UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

BROADCAST MUSIC, INC.; MJ PUBLISHING TRUST d/b/a MIJAC MUSIC; FOURTEENTH HOUR MUSIC INC.; COTILLION MUSIC, INC. d/b/a PRONTO MUSIC; HOUSE OF CASH, INC.; RICK'S MUSIC, INC.; RED SEA SONGS; RONDOR MUSIC INTERNATIONAL, INC. d/b/a IRVING MUSIC; SONGS OF UNIVERSAL, INC.; KINGS ROAD MUSIC; PAUL SIMON MUSIC; EMI VIRGIN SONGS, INC. d/b/a EMI LONGITUDE MUSIC; SONY/ATV SONGS LLC; THE BERNARD EDWARDS COMPANY LLC; PAINTED DESERT MUSIC CORPORATION,

Plaintiffs,

v.

RHONDA ROSE ROASCIO, individually and d/b/a MOM & POP'S SALOON,

Defendant.
_____/

No. C 12-04740 LB

ORDER REASSIGNING CASE

REPORT AND RECOMMENDATION TO GRANT PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT

[RE: ECF NO. 15]

INTRODUCTION

Plaintiffs – Broadcast Music Inc. ("BMI"), a licensor of the right to publicly perform copyrighted music compositions, and the copyright owners of the ten compositions that are the subject of this lawsuit – sued Defendant Rhonda Roascio individually and doing business as Mom &

Pop's Saloon for copyright infringement. Compl., ECF No. 1.[1] The complaint alleges that Defendant infringed ten copyrights that Plaintiffs either own or have the right to license by publicly performing the songs in Mom & Pop's Saloon. *Id.* ¶¶ 20, 23. On March 25, 2013, the Clerk of the Court entered default against Defendant, and Plaintiffs now move for default judgment. *See* Entry of Default, ECF No. 12; Motion for Default Judgment ("Motion"), ECF No. 15. Plaintiffs consented to the undersigned's jurisdiction but Defendant has not appeared yet. *See* Plaintiffs' Consent, ECF No. 8. For the reasons below, the undersigned **ORDERS** that the case be reassigned to a district court judge and **RECOMMENDS** that the district court grant the motion for default judgment, award $17,593.40 in total statutory damages, attorney's fees, and costs, and enjoin Defendant from continuing to infringe the musical compositions at issue in this lawsuit.

STATEMENT

I. FACTUAL ALLEGATIONS

Plaintiff BMI is a corporation that has the right to license the public performance rights of approximately 7.5 million copyrighted musical compositions, including the ten that are the subject of this lawsuit. Compl., ECF No. 1, ¶ 4. The other plaintiffs are the copyright owners of at least one of ten musical compositions licensed to BMI and allegedly infringed by Ms. Roascio. *Id.* ¶¶ 5-19.

Defendant Rhonda Roascio operates, maintains, and controls Mom & Pop's Saloon, located at 205 Third Street, San Juan Bautista, California, 95045. Compl. ¶ 20. She is the sole owner of Mom & Pop's Saloon and has a direct financial interests in the establishment and the right and ability to supervise its employees. *Id.* ¶ 21.

The ten compositions at issue were registered with the Copyright Office, which issued a registration certificate for the compositions. *Id.* ¶ 2. They are as follows:

Song Title	Performer	Copyright Owner	Copyright Registration #s
Billie Jean	Michael Jackson	MJ Publishing Trust d/b/a Mijac Music	PA 158-77

[1] Citations are to the Electronic Case File ("ECF") with pin cites to the electronically-generated page number at the top of the document.

Aretha Franklin	Chain of Fools	Fourteenth Hour Music Inc.; Cotillion Music, Inc. d/b/a Pronto Music	Ep 244288, RE 742-859
Folsom Prison Blues	Johnny Cash	House of Cash, Inc.	RE 196-295, RE 153-380, Ep 102326
Funkytown	Lipps, Inc.	Rick's Music, Inc.; Steve Greenberg, an individual d/b/a Red Sea Songs	Pau 167-962
Hard to Handle	The Black Crowes	Rondor Music International, Inc. d/b/a Irving Music	Eu 58360, Ep 254414
Magic Carpet Ride	Steppenwolf	Songs of Universal, Inc.; Philip H. Gillin, an individual d/b/a Kings Road Music	Eu 83717
Slip Slidin' Away	Paul Simon	Paul Simon, an individual d/b/a Paul Simon Music	Eu 827814, PA 10-908
That's The Way (I Like It)	KC and The Sunshine Band	EMI Virgin Songs, Inc. d/b/a EMI Longitude Music	Eu 606200, Ep 359557
We Are Family	Sister Sledge	Sony/ATV Songs LLC; The Bernard Edwards Company LLC	Pau 76-307, PA 106-660
Ring of Fire	Toucher & Rich	Painted Desert Music Corporation	RE 498-587, Ep 167400

See Compl., ECF No. 1 at 6-10; Exhibit A to Steven's Decl., ECF No. 15-2 at 9-16.

Plaintiffs allege that at some point before February 2011, BMI learned that Mom & Pop's Saloon was offering musical entertainment without a license from BMI or permission from the copyright owners. Stevens Decl., ECF No. 15-1, ¶ 3. On February 18, 2011, BMI sent a letter to the business notifying it that a license was required to authorize the performance of such works. *Id.* ¶ 2. BMI received no response. *Id.* BMI sent similar letters on at least thirteen different occasions between March 31, 2011, and November 18, 2011, but still received no response. *See* Stevens Decl. ¶ 5; *id.* Ex. B, ECF No. 15-3 (copies of correspondence). On November 1, 2011, BMI sent Ms. Roascio two copies of a cease and desist notice, one via FedEx and the other by certified mail. Stevens Decl. ¶ 6.

The FedEx letter was returned as refused by recipient and the certified mail was returned unclaimed. *Id.* BMI sent additional letters on six different occasions between December 2, 2011, and April 11, 2012. *Id.*

During the same period, BMI licensing personnel telephoned Mom & Pop's Saloon on forty-four occasions and, "on a number of those occasions spoke to persons associated with the establishment's operation." *Id.* ¶ 8. Nevertheless, the parties failed to enter into a license agreement. *Id.* ¶ 10.

On May 4, 2012,[2] BMI had Victor Adams visit Mom & Pop's Saloon to make an audio recording and written report of the music being publicly performed at the business. *Id.* ¶ 11. Adams filled out a "Certified Infringement Report" in which he "certif[ied] . . . under penalty of perjury" that he heard two of the recordings – "Slip Slidin' Away" and "We Are Family" – that are the subject of this dispute. Stevens Decl. ¶ 11, Ex. A at 3. BMI analyzed Adams's audio recording using song identification technology and identified three additional compositions. *Id.* ¶ 12. Then, a BMI Performance Identification employee reviewed the recording and identified all ten allegedly infringed compositions. *Id.* ¶ 13.

On June 5, 2012, BMI sent a letter of the investigation results to Mom & Pop's via FedEx and First Class mail. *Id.* ¶ 14. The letter sent by FedEx was refused by the recipient. *Id.* BMI sent an additional letter on June 8, 2012. *Id.* BMI has not received any response to its letters and believes that Mom & Pop's is still publicly performing music licensed by BMI. *Id.* ¶ 17.

BMI alleges that the estimated license fees between February 2011 and January 2013 would have been approximately $2,745.00. *Id.*

II. PROCEDURAL HISTORY

Plaintiffs filed their complaint on September 11, 2012. Compl., ECF No. 1. On September 24, 2012, Plaintiffs served Ms. Roascio with the Summons, Complaint and related papers by substitute service, as permitted by Federal Rule of Civil Procedure 4(e)(1) and California Code of Civil Procedure § 415.20(a). Frank Decl., ECF No. 15-5, ¶ 4. Plaintiffs subsequently mailed additional

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[2] The Stevens Declaration says that Mr. Adams visited Mom & Pop's Saloon on May 5, 2012, *see* ¶¶ 11-12, but the attached "Certified Infringement Report" indicates the date was May 4, *See* Stevens Decl. Ex. A, ECF No. 15-2 at 2.

copies of the papers to her. *Id.* Ms. Roascio has not filed an Answer or otherwise appeared in this matter. *See generally* Docket.

On December 12, 2012, February 20, 2013, April 3, 2013, and June 20, 2013, Plaintiffs filed several case management statements, all of which were served on Defendant. *See* ECF Nos. 9, 10, 13, 16. All said that Plaintiffs had been in touch with Defendant to try to negotiate a settlement, and the last two said that the efforts had not been fruitful. *See id.*

On March 18, 2013, Plaintiffs moved for entry of default against Ms. Roascio, which the Clerk of the Court granted on March 25. ECF Nos. 11-12. Plaintiffs filed the motion for default judgment on June 4, 2013, which they served on Defendant, and asked for an injunction to prevent Defendant from infringing the copyrighted music and damages, costs, and attorney's fees in the amount of $17,593.40. ECF Nos. 15 at 2, 15-7 (proof of service). The court held a hearing on July 18, 2013, and Defendant did not appear.

ANALYSIS

I. JURISDICTION AND SERVICE

Before entering default judgment, a court must determine whether it has subject matter jurisdiction over the action and personal jurisdiction over the defendant. *See In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). A court must also ensure the adequacy of service on the defendant. *See Timbuktu Educ. v. Alkaraween Islamic Bookstore*, No. C 06–03025 JSW, 2007 WL 1544790, at *2 (N.D. Cal. May 25, 2007). Plaintiffs have satisfied all three requirements.

First, the court has subject matter jurisdiction because this action arises under the Copyright Act of 1976 and federal district courts have original jurisdictions over such actions. *See* Compl., ECF No. 1, ¶ 1; 17 U.S.C. § 101, *et seq.* (the "Copyright Act"); 28 U.S.C. § 1338(a). Second, the court has personal jurisdiction over Ms. Roascio and Mom & Pop's Saloon because the infringement took place at the saloon, which is located within this judicial district, and because Ms. Roascio owns the saloon and has the right and ability to supervise the employees there. Compl. ¶¶ 20-21; *see, e.g.*, *S.E.C. v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007); *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986).

Plaintiffs also adequately served Ms. Roascio. Federal Rule of Civil Procedure 4(e)(1) allows

for service "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." Fed. R. Civ. P. 4(e)(1). California law permits service

> by leaving a copy of the summons and complaint during usual office hours in his or her office or, if no physical address is known, at his or her usual mailing address, other than a United States Postal Service post office box, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first- class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. When service is effected by leaving a copy of the summons and complaint at a mailing address, it shall be left with a person at least 18 years of age, who shall be informed of the contents thereof. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

Cal. Code Civ. Proc. § 415.20(a).

Ms. Roascio was served by substitute service on September 24, 2012. Frank Decl., ECF No. 15-5, ¶ 4; *See also* Proof of Service, ECF No. 11-1. Plaintiffs also mailed additional copies of the Summons, Complaint and related papers on September 25, 2012. Frank Decl., ECF No. 15-5, ¶ 4. As summarized above in the case's procedural history, Plaintiffs served Defendant with all papers in the case along the way. Plaintiffs adequately served Ms. Roascio.

II. DEFAULT JUDGMENT

Plaintiffs move for default judgment under Federal Rule of Civil Procedure 55(b)(2). *See* Motion, ECF No. 15. A plaintiff may apply to the district court for – and the court may grant – a default judgment against a defendant who has failed to plead or otherwise defend an action. *See Draper*, 792 F.2d at 925. Whether to enter a judgment lies within the court's discretion. *Pepsico, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002). Still, "[a] defendant's default does not automatically entitle the plaintiff to a court-ordered judgment." *Draper* 792 F.2d at 924-25. Default judgments generally are disfavored because "cases should be decided on their merits whenever reasonably possible." *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986). Where the clerk has already entered default, courts generally take as true the factual allegations of the complaint (except as to damages) and may consider other competent evidence submitted. *See Fair Hous. of Marin v. Coombs*, 285 F.3d 899, 906 (9th Cir. 2002); *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

In deciding whether to enter a default judgment, the court should consider the following: (1) the

possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claims; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute about the material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel*, 782 F.2d at 1471-72. The court analyzes the individual factors below.

A. Possibility of Prejudice to the Plaintiff (The First *Eitel* Factor)

First, Plaintiffs will be prejudiced if default judgment is not entered. Because Defendant has refused to take part in the litigation, Plaintiffs will not be able to stop Ms. Roascio and her business from continuing to infringe Plaintiffs' copyrighted works. *See PepsiCo, Inc. v. California Security Cans*, 238 F. Supp.2d 1172, 1177 (C.D. Cal. 2002).

B. The Merits and Sufficiency of the Complaint (The Second and Third *Eitel* Factors)

The merits of Plaintiffs' claims and the sufficiency of the complaint favor entry of default judgment. To establish a claim for copyright infringement, a plaintiff (1) "must show ownership of the allegedly infringed material," and (2) "must demonstrate that the alleged infringer[] violate[d] at least one exclusive right granted to copyright holders under 17 U.S.C. § 106." *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001). Plaintiffs allege that each of the ten compositions at issue in this case is the subject of a valid copyright and that the Copyright Owner "complied in all respects with the requirements of the Copyright Act and received from the Register of Copyrights Certificates of Registration bearing the number(s) listed" in the complaint. Compl. at 4, 6-10; *see also Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 488-89 (9th Cir. 2000) ("Registration is prima facie evidence of the validity of a copyright."). Moreover, for each work, Ms. Roascio allegedly performed and/or caused the musical composition to be performed publicly without a license or permission to do so. Compl. ¶ 28; *see* 17 U.S.C. § 501(a) (infringement occurs when alleged infringer engages in activity listed in § 106); 17 U.S.C. § 106(4) (affording copyright owners of musical works the exclusive rights to perform the copyrighted work publicly or to authorize another to do so). Because the Clerk of the Court has entered default, all well-pleaded allegations in Plaintiffs' complaint regarding liability should be taken as true, except as to the amount of damages. *See Fair Hous. of Marin*, 285 F.3d at 906; *TeleVideo Sys., Inc.*, 826 F.2d at

917-18. Accordingly, Plaintiffs have adequately alleged valid claims for copyright infringement, and the second and third *Eitel* factors favor entry of default judgment.

C. The Sum of Money at Stake (The Fourth *Eitel* Factor)

When the money at stake in the litigation is substantial or unreasonable, default judgment is discouraged. *See Eitel*, 782 F.2d at 1472 (three-million dollar judgment, considered in light of parties' dispute as to material facts, supported decision not to enter default judgment); *Tragni v. Southern Elec. Inc.*, No. 09-32 JF, 2009 WL 3052635, at *5 (N.D. Cal. Sept. 22, 2009); *Board of Trustees v. RBS Washington Blvd, LLC*, No. C 09-00660 WHA, 2010 WL 145097, *3 (N.D. Cal. Jan. 8, 2010) (citing *Eitel*, 782 F.2d at 1472). When the sum of money at stake is tailored to the specific misconduct of the defendant, default judgment may be appropriate. *See Board of Trustees of the Sheet Metal Workers Health Care Plan v. Superhall Mechanical, Inc.*, No. C–10–2212 EMC, 2011 WL 2600898, at *3 (N.D. Cal. June 30, 2011) (the sum of money for unpaid contributions, liquidated damages, and attorneys fees were appropriate as they were supported by adequate evidence provided by plaintiffs).

Here, Plaintiffs' requested relief is not so large or burdensome to necessitate denying the motion solely on this basis. The Copyright Act authorizes statutory damages of $750 to $30,000 per infringed work. 17 U.S.C. § 504(c)(1). Plaintiffs seeks statutory damages of $1,000 per copyrighted recording ($10,000 total) and $7,943.40 in court costs and attorney's fees. Motion at 2. These amounts are not so large in light of the evidence provided by Plaintiffs. Accordingly, this factor also supports default judgment.

D. Possibility of a Factual Dispute or Excusable Neglect (The Fifth and Sixth *Eitel* Factors)

Because Ms. Roascio has not presented a defense or otherwise communicated with the Court, there is no indication that her default is due to excusable neglect or that the material facts are subject to dispute. *See Twentieth Century Fox Film Corp. v. Streeter*, 438 F. Supp. 2d 1065, 1071-72 (D. Ariz. 2006). Further, BMI's many letters and calls to Ms. Roascio and Mom & Pop's Saloon prior to and during this action reduce the likelihood of excusable neglect.

E. Policy Favoring Merits Decisions (The Seventh *Eitel* Factor).

Finally, although strong public policy favors decisions on the merits, *see Pena v. Seguros La*

Comercial, S.A., 770 F.2d 811, 814 (9th Cir. 1985), it does not appear that litigation of the merits will be possible due to Ms. Roascio's refusal to litigate.

In sum, the court finds that all of the *Eitel* factors weigh in favor of granting the default judgment. The court recommends the district court grant Plaintiffs' motion for entry of default judgment.

III. THE RELIEF SOUGHT

Plaintiffs request a judgment awarding them statutory damages, injunctive relief, costs, and attorney's fees. *See* Motion, ECF No. 15. The court addresses each in turn.

A. Statutory Damages Under 17 U.S.C. § 504(c)

Plaintiffs seek statutory damages under the Copyright Act, which provides for statutory damages in lieu of actual damages at the plaintiff's option. *See* 17 U.S.C. § 504(c). The standard spectrum of statutory damages ranges from $750 to $30,000 "for all infringements involved in the action, with respect to any one work, . . . as the court deems just." *Id.* Within those limits, a district court "has wide discretion in determining the amount of statutory damages to be awarded." *Peer Int'l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990). The court's assessment should be guided by "the nature of the copyright [and] the circumstances of the infringement." *Id.* (quoting *F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 232 (1952)).

Here, Plaintiffs seek statutory damages of $1,000.00 per infringed work for a total of $10,000.00. According to Plaintiffs' evidence, this is slightly less than four times what it would have cost Ms. Roascio to purchase a BMI license agreement covering the period between February 2011 and January 2013. Stevens Decl., ECF No. 15-1, ¶ 17 (the estimated license fee for this period is approximately $2,745.00 and the current annual license fee is approximately $1,425.00). There is no information about how much Defendant made or continues to make from the alleged infringement.

On this record, and in the context of a default judgment, the court does not recommend granting the $10,000.00 based on the value of the BMI license agreement and instead recommends granting it as reasonable statutory damages. As to whether the cost of a BMI license agreement is a fair measure upon which to base the statutory damages award here, BMI grants licenses to "publicly

perform any of the works in BMI's repertoire by means of 'blanket license agreements.'" Wolfe Decl., ECF No. 15-4, ¶ 2. But BMI's blanket license agreements cover "over 7.5 million musical compositions." *See id.* ¶ 5. Ms. Roascio infringed only 10 of them. Even considering the cases that base infringement awards on the cost of a blanket license agreement, "the four-fold multiple of license fees is at the upper range of many statutory damages awards throughout the county." *Broadcast Music, Inc. v. Kiflit*, No. 12-CV-00856-LHK, 2012 WL 4717852, at *4 (N.D. Cal. Oct. 2, 2012) (collecting cases and reducing statutory damages award to three time the cost of a BMI blanket license agreement); *accord Broadcast Music, Inc. v. Paden*, No. 5:11-02199-EJD, 2011 WL 6217414, at *5 (N.D. Cal. Dec. 14, 2011) (same).[3]

That being said, while the $10,000.00 is greater than the damages awards deemed common in *Kiflit*, $1,000.00 per infringed work is on the low end of the statutory damages range. *See* 17 U.S.C. § 504(c). In addition, Plaintiffs (through BMI and their outside counsel) acted diligently for over two years to try to arrange a license or a settlement. The undersigned recommends the award as appropriate.

B. Injunctive Relief Under 17 U.S.C. § 502(a)

1. Injunctive Relief is Appropriate

Plaintiffs ask the court to issue a permanent injunction barring "Defendant, her agents, servants, employees, and all persons acting under her permission and authority . . . from infringing, in any manner the copyrighted musical compositions licensed by BMI, pursuant to 17 U.S.C. [§] 502." Complaint at 5; *see* Motion at 2.

The Copyright Act, 17 U.S.C. § 502(a), allows a court to "grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright." 17 U.S.C. § 502(a). "As a general rule, a permanent injunction will be granted when liability has been established and there is a threat of continuing violations." *MAI Systems Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 520 (9th Cir. 1993).

On this record, the court finds that injunctive relief is appropriate. As discussed, Plaintiffs have

[3] With only ten copyright owners joined, the court is disinclined to peg relief to a portfolio approach for reasons similar to those discussed infra in note 4 about the scope of injunctive relief.

established that Ms. Roascio is liable for copyright infringement. On the record presented, there is also a threat of continuing violations. First, it would be relatively easy for Ms. Roascio to continue to infringe Plaintiffs' compositions by playing them at Mom & Pop's Saloon. Ms. Roascio infringed Plaintiffs' copyrights more than a year after BMI began sending her cease and desist letters. *See* Stevens Decl. Ex. B, ECF No. 15-3 at 3 (2/8/11 cease and desist letter); *Id.* Ex. A, ECF No. 15-2 at 3 (5/10/12 Certified Infringement Report). Second, despite BMI's ongoing attempts to engage with her, Ms. Roascio failed to respond or appear in this action.

2. The Scope of the Injunction

The scope of an injunction "must be tailored to remedy the specific harm alleged. An overbroad injunction is an abuse of discretion." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (quoting *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991)) (internal citation omitted). In the copyright context, "the scope of the injunction should be coterminous with the infringement." 4 Nimmer & Nimmer, *Nimmer on Copyright*, § 14.06[C].

In addition, Federal Rule of Civil Procedure 65 requires "[e]very order granting an injunction" to "state its terms specifically" and to "describe in reasonable detail – and not by referring to the complaint or other document – the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1)(B)-(C). "'[O]ne basic principle built into Rule 65 is that those against whom an injunction is issued should receive fair and precisely drawn notice of what the injunction actually prohibits.'" *Columbia Pictures Indus., Inc. v. Fung*, 710 F.3d 1020, 1047-48 (9th Cir. 2013) (quoting *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1086–87 (9th Cir. 2004)). "The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." *Id.* Generally speaking, "an ordinary person reading the court's order should be able to ascertain from the document itself exactly what conduct is proscribed." *Id.* (citing 11A Charles A. Wright *et al.*, *Federal Practice & Procedure* § 2955 (2d ed.)).

Plaintiffs ask the court to bar Ms. Roascio from infringing "the copyrighted musical compositions licensed by BMI." Complaint at 5. An issue here is that Plaintiffs have established Ms. Roascio's liability for infringing only 10 of the 7.5 million works in BMI's nonexclusive

licensing portfolio, and only the copyright owners for those works are Plaintiffs in the case. The broad language in the proposed injunction covers works that Ms. Roascio has not infringed and that the copyright owners do not own.[4] The proposed injunction also does not list the 7.5 million works BMI licenses, which – even without the interplay with Plaintiffs' ownership – is a notice issue. A narrower injunction that still accomplishes BMI's purpose is to enjoin only the copyrighted musical compositions listed on the chart on pages 2 and 3 of this report and recommendation. That is the recommendation here. As the court discussed with BMI at the hearing, this accomplishes what BMI wants: a money judgment as a consequence for infringement, an injunction against future infringement of the BMI-licensed works that are listed in the chart, and notice of the consequences of future infringement of BMI-licensed copyrighted works.

C. Costs and Attorney's Fees Under 17 U.S.C. § 505

Under Section 505 of the Copyright Act, courts have discretion to award reasonable attorney's fees and costs to the prevailing party in a copyright action. 17 U.S.C. § 505. The Ninth Circuit employs the lodestar approach to determine whether a fee request is reasonable. *Jordan v. Multnomath County*, 815 F.2d 1258, 1262-63 (9th Cir. 1987). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). *See also Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The lodestar is deemed to be presumptively reasonable, though the district court has the discretion to consider an upward or downward adjustment. *Camacho*, 523 F.3d at 978.

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[4] BMI's licensing agreement with the copyright owners is explained in ECF No. 18, which it filed in response to the undersigned's order for clarification of the arrangement. *See* Order, ECF No. 17. The copyright owners (called affiliates in the licensing agreements) retain their right to separately grant permission to a particular user for public performance of their copyrighted songs. At the pleadings stage, with the joinder of the copyright owners for the ten works at issue, without any argument to the contrary by the defaulting defendant, and only on this record, the undersigned concludes that the complaint's allegation of licensing and ownership are sufficient to survive the "plausibility" standard and allow the relief that the copyright owner Plaintiffs request collectively with BMI for the ten works at issue in the lawsuit. That being said, the record does not support a broad injunction for the entire BMI catalogue given the interplay between non-exclusive licensing and ownership and instead supports the more tailored injunction that the court recommends granting.

Here, Plaintiffs seek an award of $6,892.50 in attorney's fees and $700.90 in costs. Frank Decl., ECF No. 15-5, ¶ 9. According to attorney Karen Frank, she billed $3,622.50 (6.3 hours at $575 per hour). Ms. Frank states that she has "represented BMI in many copyright infringement litigations in Northern California" and is "very familiar with the law, the issues and the procedures in this kind of litigation." *Id.* ¶ 2. Ms. Frank also states that her associate Jeremiah Burke billed $3,270.00 (10.9 hours at $300 per hour). *Id.* Ms. Frank's declaration describes the tasks the attorneys completed and the amount of time spent on each task in one-tenth hour increments. *Id.* ¶ 10. The specified tasks are appropriate for this type of litigation and the hours billed appear reasonable.

Plaintiffs' submissions do not describe Mr. Burke's relevant qualifications and experience or provide documentation supporting either attorney's hourly rate. In similar cases, courts required supplemental declarations justifying their hourly rates. *See, e.g.*, *Kiflit*, 2012 WL 471852, at *5; *Broadcast Music Inc. v. Antigua Cantina & Grill, LLC*, No. 2:12-cv-1196 KJM DAD, 2012 WL 2244641 (E.D. Cal. May 21, 2013). The court does not require the submissions here because those cases confirm that the rates are normal and appropriate, given counsel's experience with these cases. The rates also are in line with those charged in the San Francisco market for partners and associates in copyright litigation. Accordingly, the undersigned recommends the fee request of $6,892.50.

The costs are $490.00 in filing fees and $210.90 in process server fees for a total of $700.90. Frank Decl. ¶ 11. These are reasonable, and the court recommends an award of them.

D. Interest Under 28 U.S.C. § 1961

Plaintiff asks for interest on the judgment under 28 U.S.C. § 1961, which provides that interest is allowed on "any money judgment recovered in a district court." The undersigned recommends it. *See Broadcast Music Inc.*, 2012 WL 4717852 at *5 (awarding it in like circumstances).

CONCLUSION

For the above reasons, the court the undersigned **ORDERS** that the case be reassigned to a district court judge and **RECOMMENDS** that the district court **GRANT** Plaintiffs' motion for default judgment and award them a total monetary award of $17,593.40 as follows: $10,000.00 in statutory damages, $6,892.50 in attorney's fees, $700.90 in costs, and interest on the judgment. The court also **RECOMMENDS** that the district court enjoin Defendant from infringing the BMI-

licensed copyrighted musical compositions listed on the chart on pages 2 and 3.

Plaintiffs must serve Ms. Roascio with a copy of this report and recommendation. Any party may file objections to this Report and Recommendation with the district judge within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); N.D. Cal. Civ. L.R. 72. Failure to file an objection may waive the right to review of the issue in the district court. This disposes of ECF No. 15.

IT IS SO ORDERED AND RECOMMENDED.

Dated: July 18, 2013

LAUREL BEELER
United States Magistrate Judge