

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

Civil Action No. 13-cv-01001-WYD-MEH

MALIBU MEDIA, LLC,

Plaintiff,

v.

DAVID KORNMEYER,

Defendant.

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

THIS MATTER is before the Court in connection with Plaintiff's Motion for Entry of Default Judgment Against Defendant David Kornmeyer ("Kornmeyer") filed September 24, 2013. This motion was referred to Magistrate Judge Hegarty for a recommendation. A Recommendation of United States Magistrate Judge ("Recommendation") was issued on October 22, 2013, and is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Magistrate Judge Hegarty recommends therein that Plaintiff's Motion for Entry of Default Judgment be granted in part and denied in part. (See Recommendation at 1, 16.) Specifically, he first notes that Defendant Kornmeyer did not answer or respond to the Amended Complaint before the deadline, and that an Entry of Default was docketed by the Clerk of the Court on August 22, 2013. (*Id.* at 8.)

Magistrate Judge Hegarty then recommends finding that default judgment be entered in Plaintiff's favor against Kornmeyer pursuant to Fed. R. Civ. P. 55(b)(2). (Recommendation at 10.) In support of this, he finds that the Court has jurisdiction and that "Plaintiff has established violations of its copyrights by Defendant Kornmeyer, in that a computer at Kornmeyer's residence participated in an illegal download of twenty-six (26)" of Plaintiff's copyrighted works. (*Id.*) Thus, Magistrate Judge Hegarty recommends that the Court find that Kornmeyer has committed twenty-six (26) direct infringements of the Copyright Act against Plaintiff. (*Id.* at 14.) He also recommends that Kornmeyer be ordered to pay Plaintiff \$58,500.00 in statutory damages (\$2,250.00 per infringement) as authorized by 17 U.S.C. § 504(c)(1), and \$2,995.00 for attorney's fees and costs as authorized by 17 U.S.C. § 505. (*Id.* at 14-16.)

Finally, Magistrate Judge Hegarty recommends that the Court grant in part and deny in part Plaintiff's request for injunctive relief. (Recommendation at 16.) Thus, it is recommended that Plaintiff's request for an order directing Kornmeyer to "delete and permanently remove the digital media files relating to Plaintiff's works" and to "delete and permanently remove the infringing copies of the works" from each of the computers under Kornmeyer's possession, custody or control" be granted as reasonable. (*Id.*) On the other hand, Magistrate Judge Hegarty recommends that the request to enjoin Kornmeyer "from continuing to infringe Plaintiff's copyrighted works" be denied, as he finds that Plaintiff failed to proffer evidence sufficient to justify this request. (*Id.*)

Magistrate Judge Hegarty advised the parties that written objections were due within fourteen (14) days after service of the Recommendation. (Recommendation at 1

n. 1.) Despite this advisement, no objections were filed to the Recommendation. No objections having been filed, 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 See Fed. R. Civ. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. The Recommendation is well reasoned and persuasive. I agree that Plaintiff should be granted default judgment against Defendant Kornmeyer for direct copyright infringement of Plaintiff’s copyrighted works. I further agree with the recommendation on damages—that Kornmeyer should pay Plaintiff \$58,500.00 in statutory damages and \$2,995.00 for attorney’s fees and costs. Finally, I agree that Plaintiff’s request for injunctive relief should be granted in part and denied in part as set forth in the Recommendation. Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge dated October 22, 2013 (ECF No. 27) is **AFFIRMED and ADOPTED**. In accordance therewith, 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).

ORDERED that Plaintiff's Motion for Entry of Default Judgment Against Defendant David Kornmeyer (ECF No. 24) is **GRANTED IN PART AND DENIED IN PART**; namely, it is granted as to the request for a default judgment and for damages, and granted in part and denied in part as to the request for injunctive relief. Therefore, it is

ORDERED that the Clerk of Court shall enter judgment in Plaintiff's favor against Defendant David Kornmeyer for direct copyright infringement of Plaintiff's copyrighted works, as set forth in Count I of the Complaint. It is

FURTHER ORDERED that Defendant Kornmeyer shall pay Plaintiff the sum of \$58,500.00 in statutory damages and \$2,995.00 for attorney's fees and costs. It is

FURTHER ORDERED that Defendant Kornmeyer shall permanently destroy all the digital media files relating to, and copies of, Plaintiff's copyrighted works made or used by him in violation of Plaintiff's exclusive rights, as well as all master copies in his possession, custody or control from which such copies may be reproduced. Finally, it is

ORDERED that Plaintiff's request to "[p]ermanently enjoin Defendant and all other persons who are in active concert or participation with Defendant from continuing to infringe Plaintiff's copyrighted works" is denied.

Dated: November 18, 2013

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Senior United States District Judge