

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CRIMINAL PRODUCTIONS, INC.,

Plaintiff,

v.

DARRELL GUNDERMAN, *et al.*,

Defendants.

Case Nos. C16-729-RAJ; C16-1177-
RAJ; C16-1272-RAJ; C16-1351-
RAJ; C16-1352-RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on Plaintiff Criminal Productions, Inc.'s sixteen nearly identical motions for default judgment in the above captioned cases. Plaintiff seeks default judgment against the following Defendants: Reina Marroquin, Greg Gordon Sr., Michael Stoker, Maria Hull, Collin Kelly, Phillip Pisciotta, Jeff Corder, Kueejin Eum, James Puckett, Liang Deng, Valerie Mosser, Joseph David Orndonez, Kristin White, Blessings Kambala, Liam McDonald, and Sarah Larson. These motions are noted on the Court's docket as follows: C16-729-RAJ, Dkt. # 88 (Marroquin), # 90 (Gordon Sr.); C16-1177-RAJ, Dkt. # 49 (Stoker), # 51 (Hull); C16-1272-RAJ, Dkt. # 62 (Kelly), # 64 (Pisciotta), # 66 (Corder), # 68 (Eum), # 70 (Puckett); C16-1352-RAJ, Dkt. # 66 (Deng), # 68 (Mosser), # 70 (Orndonez), # 72 (White), # 74 (Kambala); C16-1351-RAJ, Dkt. # 61 (McDonald), and Dkt. # 63 (Larson). For the reasons that follow, the Court **GRANTS** the motions and enters default judgment against Defendants.

ORDER – 1

II. BACKGROUND

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2 These cases are among ten nearly identical actions filed between May 2016 and
3 January 2017 alleging copyright infringement by various Doe Defendants who
4 participated in BitTorrent “swarms.”

5 The facts are straightforward. Plaintiff is a developer and producer of the motion
6 picture *Criminal*. See, e.g., C16-729, Dkt. # 14 (Am. Compl.) ¶¶ 5-6. Plaintiff owns a
7 registered copyright in *Criminal*, Registration No. PA 1-984-029. *Id.* ¶ 6. All
8 Defendants—including those against whom Plaintiff seeks default judgment—are alleged
9 to have participated in a peer-to-peer network using the BitTorrent protocol¹ to download
10 and share *Criminal*. These Defendants are each alleged to have used or shared an IP
11 address which was observed sharing *Criminal*.² Plaintiff has not authorized any
12 Defendant to use an online media distribution system, including BitTorrent, to
13 misappropriate, reproduce, or distribute *Criminal* to the public. See, e.g., C16-729,
14 Dkt. # 14 (Am. Compl.) ¶ 46.

15 The Court has entered an order of default for failure to answer, plead, or otherwise
16 defend as to each of the Defendants against whom Plaintiff seeks default judgment. *Id.*,
17 Dkt. # 82 (Marroquin and Gordon Sr.); C16-1177, Dkt. # 38 (Hull), # 42 (Stoker); C16-

18 ¹ Numerous courts have described in detail how the BitTorrent protocol works. See e.g.,
19 *Purzel Video GmbH v. Biby*, 13 F. Supp. 3d 1127, 1131-33 (D. Colo. 2014); *Patrick Collins, Inc.*
20 *v. John Does 1-21*, 282 F.R.D. 161, 162-64 (E.D. Mich. 2012); *Malibu Media, LLC v. John Does*
1-5, 285 F.R.D. 273, 275-76 (S.D.N.Y. 2012).

21 ² The Defendants’ alleged IP addresses and date of violation are as follows: Marroquin,
22 73.221.47.207 on May 3, 2016 (C16-729, Dkt. # 14 (Am. Compl.) ¶ 19); Gordon Sr.,
23 71.197.242.154 on April 26, 2016 (*id.* ¶ 26); Stoker, 73.225.204.162 on July 18, 2016 (C16-
24 1177, Dkt. # 16 (Am. Compl.) ¶ 20); Hull, 71.231.85.148 on July 14, 2016 (*id.* ¶ 28); Kelly,
25 67.185.8.136 on August 7, 2016 (C16-1272, Dkt. # 15 (Am. Compl.) ¶ 18); Pisciotta,
26 73.181.163.149 on August 3, 2016 (*id.* ¶ 19); Corder, 67.168.217.182 on August 1, 2016 (*id.*
27 ¶ 21); Eum, 73.225.141.5 on August 1, 2016 (*id.* ¶ 22); Puckett, 24.19.94.31 on July 15, 2016
28 (*id.* ¶ 32); Deng, 24.22.134.187 on August 21, 2016 (C16-1352, Dkt. # 13 (Am. Compl.) ¶ 20);
Mosser, 73.221.119.229 on August 15, 2016 (*id.* ¶ 22); Orndonez, 73.83.51.123 on August 10,
2016 (*id.* ¶ 27); White, 73.225.182.183 on August 9, 2016 (*id.* ¶ 28); Kambala, 73.35.159.123 on
August 6, 2016 (*id.* ¶ 30); McDonald, 73.53.104.244 on July 25, 2016 (C16-1351, Dkt. # 15
(Am. Compl.) ¶ 29); Larson, 73.140.120.225 on August 8, 2016 (*id.* ¶ 19).

1 1272, Dkt. # 49 (Kelly, Pisciotta, Corder, Eum, and Puckett); C16-1352, Dkt. # 36
2 (Mosser and White), # 49 (Deng, Orndonez, and Kambala); C16-1351-RAJ, Dkt. # 42
3 (McDonald), Dkt. # 39 (Larson).

4 **III. LEGAL STANDARD**

5 Federal Rule of Civil Procedure 55(b) authorizes a court to grant default judgment.
6 Typically, default judgment is entered after the Clerk of Court has entered default under
7 Federal Rule of Civil Procedure 55(a), but district courts also have that authority. *See*
8 *Dreith v. Nu Image, Inc.*, 648 F.3d 779, 789 (9th Cir. 2011). The Court’s role in
9 considering a motion for default judgment is not ministerial. The Court must accept all
10 well-pleaded allegations of the complaint as established fact, except facts related to the
11 amount of damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir.
12 1987). Where those facts establish a defendant’s liability, the Court has discretion, not an
13 obligation, to enter a default judgment. *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d
14 1388, 1392 (9th Cir. 1988); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). The
15 plaintiff must provide evidence to support a claim for a particular sum of damages.
16 *TeleVideo Sys.*, 826 F.2d at 917-18; *see also* Fed. R. Civ. P. 55(b)(2)(B). Where the
17 plaintiff cannot prove that the sum he seeks is “a liquidated sum or capable of
18 mathematical calculation,” the Court must conduct a hearing or otherwise ensure that the
19 damage award is appropriate. *Davis v. Fendler*, 650 F.2d 1154, 1161 (9th Cir. 1981).

20 **IV. DISCUSSION**

21 **A. Whether Plaintiff Has Proven Copyright Infringement**

22 Plaintiff must first prove the respective Defendants’ liability. To establish
23 copyright infringement, Plaintiff must show two elements: “(1) ownership of a valid
24 copyright, and (2) copying of constituent elements of the work that are original.” *L.A.*
25 *Printex Indus., Inc. v. Aeropostale, Inc.*, 676 F.3d 841, 846 (9th Cir. 2012) (quoting *Feist*
26 *Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991)).

27 Plaintiff has alleged and shown its ownership of a valid and registered copyright in

1 the *Criminal* film. See, e.g., C16-729, Dkt. # 14 (Am. Compl.) ¶¶ 1, 6; *id.*, Dkt. # 15 at 2-
2 3 (Certificate of Registration). This “is considered prima facie evidence of the validity of
3 the copyright.” *Syntek Semiconductor Co., Ltd. v. Microchip Tech. Inc.*, 307 F.3d 775,
4 781 (9th Cir. 2002); see also 17 U.S.C. § 410(c). As such, Plaintiff has established the
5 first element.

6 The Court also finds that Plaintiff has adequately alleged that each of the
7 Defendants copied pieces of *Criminal*. Each of the relevant Amended Complaints
8 specifically alleges that the relevant Defendants’ IP addresses were observed copying
9 pieces (or the entirety) of *Criminal*. The complaints also allege that the “physical make
10 up and layout” of Defendants’ residences and the security measures taken by Comcast IP
11 make it unlikely that these IP addresses were hijacked by others. The complaints further
12 allege that the infringing activity was not an isolated incident and would have diminished
13 the bandwidth of Defendants’ Internet connections such that they would likely have been
14 aware that it was occurring. The Court must deem the facts in the Amended Complaints
15 to be true for the purposes of establishing liability. See *Derek Andrew, Inc. v. Poof*
16 *Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008). As such, the Court must find that the
17 second element has been met and that Plaintiff has established the Defendants’ liability
18 for copyright infringement.

19 **B. Whether Default Judgment is Warranted**

20 Having established liability, Plaintiff must also show that default judgment is
21 warranted. Courts often apply the factors listed in *Eitel v. McCool*, 782 F.2d 1470, 1471-
22 72 (9th Cir. 1986) to determine if default judgment is appropriate. Those factors are: (1)
23 the possibility of prejudice to plaintiff, (2) the merits of plaintiff’s substantive claims, (3)
24 the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the
25 possibility of a dispute concerning the material facts; (6) whether defendant’s default was
26 the product of excusable neglect, and (7) the strong public policy favoring decisions on
27 the merits. *Id.*

1 The factors weigh in favor of granting default judgment. Without entry of default
2 judgment, Plaintiff will be prejudiced because it will be left without a proper remedy.
3 *See Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal.
4 2010). As discussed above, Plaintiff has adequately alleged and shown the Defendants’
5 liability. The amount at stake in each case is also relatively modest—Plaintiff seeks
6 statutory damages of at least \$2,500 and costs and attorneys’ fees of approximately
7 \$4,000. It is unlikely that the Defendants’ failure to respond is the product of excusable
8 neglect. Plaintiff properly served or obtained waiver of service as to each of the
9 Defendants, meaning that they likely had ample notice of the action.

10 The Court acknowledges that a dispute may arise concerning material facts,
11 including whether the Defendants are the actual infringers. *See In re BitTorrent Adult*
12 *Film Copyright Infringement Cases*, 296 F.R.D. 80, 84 (E.D.N.Y. 2012) (finding that “it
13 is no more likely that the subscriber to an IP address carried out a particular computer
14 function . . . than to say an individual who pays the telephone bill made a specific
15 telephone call.”). The Court, however, finds that such a possibility is insufficient to
16 overcome the other factors weighing in favor of granting default judgment, especially as
17 each of the Defendants was personally served or waived service, giving them ample
18 opportunity to contest the allegations. Finally, although there is a strong policy for
19 deciding cases on their merits (*see Eitel*, 782 F.2d at 1472), Defendants’ failure to
20 respond to Plaintiff’s claims means that this factor does not preclude entry of default
21 judgment (*see Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998, 1013 (C.D. Cal. 2014)).

22 As the *Eitel* factors generally weigh in favor of granting default judgment, the
23 Court will **GRANT** Plaintiff’s motions. What remains to be determined is what relief
24 Plaintiff should be awarded.

25 **C. Appropriate Relief**

26 Plaintiff requests three categories of relief: (1) permanent injunctive relief, (2)
27 statutory damages not less than \$2,500, and (3) attorneys’ fees and costs.

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i. Injunctive Relief

Plaintiff first requests an injunction enjoining Defendants from infringing on Plaintiff's rights in *Criminal*, including through using the Internet. 17 U.S.C. § 502(a) permits a court to grant final injunctions to "prevent or restrain infringement of a copyright." Under 17 U.S.C. § 503(b), a court may order the destruction of copies found to have been made or used in violation of a copyright owner's rights. Parties obtaining a permanent injunction ordinarily must satisfy a four part test: (1) irreparable harm; (2) lack of adequate remedies at law; (3) the balance of hardships weighs in its favor; and (4) the injunction is in the public's interest. *See eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 393-94 (2006).

The Court agrees that injunctive relief is appropriate here. As in numerous other BitTorrent cases (*see e.g., Malibu Media, LLC v. Flanagan*, No. 2:13-CV-5890, 2014 WL 2957701, at *5 (E.D. Pa. July 1, 2014)), the four elements are established here. Furthermore, "[a]s a general rule, a permanent injunction will be granted when liability has been established and there is a threat of continuing violations." *MAI Sys. Corp. v. Peak Comput., Inc.*, 991 F.2d 511, 520 (9th Cir. 1993) (citing *Nat'l Football League v. McBee & Bruno's, Inc.*, 792 F.2d 726, 732 (8th Cir. 1986)). Consequently, the Court will issue a permanent injunction enjoining each of the relevant Defendants from infringing Plaintiff's rights in *Criminal* and ordering them to destroy all unauthorized copies of *Criminal*.

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ii. Statutory Damages

Next, Plaintiff requests statutory damages of at least \$2,500. In previous similar decisions, the Court has awarded minimum statutory damages of \$750. *See e.g., Criminal Prods., Inc. v. Gunderman*, No. C16-1016-RAJ, 2017 WL 664047, at *1 (W.D. Wash. Feb. 17, 2017); *Dallas Buyers Club, LLC v. Nydam*, No. C14-1684-RAJ, 2016 WL 7719874, at *1 (W.D. Wash. Aug. 8, 2016); *Dallas Buyers Club, LLC v. Bui*, No. C14-1926-RAJ, 2016 WL 1242089, at *4 (W.D. Wash. Mar. 30, 2016); *Dallas Buyers Club, LLC v. Madsen*, No. C14-1153-RAJ, 2015 WL 6680260, at *6 (W.D. Wash. Nov. 2,

1 2015). For the same reasons noted in those decisions, the Court remains convinced that
2 the statutory minimum of \$750 is the appropriate award in this case as to each Defendant.

3 **iii. Attorneys' Fees and Costs**

4 Finally, Plaintiff seeks attorneys' fees and costs against the Defendants. The
5 Court "in its discretion may allow the recovery of full costs by or against any party" and
6 "may also award a reasonable attorney's fee to the prevailing party." 17 U.S.C. § 505.
7 Courts may consider several factors in making an attorneys' fee determination under the
8 Copyright Act, including "(1) the degree of success obtained, (2) frivolousness, (3)
9 motivation, (4) objective unreasonableness (legal and factual), and (5) the need to
10 advance considerations of compensation and deterrence." *Smith v. Jackson*, 84 F.3d
11 1213, 1221 (9th Cir. 1996) (citing *Jackson v. Axton*, 25 F.3d 884, 890 (9th Cir. 1994)).

12 These factors weigh in favor of awarding fees. Plaintiff has obtained success on
13 its non-frivolous claims, and awarding fees would advance considerations of
14 compensation and deterrence.

15 Courts begin with a "lodestar" method in calculating reasonable attorneys' fees,
16 which is obtained by multiplying the number of hours reasonably expended on the
17 litigation by an hourly rate. *See Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978
18 (9th Cir. 2008).

19 Plaintiff requests a \$300 rate requested for lead counsel, David A. Lowe. Plaintiff
20 requests a rate of \$200 for his colleague, Tim Billick, along with an hourly rate of \$145
21 per hour for his legal assistant. *See, e.g.*, C16-729, Dkt. # 89 at 5-6. In previous cases,
22 Plaintiff requested higher attorney billing rates that the Court reduced to the amounts now
23 requested in the instant action. The Court appreciate that, instead of again requesting
24 higher rates, Plaintiff has accepted the rates previously set by the Court. Those rates are
25 approved.

26 The Court, however, finds that the number of billing hours requested by Plaintiff
27 is unreasonable. Plaintiff has filed dozens of pleadings and motions in numerous

1 BitTorrent matters. These pleadings and motions are essentially cut-and-paste jobs.
2 Having reviewed these filings, the Court discerns minimal differences aside from the
3 name of the particular defendant against whom relief is sought. For instance, the
4 supporting documentation submitted in support of each motion contains the same set of
5 financial reports, photocopies of Tweets criticizing this Court's previous rulings by users
6 such as @Raul15340965 and @DieTrollDie, and copies of decisions from other courts.
7 *See, e.g.*, Dkt. # 63-1. Despite the duplicative nature of these filings, Plaintiff states that
8 it collectively took him, his associate, and legal assistant approximately seven hours to
9 litigate against each of the sixteen Defendants.³ While that may be, the Court finds that
10 the minimally complex and highly redundant nature of these cases warrants far fewer
11 hours of compensation.

12 In addition, notwithstanding the cut-and-paste nature of this motions practice,
13 Plaintiff's work has been sloppy. The Court expressed its dissatisfaction with Plaintiff's
14 performance when it struck numerous filings that failed to comply with the Local Civil
15 Rules, misidentified defendants, and contained other significant errors. Dkt. # 87. In
16 striking these filings, the Court noted that it would consider Plaintiff's subpar work in
17 calculating attorneys' fees. *Id.* at 2. Although counsel has since reduced the number of
18 attorney billing hours requested, this reduction is not sufficient to account for the
19 concerns noted above.

20 Given these errors, as well as the extreme similarities between the filings in these
21 cases and those filed previously by counsel of record, the Court, through the exercise of
22 its discretion in matters concerning attorneys' fees, reduces by ten percent (10%) the
23 number of attorney billing hours that Plaintiff requests. The Court approves the number
24 of hours billed for legal assistant support.

25 Finally, Plaintiff requests prorated costs for each Defendant and supports this

26 ³ The Court notes that these Defendants comprise only a portion of the total named in
27 Plaintiff's ten actions in this Court for infringing on Plaintiff's copyright to the movie, *Criminal*.
28 Plaintiff's filings against the numerous other defendants are similarly duplicative.

1 request with a receipt and declaration. The Court finds that these costs are appropriate.

2 Accordingly, the Court awards attorneys' fees and costs against each of the
3 Defendants individually and in favor of Plaintiff as follows:

4 Case / Dkt.	Defendant	Atty. Hours ⁴	Atty. Fees ⁵	Legal Assist. Hours	Legal Assist. Fees	Costs	Total
6 C16-729, Dkt. # 89	Reina Marroqui n	4.1	\$1150	2.5	\$362.50	\$153.57	\$1666.07
8 C16-729, Dkt. # 91	Greg Gordon Sr.	4.1	\$1150	2.5	\$362.50	\$153.57	\$1666.07
10 C16-1177, Dkt. # 50	Michael Stoker	4.4	\$1240	2.1	\$304.50	\$136.66	\$1681.16
11 C16-1177, Dkt. # 52	Maria Hull	4.4	\$1240	2.1	\$304.50	\$136.66	\$1681.16
12 C16-1272, Dkt. # 63	Collin Kelly	4.1	\$1150	2.5	\$362.50	\$142.22	\$1654.72
13 C16-1272, Dkt. # 65	Phillip Pisciotta	4.1	\$1150	2.5	\$362.50	\$102.22 ₆	\$1614.72
15 C16-1272, Dkt. # 67	Jeff Corder	4.1	\$1150	2.5	\$362.50	\$152.22	\$1664.72
16 C16-1272, Dkt. # 69	Kueejin Eum	4.1	\$1150	2.5	\$362.50	\$142.22	\$1654.72
17 C16-1272, Dkt. # 71	James Puckett	4.1	\$1150	2.5	\$362.50	\$142.22	\$1654.72
19 C16-1352, Dkt. # 67	Liang Deng	4.1	\$1150	2.1	\$304.50	\$143.52	\$1598.02
20 C16-1352, Dkt. # 69	Valerie Mosser	3.9	\$1090	2.1	\$304.50	\$103.52	\$1498.02
21 C16-1352, Dkt. # 71	Joseph David Orndonez	3.9	\$1090	2.1	\$304.50	\$143.52	\$1538.02

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24 ⁴ Total requested attorney billing hours reduced by ten percent.

25 ⁵ Fees calculated to reflect Lowe's and Billick's different billing rates of \$300 and \$200
26 respectively.

27 ⁶ Plaintiff requests \$50 for service of summons on Defendant Pisciotta, yet the affidavit
28 of summons on record contains no reference to the amount charged. Dkt. # 30 at 2.

C16-1352, Dkt. # 73	Kristin White	3.9	\$1090	2.1	\$304.50	\$103.52	\$1498.02
C16-1352, Dkt. # 75	Blessings Kambala	3.9	\$1090	2.1	\$304.50	\$143.52	\$1538.02
C16-1351, Dkt. # 62	Liam McDonal d	3.9	\$1090	2.5	\$362.50	\$145	\$1597.50
C16-1351, Dkt. # 64	Sarah Larson	3.9	\$1090	2.5	\$362.50	\$145	\$1597.50

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiff's motions. The Court thus enters default judgment against each of the Defendants. The Clerk will enter judgment for Plaintiff following this Order.

Specifically, this Court enters judgment against Defendants as follows:

1. Defendants Reina Marroquin, Greg Gordon Sr., Michael Stoker, Maria Hull, Collin Kelly, Phillip Pisciotta, Jeff Corder, Kueejin Eum, James Puckett, Liang Deng, Valerie Mosser, Joseph David Orndonez, Kristin White, Blessings Kambala, Liam McDonald, and Sarah Larson are hereby permanently enjoined from directly, indirectly, or contributorily infringing Plaintiff Criminal Productions, LLC's rights in the work *Criminal*, including without limitation by using the Internet to reproduce or copy *Criminal*, to distribute *Criminal*, or to make *Criminal* available for distribution to the public, except pursuant to lawful written license or with the express authority of Plaintiff;

2. To the extent any such material exists, Defendants Reina Marroquin, Greg Gordon Sr., Michael Stoker, Maria Hull, Collin Kelly, Phillip Pisciotta, Jeff Corder, Kueejin Eum, James Puckett, Liang Deng, Valerie Mosser, Joseph David Orndonez, Kristin White, Blessings Kambala, Liam McDonald, and Sarah Larson are directed to destroy all unauthorized copies of *Criminal* in his or her possession or subject to his or her control;

Statutory damages, attorneys' fees, legal assistant fees, and costs are awarded as follows:

Defendant	Statutory Damages	Atty. Fees, Legal Assist. Fees, and Costs	Total
Reina Marroquin	\$750.00	\$1666.07	\$2416.07
Greg Gordon Sr.	\$750.00	\$1666.07	\$2416.07
Michael Stoker	\$750.00	\$1681.16	\$2431.16
Maria Hull	\$750.00	\$1681.16	\$2431.16
Collin Kelly	\$750.00	\$1654.72	\$2404.72
Phillip Pisciotta	\$750.00	\$1614.72	\$2364.72
Jeff Corder	\$750.00	\$1664.72	\$2414.72
Kueejin Eum	\$750.00	\$1654.72	\$2404.72
James Puckett	\$750.00	\$1654.72	\$2404.72
Liang Deng	\$750.00	\$1598.02	\$2348.02
Valerie Mosser	\$750.00	\$1498.02	\$2248.02
Joseph David Orndonez	\$750.00	\$1538.02	\$2288.02
Kristin White	\$750.00	\$1498.02	\$2248.02
Blessings Kambala	\$750.00	\$1538.02	\$2288.02
Liam McDonald	\$750.00	\$1597.50	\$2347.50
Sarah Larson	\$750.00	\$1597.50	\$2347.50

DATED this 27th day of July, 2017.



The Honorable Richard A. Jones
United States District Judge