

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

Civil Action No. 13-cv-01167-WYD-MEH

PURZEL VIDEO GmbH,

Plaintiff,

v.

BENITO SMOAK,

Defendant.

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

THIS MATTER is before the Court on Plaintiff's Motion and Memorandum for Default Judgment against Defendant Benito Smoak (ECF No. 69). In his Recommendation, Magistrate Judge Hegarty recommends that the pending motion be granted in part and denied in part. (Recommendation at 1, 16-17). The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b).

Magistrate Judge Hegarty advised the parties that written objections were due within fourteen (14) days after service of a copy of the Recommendation. (Recommendation at 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. I find that Magistrate Judge Hegarty's Recommendation is thorough, well-reasoned and sound. I agree with Magistrate Judge Hegarty that the pending motion should be granted in part and denied in part for the reasons stated in both the Recommendation and this Order.

Based on the foregoing, it is

ORDERED that the Recommendation of United States Magistrate Judge Hegarty (ECF No. 72) is **AFFIRMED** and **ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Plaintiff's Motion and Memorandum for Default Judgment against Defendant Benito Smoak (ECF No. 69) is **DENIED IN PART AND GRANTED IN PART** as follows:

1. Judgment shall enter in Plaintiff's favor against Defendant Benito Smoak for direct copyright infringement of Plaintiff's copyrighted work and contributory infringement, as set forth in Counts I and II of the Amended Complaint;

2. Defendant Smoak shall pay to Plaintiff the sum of \$2,250.00 in statutory damages, as authorized by 17 U.S.C. § 504(c)(1), and \$1,047.50 for attorney's fees and

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).

costs as authorized by 17 U.S.C. § 505;

3. Defendant Smoak shall permanently destroy all the digital media files relating to, and copies of, Plaintiff's copyrighted work 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; and

4. Plaintiff's request for "entry of preliminary and permanent injunctions providing that [Smoak] shall be enjoined from directly or indirectly infringing Plaintiff's rights in the copyrighted Motion Picture" is **DENIED**.

Dated: October 1, 2014

BY THE COURT:

s/ Wiley Y. Daniel
WILEY Y. DANIEL,
SENIOR UNITED STATES DISTRICT JUDGE