

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

3
4 DFSB KOLLECTIVE CO., LTD.; NEGA
5 NETWORK; JUNGLE ENTERTAINMENT;
6 FOUNDATION RECORDS; WOOLIM
7 ENTERTAINMENT; AFTERMOON MUSIC
8 ENTERTAINMENT, INC.; PARAGON
9 MUSIC CORP.; ROXTA MUSIC; and
10 SPOT/MONKY GLOBAL,

11 Plaintiffs,

12 v.

13 BING YANG; INDRAWATI YANG; and
14 JOHN DOES 3-10,

15 Defendants.

No. C 11-1051 CW

ORDER DECLINING TO
ADOPT MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION
(Docket No. 34)
AND GRANTING
PLAINTIFFS' MOTION
FOR DEFAULT
JUDGMENT (Docket
No. 28)

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Plaintiffs DFSB Kollektive Co. Ltd., Nega Network, Jungle Entertainment, Foundation Records, Woolim Entertainment, Afternoon Music Entertainment, Paragon Music Corp., Roxta Music and Spot/Monky Global moved for default judgment on their claims against Defendants Bing Yang and Indrawati Yang. The motion was referred to a Magistrate Judge, who issued an order to show cause why the case should not be dismissed for lack of personal jurisdiction and improper venue. After receiving their response, the Magistrate Judge recommended dismissing the case for lack of personal jurisdiction and improper venue. Plaintiffs object to his report and recommendation. Having considered the papers filed by Plaintiffs, the Court declines to adopt the Magistrate Judge's recommendation and grants Plaintiffs' motion for default judgment.

BACKGROUND

I. Facts

The following allegations were made in Plaintiffs' First Amended Complaint (1AC).

Plaintiff DFSB Kollektive Co. Ltd. is a Korean corporation that has the right to promote, protect and enforce the musical-recording copyrights owned by Plaintiffs Nega Network, Jungle Entertainment, Foundation Records, Woolim Entertainment, Afternoon Music Entertainment, Paragon Music Corp., Roxta Music and Spot/Monky Global. 1AC ¶¶ 7-15. Each Plaintiff is a Korean corporation based in Seoul, Korea. Id. The copyrights owned by Plaintiffs were issued by the United States Copyright Office and cover various Korean pop songs and their corresponding album artwork. Id. at ¶¶ 7, 16 & Ex. A.

Defendant Bing Yang is an individual who is a resident of Vietnam and uses the following aliases on various websites: Kpop Explorer, Bingyang, Bingyang.co.cc and Bingyang1411. Id. at ¶ 20. Bing Yang "conducts business" through websites located at kpopexplorer.wordpress.com and bingyang.co.cc. Id. Bing Yang also uses the name "Kpop Explorer" on the online blogging site Wordpress and the names "Bingyang," "Bingyang.co.cc" and "Bingyang1411" on various web lockers or third-party storage sites. Id.

Defendant Indrawati Yang is an individual who is a resident of Indonesia and uses the following aliases on various websites: Asian Loud, Korean Wave, Clarrie, Koreanmusicfans, joehanny and Kpopsounds. Id. at ¶ 21. Indrawati Yang "conducts business" through websites located at www.asianloud.co.cc,

1 www.asianloud.net, kpopounds.blogspot.com,
2 koreanmusicdownload.blogspot.com, koreanmusicswave.blogspot.com,
3 koreanmusicswave.blogspot.com/2010/04/freeq-free-4-all.html and
4 kpopounds.blog127.fc2.com. Id. Indrawati Yang also uses the
5 names "Asian Loud" on the social networking site Facebook, "Korean
6 Wave" and "Clarrie" on the online blogging site Blogger,
7 "Koreanmusicfans" on the online payment processing site PayPal,
8 "joehanny" on the online advertisement site Linkbucks, file
9 sharing site Mediafire and social networking site Twitter,
10 "Kpopounds88" on the online video community YouTube and "Kpop
11 Sounds" on the online blogging site FC2. Id.

12 Using the aliases identified above and others, Defendants
13 search for, collect, index and post on their websites links to
14 content available on third-party websites, which include material
15 that infringes on Plaintiffs' copyrights. Id. at ¶ 3. Plaintiffs
16 allege that Defendants' websites provide to "Internet users" links
17 to material that would otherwise be inaccessible to them and that,
18 by compiling and indexing the links to the infringing content,
19 Defendants make the infringing content "easily accessible to
20 users." Id. at ¶ 24. In addition to links, Defendants' websites
21 contain images of the copyrighted artwork that is associated with
22 Plaintiffs' albums, in order to enhance the "user interface" on
23 the websites. Id. at ¶¶ 23, 25.

24 To download or listen to a Plaintiffs' copyrighted material
25 using Defendants' website, an internet user clicks on a link,
26 which is next to an image of the cover associated with the
27 relevant album. Id. at ¶ 26. When an internet user clicks on the
28 link, the user is directed to a third party website where the user

1 "may be given the option to download all or part of the album."
2 Id. at ¶ 27. Plaintiffs allege that Defendants themselves have
3 uploaded Plaintiffs' copyrighted work to the third party websites.
4 Id. These third party websites are "often hosted on servers
5 located outside the United States." Id. at ¶ 24.

6 Defendants derive revenue by displaying advertisements on
7 their websites. Id. at ¶ 26. "The listings of albums for which
8 links are offered are surrounded by advertisements." Id.
9 Advertisers pay to be included in advertising on Defendants'
10 websites, either "directly or through advertising brokers such as
11 Google." Id.

12 Plaintiffs allege that "Defendants have acted in willful
13 disregard of laws protecting" their copyrights and that this has
14 caused "substantial damage to the value of their creative works."
15 Id. at ¶ 31. Plaintiffs assert claims against Defendants for
16 copyright infringement, contributory copyright infringement and
17 inducing copyright infringement. Id. at ¶ 4.

18 Plaintiffs allege that this Court has personal jurisdiction
19 over Defendants "because, among other things, (a) each of the
20 Defendants or their respective agents are doing business in this
21 District; and (b) the DFSB Plaintiffs are informed and believe,
22 and upon that basis allege, that a substantial part of the
23 wrongful acts committed by Defendants has occurred in interstate
24 commerce in the State of California and Northern District of
25 California." Id. at ¶ 6. They also allege that venue is
26 appropriate here because the "events giving rise to the claims
27 alleged herein occurred, among other places, within this judicial
28 district." Id.

1 II. Procedural history

2 Plaintiffs filed this action on March 7, 2011. Docket No. 1.
3 After the Court granted permission to serve Defendants by email,
4 Plaintiffs completed service in this manner on January 6, 2012.
5 Docket Nos. 19, 23, 24.

6 Defendants have not appeared or filed an answer to the 1AC.
7 On February 16, 2012, the Clerk entered default as to both
8 Defendants. Docket No. 26.

9 On March 23, 2012, Plaintiffs filed the instant motion for
10 default judgment. Docket No. 28. The motion was referred to a
11 Magistrate Judge for a report and recommendation. Docket Nos. 29,
12 30.

13 On May 21, the Magistrate Judge issued an order to show cause
14 why he should not recommend that the case be dismissed for lack of
15 personal jurisdiction and improper venue. Docket No. 31.

16 On June 4, 2012, Plaintiffs responded to the order to show
17 cause. Docket No. 32.

18 On July 18, 2012, the Magistrate Judge issued a report and
19 recommendation, recommending that the Court dismiss the complaint
20 for lack of personal jurisdiction and improper venue and deny the
21 motion for default judgment. Docket No. 34.

22 On August 1, 2012, Plaintiffs filed an objection to the
23 report and recommendation. Docket No. 36. They also request that
24 the Court take judicial notice of a declaration that Bernie Cho,
25 the President of DFSB, filed in a similar case in this district.
26 Docket No. 37. The Court grants this request and takes judicial
27 notice of the Cho Declaration, but not of the truth of the facts
28 asserted therein.

1 LEGAL STANDARD

2 When a party files a timely objection to a magistrate judge's
3 report and recommendation, the district court must "make a de novo
4 determination of those portions of the report or specified . . .
5 recommendations to which objection is made," and "may accept,
6 reject, or modify, in whole or in part, the findings or
7 recommendations made by the magistrate." 28 U.S.C.
8 § 636(b)(1)(c); see also Fed. R. Civ. P. 72(b)(3).

9 DISCUSSION

10 I. Jurisdiction

11 "When entry of judgment is sought against a party who has
12 failed to plead or otherwise defend, a district court has an
13 affirmative duty to look into its jurisdiction over both the
14 subject matter and the parties." In re Tuli, 172 F.3d 707, 712
15 (9th Cir. 1999).

16 A. Subject Matter Jurisdiction

17 Plaintiffs bring claims against Defendants for copyright
18 infringement in violation of 17 U.S.C. § 501, contributory
19 copyright infringement and inducement of copyright infringement.
20 The Court has subject matter jurisdiction over these claims
21 pursuant to 28 U.S.C. sections 1331 and 1338.

22 B. Personal Jurisdiction

23 "The party seeking to invoke jurisdiction has the burden of
24 establishing that jurisdiction exists." Flynt Distributing Co. v.
25 Harvey, 734 F.2d 1389, 1392 (9th Cir. 1984). Where the court does
26 not conduct an evidentiary hearing regarding personal
27 jurisdiction, "the plaintiff need make only a prima facie showing
28 of jurisdictional facts." Id. To satisfy this burden, the

1 plaintiff "need only demonstrate facts that if true would support
2 jurisdiction over the defendant." Ballard v. Savage, 65 F.3d
3 1495, 1498 (9th Cir. 1995). "The plaintiff cannot simply rest on
4 the bare allegations of its complaint, but uncontroverted
5 allegations in the complaint must be taken as true." Mavrix
6 Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1223 (9th Cir.
7 2011) (internal quotation marks and citation omitted). The court
8 may not assume the truth of such allegations if they are
9 contradicted by affidavit. Data Disc, Inc. v. Systems Tech.
10 Assocs., Inc., 557 F.2d 1280, 1284 (9th Cir. 1977). However,
11 factual disputes are resolved in the plaintiff's favor. Mavrix
12 Photo, 647 F.3d at 1223 (citing Pebble Beach Co. v. Caddy, 453
13 F.3d 1151, 1154 (9th Cir. 2006).

14 There are two independent limitations on a court's power to
15 exercise personal jurisdiction over a non-resident defendant: the
16 applicable state personal jurisdiction rule and constitutional
17 principles of due process. Sher v. Johnson, 911 F.2d 1357, 1361
18 (9th Cir. 1990). Because California's jurisdictional statute is
19 co-extensive with federal due process requirements, jurisdictional
20 inquiries under state law and federal due process standards merge
21 into one analysis. Rano v. Sipa Press, Inc., 987 F.2d 580, 587
22 (9th Cir. 1993). Under that analysis, the exercise of
23 jurisdiction over a non-resident defendant will violate due
24 process unless the defendant has established such "minimum
25 contacts" with the forum state that the exercise of jurisdiction
26 "does not offend traditional notions of fair play and substantial
27 justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

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1 The court's exercise of personal jurisdiction may be either
2 general or specific. General jurisdiction exists when the
3 defendant maintains significant contacts with the forum state,
4 even if the cause of action is unrelated to those contacts.
5 Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408,
6 414 (1984). Plaintiffs do not contend that the Court has general
7 jurisdiction over Defendants.

8 Specific jurisdiction exists when the cause of action arises
9 out of the defendant's contacts with the forum state, even if
10 those contacts are isolated and sporadic. Data Disc, 557 F.2d at
11 1287. Courts in this circuit use a three-prong test to determine
12 whether they may assert specific jurisdiction in a particular
13 case: (1) the foreign defendant must purposefully direct its
14 activities or consummate some transaction with the forum or a
15 resident thereof, or perform some act by which it purposefully
16 avails itself of the privilege of conducting business in the
17 forum, thereby invoking the benefits and protections of its laws;
18 (2) the claim must be one which arises out of or results from the
19 defendant's forum-related activities; and (3) the exercise of
20 jurisdiction must be reasonable. Lake v. Lake, 817 F.2d 1416,
21 1421 (9th Cir. 1987). Each of these conditions must be satisfied
22 to assert jurisdiction. Insurance Co. of N. Am. v. Marina Salina
23 Cruz, 649 F.2d 1266, 1270 (9th Cir. 1981).

24 1. Purposeful direction or availment

25 The first factor of the test for specific jurisdiction can be
26 met by showing either purposeful availment or purposeful
27 direction. Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d
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1 1124, 1128 (9th Cir. 2010). The Magistrate Judge applied the
2 purposeful direction framework. Plaintiffs object to this.

3 The Ninth Circuit has explained that, although courts "often
4 use the phrase 'purposeful availment' in shorthand fashion," these
5 are two distinct concepts. See Schwarzenegger v. Fred Martin
6 Motor Co., 374 F.3d 797, 802 (9th Cir. 2004). "A purposeful
7 availment analysis is most often used in suits sounding in
8 contract." Id. "A showing that a defendant purposefully availed
9 himself of the privilege of doing business in a forum state
10 typically consists of evidence of the defendant's actions in the
11 forum, such as executing or performing a contract there." Id.
12 "By taking such actions, a defendant 'purposefully avails itself
13 of the privilege of conducting activities within the forum State,
14 thus invoking the benefits and protections of its laws.'" Id.
15 (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)). "A
16 purposeful direction analysis, on the other hand, is most often
17 used in suits sounding in tort." Id. "A showing that a defendant
18 purposefully directed his conduct toward a forum state, by
19 contrast, usually consists of evidence of the defendant's actions
20 outside the forum state that are directed at the forum, such as
21 the distribution in the forum state of goods originating
22 elsewhere." Id. at 803 (citations omitted). The Ninth Circuit
23 recently explained that, where, as here, "the underlying action is
24 copyright infringement, which is often characterized as a tort,"
25 purposeful direction is "the proper analytical framework."
26 Brayton Purcell, 606 F.3d at 1128. Thus, the Magistrate Judge's
27 use of the purposeful direction framework was appropriate.

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1 The Ninth Circuit "evaluates purposeful direction using the
2 three-part 'Calder-effects' test, taken from the Supreme Court's
3 decision in Calder v. Jones, 465 U.S. 783 (1984)." Brayton
4 Purcell, 606 F.3d at 1128. "Under this test, 'the defendant
5 allegedly must have (1) committed an intentional act,
6 (2) expressly aimed at the forum state, (3) causing harm that the
7 defendant knows is likely to be suffered in the forum state.'" Id.

9 A. Intentional Act

10 The Magistrate Judge recommended finding that the first
11 element of the Calder effects test is met here because Defendants
12 acted intentionally in operating websites containing links to
13 material that allegedly infringes Plaintiffs' copyrights. Docket
14 No. 34, 7. Plaintiffs do not object to that recommendation, and
15 the Court finds that it is correct.

16 B. Express Aiming

17 "The second part of the Calder-effects test requires that the
18 defendant's conduct be expressly aimed at the forum." Brayton
19 Purcell, 606 F.3d at 1129. The Ninth Circuit "has emphasized that
20 'something more' than mere foreseeability [is required] in order
21 to justify the assertion of personal jurisdiction and that
22 'something more' means conduct expressly aimed at the forum." Id.
23 (internal formatting, quotation marks and citations omitted). In
24 the context of evaluating "whether tortious conduct on a
25 nationally accessible website is expressly aimed at any, or all,
26 of the forums in which the website can be viewed," the Ninth
27 Circuit has identified several factors that it has considered to
28 determine whether a nonresident defendant has done "something

1 more." Mavrix Photo, 647 F.3d at 1229 (citations omitted).
2 These factors include "the interactivity of the defendant's
3 website . . . ; the geographic scope of the defendant's commercial
4 ambitions . . . ; and whether the defendant 'individually
5 targeted' a plaintiff known to be a forum resident . . ." Id.
6 (citations omitted).

7 In their response to the Magistrate Judge's order to show
8 cause, Plaintiffs argued that Defendants' actions were expressly
9 aimed at California "given the highly interactive, commercial
10 nature of Defendants' websites." Resp. to Order to Show Cause, 4.
11 They also contended that Defendants' websites and blogs were
12 hosted by companies located in California or whose parent
13 companies are located in California and that they used other
14 California companies, such as Twitter, Facebook and Youtube to
15 direct Internet users to their websites, as well as to host
16 infringing videos, artwork and links to unauthorized downloads.
17 Id. at 4-5. They further stated that Defendants "target[ted]
18 California residents indiscriminately" and that they "profited
19 from Internet traffic through advertising displayed on their
20 respective Accounts." Id. at 4. In their objection to the
21 Magistrate Judge's report and recommendation, Plaintiffs argue for
22 the first time that "the advertising on Defendants' website . . .
23 targeted California residents." Obj. at 5. They also argue that
24 Defendants targeted California by taking revenue away from Apple
25 iTunes, which was a legitimate provider of Plaintiffs' material.
26 Id. at 6.

27 The Ninth Circuit examined a similar situation in Mavrix
28 Photo. In that case, Mavrix Photo, a celebrity photo agency,

1 brought suit in California against Brand, an Ohio corporation,
2 which operated a website that "covers popular personalities in the
3 entertainment industry and features photo galleries, videos, and
4 short articles." Mavrix Photo, 647 F.3d at 1221-22. The website
5 at issue there had various interactive features: it allowed
6 visitors to comment on articles, vote in polls, subscribe to an
7 email newsletter, join a membership club and submit news tips and
8 photos of celebrities. Id. at 1222. Although the website
9 "court[ed] a national audience, not restricted to California," it
10 had "some ties specific to California," including that it made
11 "money from third-party advertisements for jobs, hotels, and
12 vacations in California." Id. In concluding that Brand expressly
13 aimed his conduct at California, the court stated that it found
14 "most salient the fact that Brand used Mavrix's copyrighted photos
15 as part of its exploitation of the California market for its own
16 commercial gain." Id. at 1229. The court explained,

17 Brand makes money by selling advertising space on its
18 website to third-party advertisers: the more visitors
19 there are to the site, the more hits that are made on
20 the advertisements; the more hits that are made on the
21 advertisements, the more money that is paid by the
22 advertisers to Brand. A substantial number of hits to
23 Brand's website came from California residents. One of
24 the ways we know this is that some of the third-party
25 advertisers on Brand's website had advertisements
26 directed to Californians. In this context, it is
27 immaterial whether the third-party advertisers or Brand
28 targeted California residents. The fact that the
29 advertisements targeted California residents indicates
30 that Brand knows--either actually or constructively--
31 about its California user base, and that it exploits
32 that base for commercial gain by selling space on its
33 website for advertisements.

34 Id. at 1230. Further, although Brand did not market its website
35 in California local media, he "operated a very popular website
36 with a specific focus on the California-centered celebrity and

1 entertainment industries." Id. "Based on the website's subject
2 matter, as well as the size and commercial value of the California
3 market," the court concluded "that Brand anticipated, desired, and
4 achieved a substantial California viewer base." Id. The court
5 cautioned, "Not all material placed on the Internet is, solely by
6 virtue of its universal accessibility, expressly aimed at every
7 state in which it is accessed." Id. at 1231. It nevertheless
8 held that, "where, as here, a website with national viewership and
9 scope appeals to, and profits from, an audience in a particular
10 state, the site's operators can be said to have 'expressly aimed'
11 at that state." Id.

12 The Magistrate Judge acknowledged that the websites at issue
13 here are highly interactive but found that Plaintiffs "have not
14 shown that a California audience is an integral component of
15 defendants' business model and profitability or that the economic
16 value of defendants' websites depends in any way on their appeal
17 to California residents." Report and Recommendation, 8-9.
18 However, Plaintiffs have now cited evidence which shows that, as
19 in Mavrix, many of the third party advertisements on Defendants'
20 websites specifically targeted California residents. For example,
21 one of Indrawati Yang's websites,
22 koreanmusicdownload.blogspot.com, showed advertisements for
23 Groupon Los Angeles and AAA of Southern California. Mot. for
24 Default J., Ex. D, Docket No. 28-4, 14; Mot. for Default J., Ex.
25 H, Docket No. 28-7, 133; see also Mot. for Default J., Ex. H,
26 Docket No. 28-7, 35 (advertisement for livingsocial Los Angeles).
27 In addition, Plaintiffs have provided evidence that the United
28 States is their largest market for sales and that California

1 accounts for a large share of their business within the United
2 States, in part because the music appeals to the large population
3 of residents of Korean descent in the state. Cho Decl. ¶ 2. This
4 is further supported by the fact that many of the websites have
5 "hit counters" that show the number of visitors they have
6 received, by country, and reveal that a substantial percentage of
7 them were from the United States. See, e.g., Mot. for Default J.,
8 Ex. H, Docket No. 28-7, 43 (showing that the top two countries
9 from which users accessed the website were Korea, with 1,498
10 visitors, and the United States, with 1,269 visitors). As in
11 Mavrix, these facts show that Defendants had actual or
12 constructive knowledge of their California users and that they
13 exploited that user base for profit.

14 This evidence differentiates the present case from DFSB
15 Kolletive Co. v. Bourne, 2012 U.S. Dist. LEXIS 131079 (N.D.
16 Cal.), in which the court adopted a magistrate judge's
17 recommendation to deny a motion for default judgment based on lack
18 of personal jurisdiction. In that decision, the district judge
19 found that the plaintiffs had not shown that the defendant
20 actually or constructively knew about his California user base
21 because they did not show that "a substantial number of hits to
22 defendant's websites came from California" or "that defendant's
23 websites displayed advertisements targeted to California
24 residents," among other things. Id. Here, Plaintiffs have
25 offered such evidence.

26 Accordingly, the Court concludes that Mavrix controls the
27 outcome here and Plaintiffs have made a sufficient showing that
28 Defendants "expressly aimed" their activities at California.

1 C. Harm

2 The third part of the Calder effects test requires that
3 Defendants' conduct "caused harm that [they] knew was likely to be
4 suffered in the forum." Brayton Purcell, 606 F.3d at 1131 (citing
5 Yahoo! Inc. v. La Ligue Contre Le Racisme, 433 F.3d 1199, 1206
6 (9th Cir. 2006). "In copyright cases this requirement is
7 generally satisfied when the plaintiff resides in the forum
8 state." DFSB Collective Co. Ltd. v. Bourne, 2012 WL 2376209, at
9 *8 (citing Brayton Purcell, 606 F.3d at 1131). "In appropriate
10 circumstances [however,] a corporation can suffer economic harm
11 both where the bad acts occurred and where the corporation has its
12 principal place of business." Id. (quoting Dole Food Co. Inc. v.
13 Watts, 303 F.3d 1104, 1113 (9th Cir. 2002)) (brackets in
14 original).

15 The Magistrate Judge concluded that Plaintiffs made an
16 insufficient showing that "the brunt of the harm caused by
17 defendants' alleged infringement of plaintiffs' copyrights was
18 felt in California." Report and Recommendation, 12 (emphasis in
19 original). However, the Ninth Circuit has recognized "that the
20 'brunt' of the harm need not be suffered in the forum state."
21 Yahoo! Inc., 433 F.3d at 1207. "If a jurisdictionally sufficient
22 amount of harm is suffered in the forum state, it does not matter
23 that even more harm might have been suffered in another state."
24 Id.

25 Here, although Plaintiffs are not residents of California,
26 they have offered evidence that Defendants likely knew that they
27 would cause harm in this state. Plaintiffs allege that, by making
28 Plaintiffs' material online for free, Defendants significantly

1 reduced the value of Plaintiffs' works and decreased the volume of
2 sales and corresponding revenue, including in California. "The
3 economic loss caused by the intentional infringement of a
4 plaintiff's copyright is foreseeable." Mavrix, 647 F.3d at 1231.
5 Here, as in Mavrix, it was foreseeable that this economic loss
6 would occur in California, as well as in Korea, where Plaintiffs
7 are located. As explained above, a sizeable portion of the value
8 of the music and cover art was based on potential sales in the
9 United States market and in California in particular. That this
10 was reasonably foreseeable is demonstrated in part by the
11 California-targeted advertisements, the number of American users
12 of Defendants' websites and the evidence that the demand for
13 Korean music within California is higher than in other parts of
14 the United States. Because Defendants caused Plaintiffs to lose
15 potential sales in California, a jurisdictionally significant
16 amount of Plaintiffs' harm was suffered within the state.

17 2. Forum-Related Activities

18 Under the second prong of the personal jurisdiction analysis,
19 which the Magistrate Judge did not reach, the Court considers that
20 "the plaintiff's claim must be one which arises out of or relates
21 to the defendant's forum-related activities." Menken v. Emm, 503
22 F.3d 1050, 1058 (9th Cir. 2007). The Ninth Circuit "follows the
23 'but for' test to determine forum-related conduct." Fiore v.
24 Walden, 688 F.3d 558, 582 (9th Cir. 2012) (internal quotation
25 marks and citation omitted).

26 Here, Defendants have created websites on which they place,
27 and link to, infringing content, and which are targeted to
28 California residents. Plaintiffs would not have suffered injury

1 but for Defendants' creation of these websites. Thus, the forum-
2 related conduct requirement for specific jurisdiction has been
3 met.

4 3. Reasonableness of Exercise of Jurisdiction

5 Because Plaintiffs have met their burden to satisfy the first
6 two prongs of the test for establishing personal jurisdiction, the
7 burden shifts to Defendants "to satisfy the third part--
8 'present[ing] a compelling case' that the exercise of jurisdiction
9 would not be reasonable'" in California. Fiore, 688 F.3d at 582
10 (citations omitted). The Magistrate Judge did not reach this
11 factor. To determine the reasonableness of the exercise of
12 jurisdiction, the Ninth Circuit balances seven factors: (1) the
13 extent of the defendants' purposeful interjection into the forum
14 state's affairs; (2) the burden on the defendants of defending in
15 the forum; (3) the extent of conflict with the sovereignty of the
16 defendants' state; (4) the forum state's interest in adjudicating
17 the dispute; (5) the most efficient judicial resolution of the
18 controversy; (6) the importance of the forum to the plaintiffs'
19 interest in convenient and effective relief; and (7) the existence
20 of an alternative forum. Id. at 582-83 (citing Menken, 503 F.3d
21 at 1058).

22 Because Defendants have not appeared or responded to the
23 motion for default judgment, they have not met their burden to
24 establish that the exercise of jurisdiction would be unreasonable.
25 In addition, based on its own analysis of the factors, the Court
26 concludes that the exercise of jurisdiction is not unreasonable.

27 First, because it is not clear exactly how many California
28 users accessed Defendants' websites, the precise degree of

1 purposeful injection is unknown. However, the evidence suggests
2 that there were a substantial number. Thus, this factor weighs in
3 favor of exercising jurisdiction.

4 As to second factor, the "defendant's burden in litigating in
5 the forum is a factor in the assessment of reasonableness, but
6 unless the 'inconvenience is so great as to constitute a
7 deprivation of due process, it will not overcome clear
8 justifications for the exercise of jurisdiction.'" Panavision
9 Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1323 (9th Cir. 1998)
10 (citation omitted). Here, the burden on Defendants, who live in
11 Vietnam and Indonesia, to litigate in California is significant.
12 However, the inconvenience is not so great as to deprive them of
13 due process, particularly given their purposeful availment of the
14 benefits of conducting business within the state.

15 The third factor "concerns the extent to which the exercise
16 of jurisdiction would conflict with the sovereignty of the
17 defendants' state." Core-Vent Corp. v. Nobel Indus. AB, 11 F.3d
18 1482, 1489 (9th Cir. 1993). "Litigation against an alien
19 defendant creates a higher jurisdictional barrier than litigation
20 against a citizen from a sister state because important
21 sovereignty concerns exist." Id. (internal quotation marks,
22 formatting and citation omitted). When determining how much
23 weight to accord to this factor, the Ninth Circuit has "focused on
24 the presence or absence of connections to the United States in
25 general, not just to the forum state." Id. "Sovereignty concerns
26 weigh more heavily when the defendants have no United States-based
27 relationships." Id. Here, Defendants have United States-based
28 relationships with the companies that host their websites and

1 content. "Thus, sovereignty considerations weigh less heavily
2 than if no United States-based relationships were established."
3 Sinatra v. Nat'l Enquirer, Inc., 854 F.2d 1191, 1200 (9th Cir.
4 1988).

5 Fourth, California has an interest in adjudicating this
6 dispute. Plaintiffs have alleged that Defendants target
7 California residents, among others, to download infringing content
8 and to provide profit to Defendants based on their viewing of
9 advertisements. This factor favors the exercise of jurisdiction.

10 The fifth factor, the efficient resolution of the litigation,
11 "focuses on the location of the evidence and witnesses."
12 Panavision, 141 F.3d at 1323 (citation omitted). "It is no longer
13 weighed heavily given the modern advances in communication and
14 transportation." Id. Here, although the parties are located
15 outside of California, much of the evidence and witnesses,
16 including the companies who host Defendants' websites, are within
17 California. Accordingly, this factor is neutral or favors the
18 exercise of jurisdiction.

19 As to the sixth factor, "evaluating the convenience and
20 effectiveness of relief for the plaintiff," courts "have given
21 little weight to the plaintiff's inconvenience." Id. at 1324.
22 Plaintiffs are not residents of this forum and, thus, the
23 inconvenience that they may suffer from litigating elsewhere is
24 neutral.

25 Finally, Defendants have not come forward to offer any
26 alternative forum in which this case could proceed. It is not
27 clear whether Plaintiffs would be able to bring their claims
28 asserting infringement of copyrights registered in the United

1 States in Korea, Vietnam or Indonesia or in any other district
2 within the United States. Because there is no apparent
3 alternative forum, this factor weighs in favor of the exercise of
4 jurisdiction here.

5 Based on a balancing of these factors, the exercise of
6 jurisdiction over Defendants is reasonable.

7 C. Service of Process

8 "Before considering the merits of a motion for default
9 judgment, the Court must first 'assess the adequacy of the service
10 of process on the party against whom default is requested.'" U.A.
11 Local No. 467 Pension Trust Fund v. Hydra Ventures Inc., 2013 U.S.
12 Dist. LEXIS 34931, at *13 (N.D. Cal.) (citation omitted).

13 Plaintiffs, with Court approval, served Defendants by email.
14 See Docket Nos. 21, 23, 24. Federal Rule of Civil Procedure 4(f)
15 provides, in pertinent part, "Unless otherwise provided by federal
16 law, service upon an individual from whom a waiver has not been
17 obtained and filed . . . may be effected in a place not within any
18 judicial district of the United States: . . . (3) by other means
19 not prohibited by international agreement as may be directed by
20 the court." In approving service upon an international defendant
21 by e mail, the Ninth Circuit has stated that "service of process
22 under Rule 4(f)(3) is neither a 'last resort' nor 'extraordinary
23 relief.' . . . It is merely one means among several which enables
24 service of process on an international defendant." Rio Props. v.
25 Rio Int'l Interlink, 284 F.3d 1007, 1015 (9th Cir. 2002) (internal
26 citations omitted). "As obvious from its plain language, service
27 under Rule 4(f)(3) must be (1) directed by the court; and (2) not
28 prohibited by international agreement. No other limitations are

1 evident from the text." Id. at 1014. However, to comport with
2 the Constitution, "the method selected [must] be reasonably
3 calculated to provide notice and an opportunity to respond" when
4 considered under the circumstances of the case. Id. at 1017-18.

5 Neither Indonesia nor Vietnam are parties to the Hague
6 Convention and there are no treaties between these countries and
7 the United States regarding service of documents. Thus, there are
8 no international agreements prohibiting service by e-mail.

9 Further, Defendants structured their businesses such that
10 they can be contacted only via their email addresses. When
11 registering their websites with their internet service providers,
12 they provided email addresses but no valid street addresses. It
13 was through those email addresses that Defendants conducted the
14 business alleged to be infringing here. Thus, service upon
15 Defendants using their email addresses was not only reasonably
16 calculated to give them notice of the pendency of this action, but
17 was also, as in Rio Properties, the method of service most likely
18 actually to reach Defendants.

19 Accordingly, service of process upon Defendants was proper.

20 II. Venue

21 Title 28 U.S.C. § 1400(a) provides that copyright actions
22 "may be instituted in the district in which the defendant or his
23 agent resides or may be found." The Ninth Circuit has interpreted
24 this code section to mean that venue "is proper in any judicial
25 district in which the defendant would be amenable to personal
26 jurisdiction if the district were a separate state." Columbia
27 Pictures Television v. Krypton Broad. of Birmingham, Inc., 106
28 F.3d 284, 289 (9th Cir. 1997), overruled on other grounds.

1 The Magistrate Judge concluded that venue was inappropriate
2 in this district because "defendants are not amenable to personal
3 jurisdiction in California." Report and Recommendation, 13.
4 Because this Court has held to the contrary regarding personal
5 jurisdiction, it also concludes that venue is appropriate in this
6 district.

7 III. Merits of the Motion for Default Judgment

8 Factors that the Court may consider when exercising its
9 discretion regarding the entry of default judgment include:

10 (1) the possibility of prejudice to the plaintiff,
11 (2) the merits of plaintiff's substantive claim, (3) the
12 sufficiency of the complaint, (4) the sum of money at
13 stake in the action, (5) the possibility of a dispute
14 concerning material facts, (6) whether the default was
15 due to excusable neglect, and (7) the strong policy
16 underlying the Federal Rules of Civil Procedure favoring
17 decisions on the merits.

18 Eitel v. McCool, 782 F.2d 1470, 1471-1472 (9th Cir. 1986). "The
19 general rule of law is that upon default the factual allegations
20 of the complaint, except those relating to the amount of damages,
21 will be taken as true." TeleVideo Systems, Inc. v. Heidenthal,
22 826 F.2d 915, 917-918 (9th Cir. 1987) (quoting Geddes v. United
23 Financial Group, 559 F.2d 557, 560 (9th Cir. 1977)). In addition
24 to the allegations in their pleading, Plaintiffs have also
25 submitted evidence of Defendants' infringing websites and
26 Plaintiffs' investigations into their activities, which the Court
27 will also consider in evaluating this motion.

28 A. Sufficiency of the Complaint and Merits of Plaintiffs'
Claims

The second and third Eitel factors, the merits of the
Plaintiffs' substantive claim and the sufficiency of the
complaint, favor default judgment. "These two factors together

1 require plaintiffs' allegations to state a claim on which the
2 plaintiff may recover." U.A. Local No. 467 Pension Trust Fund,
3 2013 U.S. Dist. LEXIS 34931, at *13 (internal quotation marks,
4 formatting and citation omitted); see also Danning v. Lavine, 572
5 F.2d 1386, 1388 (9th Cir. 1978) ("The issue here is whether the
6 allegations in the complaint are sufficient to state a claim on
7 which the [moving party] may recover.").

8 In their first cause of action, Plaintiffs allege that
9 Defendants infringed their copyrights in violation of 17 U.S.C.
10 § 501. "Plaintiffs must satisfy two requirements to present a
11 prima facie case of direct infringement: (1) they must show
12 ownership of the allegedly infringed material and (2) they must
13 demonstrate that the alleged infringers violate at least one
14 exclusive right granted to copyright holders under 17 U.S.C.
15 § 106." Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146, 1159
16 (9th Cir. 2007) (internal quotation marks and citation omitted).
17 These rights include to do and to authorize a number of acts
18 regarding the copyrighted works, including to reproduce and
19 distribute copies. 17 U.S.C. § 106.

20 Plaintiffs allege that they own the copyrights for more than
21 two hundred songs on fifteen different albums and their associated
22 artwork. 1AC ¶ 16 & Ex. A. They have submitted the registration
23 certificates for all fifteen albums. Cho Decl. ¶ 4, Ex. E, Docket
24 No. 28-5. They have also alleged that Defendants have created
25 unauthorized copies of these copyrighted works and have uploaded
26 those to third party websites for distribution. 1AC ¶¶ 25, 27.
27 They have submitted declarations attesting that Bing Yang did this
28 with sixty-three works and Indrawati Yang with one hundred and

1 eighty works. Cho Decl. ¶¶ 5-10. These allegations and evidence
2 are sufficient to establish a claim for direct copyright
3 infringement.

4 In their second cause of action, Plaintiffs charge Defendants
5 with contributory copyright infringement. "One who, with
6 knowledge of the infringing activity, induces, causes or
7 materially contributes to the infringing conduct of another may be
8 liable as a 'contributory' copyright infringer." Ellison v.
9 Robertson, 357 F.3d 1072, 1076 (9th Cir. 2004) (internal quotation
10 marks, citation and formatting omitted). This includes "both
11 those with actual knowledge and who have reason to know of direct
12 infringement." Id.

13 Plaintiffs have alleged that third party websites host and
14 distribute the infringing content, in violation of 17 U.S.C.
15 § 501, and that Defendants materially contributed to this conduct
16 by uploading the works to those sites and indexing them and
17 providing links to them from Defendants' own websites. 1AC ¶¶ 24,
18 26-27, 39. Plaintiffs also allege that Defendants know that the
19 files are infringing because they have received notices from
20 Plaintiffs and the third-party sites advising them of this fact.
21 Id. at ¶ 40. Accordingly, Plaintiffs have sufficiently alleged
22 claims against Defendants for contributory copyright infringement.

23 In Plaintiffs' third cause of action, they charge Defendants
24 with inducing copyright infringement. Under the Supreme Court's
25 decision in Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.,
26 545 U.S. 913 (2005), inducement of copyright infringement appears
27 to be a particular type of contributory liability, rather than a
28 separate cause of action. See id. at 930 ("One infringes

1 contributorily by intentionally inducing or encouraging direct
2 infringement."); id. at 942 (Ginsburg, J., concurring) ("Liability
3 under our jurisprudence may be predicated on actively encouraging
4 (or inducing) infringement through specific acts (as the Court's
5 opinion develops) or on distributing a product distributees use to
6 infringe copyrights, if the product is not capable of
7 'substantial' or 'commercially significant' noninfringing uses.");
8 see also Columbia Pictures Indus. v. Gayr Fu Ng, 2013 U.S. App.
9 LEXIS 5597, at *2, 19-20, 23-48 (affirming the trial court's
10 finding of contributory infringement under an inducement theory of
11 liability); IO Group, Inc. v. Jordon, 708 F. Supp. 2d 989, 999
12 (N.D. Cal. 2010) (declining to find that inducement of
13 infringement is a cause of action separate from contributory
14 infringement). Because Plaintiffs do not appear to seek
15 additional damages or relief under this cause of action, other
16 than what they also seek under their other causes of action, the
17 Court need not reach this issue. See DFSB Kollektive Co., Ltd. v.
18 Tran, 2011 U.S. Dist. LEXIS 147538, at *22 (N.D. Cal.).

19 Because Plaintiffs have sufficiently plead copyright
20 infringement and contributory infringement, the Court finds that
21 these factors favor entry of default judgment.

22 B. The Remaining Eitel Factors

23 The balance of the remaining factors also favors entry of
24 default judgment.

25 As to the first factor, Plaintiffs will be prejudiced if the
26 motion for default judgment is denied because they will likely be
27 left without any way to obtain a remedy.

28

1 Regarding the fourth Eitel factor, the sum of money at stake,
2 Plaintiff seeks a significant amount of money, \$315,000.00 in
3 statutory damages against Bing Yang, and \$900,000.00 in statutory
4 damages against Indrawati Yang. However, in light of Defendants'
5 infringing conduct and their refusal to participate in this
6 litigation, monetary damages are appropriate. IO Group, 708 F.
7 Supp. 2d at 999. Further, the damages sought here are statutory
8 and the amount left to the Court's discretion. DFSB Kollektive
9 Co., Ltd. v. Tran, 2011 U.S. Dist. LEXIS 147538, at *23.

10 Nothing in the record suggests a "possibility of a dispute
11 concerning material facts," the fifth Eitel factor. See U.A.
12 Local No. 467 Pension Trust Fund, 2013 U.S. Dist. LEXIS 34931, at
13 *13 (finding nothing to suggest the possibility of a dispute of
14 material fact where "Defendant has not filed an answer to the
15 complaint or any other responsive pleading in this matter").
16 Further, Plaintiffs have offered documentary evidence that makes
17 it unlikely that such a dispute would arise.

18 The sixth Eitel factor requires the Court to consider whether
19 Defendants' default was due to excusable neglect. As explained
20 above, Defendants were served with process at the email addresses
21 from which they conduct their business. Further, Plaintiffs have
22 offered proof that they served Defendants with the request for
23 entry of default and motion for default judgment at these email
24 addresses as well. Defendants thus had notice and sufficient
25 opportunity to appear and litigate this case.

26 Finally, as to the seventh Eitel factor, although cases
27 "should be decided on their merits whenever reasonably possible,"
28 Eitel, 782 F.2d at 1472, "Rule 55(b) allows entry of default

1 judgment in situations such as this, where the defendant has
2 refused to litigate," Bd. of Trs. v. RBS Wash. Blvd, LLC, 2010
3 U.S. Dist. LEXIS 1693, at *9-10 (N.D. Cal.). Because Defendants
4 have not responded to the complaint or participated in the
5 proceedings, a decision on the merits is not possible.
6 Accordingly, this factor does not weigh against default judgment.

7 IV. Relief

8 In their motion for default judgment, Plaintiffs seek entry
9 of a permanent injunction against both Bing Yang and Indrawati
10 Yang prohibiting them from further infringing any of Plaintiffs'
11 copyrights. They also request an award of \$315,000 in statutory
12 damages against Bing Yang and \$900,000 in statutory damages
13 against Indrawati Yang. Finally, they seek post-judgment interest
14 pursuant to 28 U.S.C. § 1961.

15 A. Injunctive Relief

16 The Copyright Act, 17 U.S.C. § 502(a), authorizes courts to
17 issue permanent injunctions on reasonable terms to prevent future
18 infringement of a copyright. "A plaintiff seeking a permanent
19 injunction must satisfy a four-factor test before a court may
20 grant such relief." eBay Inc. v. MercExchange, LLC, 547 U.S. 388,
21 391 (2006). The plaintiff

22 must demonstrate: (1) that it has suffered an
23 irreparable injury; (2) that remedies available at law,
24 such as monetary damages, are inadequate to compensate
25 for that injury; (3) that, considering the balance of
26 hardships between the plaintiff and defendant, a remedy
27 in equity is warranted; and (4) that the public interest
28 would not be disserved by a permanent injunction.

26 Id.

27 Here, each of these four factors favors entering a permanent
28 injunction. Plaintiffs have shown that they will suffer

1 irreparable injury in the absence of an injunction and that
2 monetary damages are not adequate to compensate for this. They
3 have offered evidence that Bing Yang and Indrawati Yang are "two
4 of the biggest illegal uploaders (and free download link
5 providers) of Korean music in the world." Cho Decl. ¶ 11. They
6 have also provided evidence that, "for every legitimate digital
7 download sale" of their music, about "19 downloads are lost to
8 piracy." Id. "This type of infringing conduct exposes Plaintiffs
9 to 'massive, repeated, and worldwide infringement' of their
10 copyrighted sound recordings." DFSB Kollektive Co., Ltd. v. Tran,
11 2011 U.S. Dist. LEXIS 147538, at *25 (citing Twentieth Century Fox
12 Film Corp. v. Streeter, 438 F. Supp. 2d 1065, 1073 n.2 (D. Ariz.
13 2006) ("When digital works are distributed via the internet, as in
14 this case, every downloader who receives one of the copyrighted
15 works from Defendant is in turn capable of also transmitting
16 perfect copies of the works. Accordingly, the process is
17 potentially exponential rather than linear, threatening virtually
18 unstoppable infringement of the copyright.")). The third factor,
19 which addresses the balance of hardships between Plaintiffs and
20 Defendants, also favors entry of a permanent injunction. Here,
21 without entry of the injunction, Plaintiffs face further harm from
22 ongoing infringement of their copyrights, while the injunction
23 would simply require Defendants to comply with the Copyright Act.
24 Id. at *26. Finally, the public interest would be served by entry
25 of the injunction. See Taylor Corp. v. Four Seasons Greetings,
26 LLC, 315 F.3d 1039, 1042 (8th Cir. 2003) ("The public interest is
27 served in protecting the holders of valid copyrights from
28 infringing activity.").

1 B. Monetary Damages

2 Plaintiffs seek statutory damages in the amount of \$5,000 per
3 copyright infringed, for a total of \$315,000 for Bing Yang's
4 infringement of at least sixty-three of their copyrights and
5 \$900,000 for Indrawati Yang's infringement of at least one hundred
6 and eighty of their copyrights.

7 The Copyright Act authorizes statutory damages for
8 infringement of each work "in a sum of not less than \$750 or more
9 than \$30,000 as the court considers just." 17 U.S.C. § 504(c)(1).
10 "In a case where the copyright owner sustains the burden of
11 proving, and the court finds, that infringement was committed
12 willfully, the court in its discretion may increase the award of
13 statutory damages to a sum of not more than \$150,000." 17 U.S.C.
14 § 504(c)(2).

15 "Under the Copyright Act, the court has wide discretion in
16 calculating statutory damages, 'constrained only by the specified
17 maxima and minima.'" Chanel, Inc. v. Doan, 2007 U.S. Dist. LEXIS
18 22691, at *12-13 (N.D. Cal.) (quoting Harris v. Emus Records
19 Corp., 734 F.2d 1329, 1335 (9th Cir. 1984)). "Determination of
20 statutory damages within the applicable limits may turn upon such
21 factors as the expenses saved and profits reaped by the defendants
22 in connection with the infringement, the revenues lost by the
23 plaintiff as a result of the defendant's conduct, and the
24 infringer's state of mind--whether willful, knowing, or merely
25 innocent." Lamb v. Starks, 1997 U.S. Dist. LEXIS 11369, at *6
26 (N.D. Cal.) (citing N.A.A.S. Import Corp. v. Chenson Enters. Inc.,
27 968 F.2d 250, 252 (2d Cir. 1992); Nimmer on Copyright,
28 § 1404(b)(1)(a)) (internal quotation marks omitted). "It is

1 clear, however, that a plaintiff may recover statutory damages
2 whether or not there is adequate evidence of the actual damages
3 suffered by the plaintiff or of the profits reaped by defendant."
4 Peer Int'l Corp. v. Pausa Records, Inc., 909 F.2d 1332, 1337 (9th
5 Cir. 1990) (internal quotation marks and citation omitted).
6 Further, "[t]he Supreme Court has stated that 'even for
7 uninjurious and unprofitable invasions of copyright the court may,
8 if it deems it just, impose a liability within [the] statutory
9 limits to sanction and vindicate the statutory policy' of
10 discouraging infringement." Id. (quoting F.W. Woolworth Co. v.
11 Contemporary Arts, Inc., 344 U.S. 228, 233 (1952)).

12 On the evidence offered here, an award of \$5,000 for each
13 violation is reasonable. Plaintiffs have offered evidence that
14 each Defendant has created an extensive number of websites and
15 accounts to distribute Korean pop music illegally over the
16 internet and that they have denied Plaintiffs significant revenue
17 that they would have achieved from the legitimate sales of this
18 music. Further, Defendants profit from their misconduct through
19 the sales of advertisements on their websites. Plaintiffs also
20 offer evidence that Defendants' infringement has been willful.
21 For example, Plaintiffs have shown that they have previously
22 attempted to address Defendants' infringement by sending them
23 notices through their third-party service providers or having
24 these providers shut down the accounts, and that this did not
25 deter Defendants, who simply opened new accounts or transferred to
26 their old accounts to new providers.

27

28

1 Thus, the Court concludes that an award of \$5,000 for each
2 act of infringement is reasonable. The Court awards Plaintiffs
3 \$315,000 against Bing Yang and \$900,000 against Indrawati Yang.

4 C. Post-Judgment Interest

5 "Interest shall be allowed on any money judgment in a civil
6 case recovered in a district court." 28 U.S.C. § 1961(a). Thus,
7 Plaintiffs are awarded such interest, which "shall be calculated
8 from the date of the entry of the judgment, at a rate equal to the
9 weekly average 1-year constant maturity Treasury yield, as
10 published by the Board of Governors of the Federal Reserve System,
11 for the calendar week preceding the date of the judgment." Id.

12 CONCLUSION

13 For the reasons set forth above, the Court declines to adopt
14 the Magistrate Judge's Report and Recommendation (Docket No. 34)
15 and GRANTS Plaintiffs' motion for default judgment (Docket No.
16 28). A permanent injunction shall be entered separately.

17 The Clerk shall enter default judgment for \$315,000 against
18 Bing Yang, \$900,000 against Indrawati Yang and post-judgment
19 interest on these amounts and close the file. Plaintiffs shall
20 recover their costs from Defendants.

21 IT IS SO ORDERED.

22
23 Dated: 3/28/2013


CLAUDIA WILKEN
United States District Judge

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