

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

Civil Action No. 14-cv-00179-WYD-MEH

MALIBU MEDIA, LLC,

Plaintiff,

v.

ANDREW DAVIS,

Defendant.

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

THIS MATTER is before the Court on Plaintiff's Motion for Entry of Default Judgment against Defendant Andrew Davis (ECF No. 28). In his Recommendation, Magistrate Judge Hegarty recommends that the pending motion be granted in part and denied in part. (Recommendation at 1, 15-16). 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 a default should enter in favor of the Plaintiff and against Defendant Andrew Davis 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. 31) is **AFFIRMED** and **ADOPTED**. It is

FURTHER ORDERED that Plaintiff's Motion for Entry of Default Judgment against Defendant Andrew Davis (ECF No. 28) is **GRANTED IN PART AND DENIED IN PART** as follows:

1. Judgment shall enter in Plaintiff's favor against Defendant Davis for direct copyright infringement of the Plaintiff's copyrighted works, as set forth in Count I of the Amended Complaint;

2. Defendant Davis is ordered to pay to Plaintiff the sum of \$31,500.00 in statutory damages, as authorized by 17 U.S.C. § 504(c)(1), and \$1,652.00 for attorney's fees and costs as authorized by 17 U.S.C. § 505;

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).

3. Defendant Davis is ordered to permanently destroy all of 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 masters in his possession, custody or control from which such copies may be reproduced; and

4. Plaintiff's request, if sought, 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: February 2, 2015

BY THE COURT:

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