that basis).
16 Therefore, Plaintiff is ordered to show cause why this Court should recommend awarding any actual
17 damages against St. Clair with respect to the album *Celtic Journeys*. Accordingly, **by no later than**
18 **December 23, 2010**, Plaintiff shall file a further supplemental declaration on this issue and any
19 evidence in support. No further hearing shall be conducted.

20 **Immediately upon receipt of this order, Plaintiff shall serve a copy of this order on St.**
21 **Clair, and file a proof of service with the Court. At the same time Plaintiff’s further**
22 **supplemental declaration and evidence as ordered herein are submitted to the Court, Plaintiff**
23 **shall serve St. Clair with a copy and file a proof of service with the Court.** Service by Plaintiff
24 may be made by mail.

25 IT IS SO ORDERED.

26 Dated: December 13, 2010



27 DONNA M. RYU
28 United States Magistrate Judge