

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Wiley Y. Daniel

Civil Action No. 12-cv-03146-WYD-MEH

reFX AUDIO SOFTWARE, INC.,

Plaintiff,

v.

DARRYL JOHONSON II;
ELEANOR TURNER;
KEITH ESTES; and,
NICOLE FIELDS,

Defendants.

**ORDER AFFIRMING AND ADOPTING RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE**

THIS MATTER is before the Court on plaintiff, reFX Audio Software, Inc.'s Amended Motion And Memorandum For Default Judgment Against Defendants Darryl Johnson II, Eleanor Turner, And Nicole Fields [ECF No. 110] and Magistrate Judge Hegarty's Recommendation [ECF No. 114]. I referred reFX Audio Software, Inc.'s motion to Magistrate Judge Hegarty on November 25, 2013. ECF No. 113. On December 9, 2013, Magistrate Judge Hegarty issued his Recommendation and stated that reFX Audio Software, Inc.'s motion should be granted in part and denied in part. Magistrate Judge Hegarty's Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1), Rule 72(b) of the FEDERAL RULES of CIVIL PROCEDURE, and D.C.COLO.LCivR. 72.1.

Magistrate Judge Hegarty advised the parties that they had 14 days after service of a copy of his Recommendation to file objections to the Recommendation. ECF No. 114, p. 1, n.1. As of Tuesday, May 20, 2014, no party has filed objections. Because the parties did not file objections, I am vested with discretion to review the Recommendation “under any standard [I] deem[] appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that “[i]t does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings”). Nonetheless, though not required to do so, I review the Recommendation to “satisfy [my]self that there is no clear error on the face of the record.”¹ Advisory Committee Notes to FED. R. CIV. P. 72(b).

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I find that Magistrate Judge Hegarty’s Recommendation is thorough, well-reasoned, and sound. Further, I agree that reFX Audio Software, Inc.’s Amended Motion And Memorandum For Default Judgment Against Defendants Darryl Johnson II, Eleanor Turner, And Nicole Fields [ECF No. 110] should be granted in part and denied in part.

CONCLUSION

After careful consideration of the matter before this Court, it is
ORDERED that Magistrate Judge Hegarty’s Recommendation [ECF No. 114] is
AFFIRMED and ADOPTED. As such, it is

¹ Note, this standard of review is something less than a “clearly erroneous or contrary to law” standard of review, FED. R. CIV. P. 72(a), which in turn is less than a *de novo* review, FED. R. CIV. P. 72(b).

FURTHER ORDERED reFX Audio Software, Inc.'s Amended Motion And Memorandum For Default Judgment Against Defendants Darryl Johnson II, Eleanor Turner, And Nicole Fields [ECF No. 110] is **GRANTED IN PART** and **DENIED IN PART**. The motion is **GRANTED** in that:

- (1) judgment is **ENTERED IN FAVOR** of reFX Audio Software, Inc. **AGAINST** defendants, Darryl Johnson II, Eleanor Turner, and Nicole Fields for direct copyright infringement of reFX Audio Software, Inc.'s copyrighted software, as set forth in Counts I and II of the First Amended Complaint [ECF No. 55];
- (2) defendant, Darryl Johnson II, **SHALL PAY** reFX Audio Software, Inc. \$7,500.00 in statutory damages, as authorized by 17 U.S.C. § 504(c)(1), and \$604.44 in attorney fees and costs as authorized by 17 U.S.C. § 505;
- (3) defendant, Eleanor Turner, **SHALL PAY** reFX Audio Software, Inc. \$13,250.00 in statutory damages, as authorized by 17 U.S.C. § 504(c)(1), and \$604.44 in attorney fees and costs as authorized by 17 U.S.C. § 505;
- (4) defendant, Nicole Fields, **SHALL PAY** reFX Audio Software, Inc. \$2,750.00 in statutory damages, as authorized by 17 U.S.C. § 504(c)(1), and \$604.44 in attorney fees and costs as authorized by 17 U.S.C. § 505; and,
- (5) defendants, Darryl Johnson II, Eleanor Turner, and Nicole Fields **SHALL PERMANENTLY DESTROY** all digital media files relating to, and copies of, reFX Audio Software, Inc.'s copyrighted software made or used by them in violation of reFX Audio Software, Inc.'s exclusive rights, as well

as all masters in their possession, custody, or control from which such copies may be reproduced.

The motion is **DENIED** to the extent that reFX Audio Software, Inc. requests this Court to permanently enjoin defendants, Darryl Johnson II, Eleanor Turner, and Nicole Fields from continuing to infringe on reFX Audio Software, Inc.'s copyrighted software.

Dated: May 20, 2014.

BY THE COURT:

/s/ Wiley Y. Daniel
Wiley Y. Daniel
Senior U. S. District Judge