

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UN4 PRODUCTIONS, INC.,

11 Plaintiff,

12 v.

13 MADISON PALMER, *et al.*,

14 Defendants.  
15

Case No. C17-0785RSL

ORDER DIRECTING ENTRY OF  
DEFAULT JUDGMENT AGAINST  
MORTEDHA AL-SULTAN

16  
17 This matter comes before the Court on plaintiff UN4's motion for default  
18 judgment against defendant Mortedha Al-Sultan. Dkt. #132. Having reviewed the  
19 relevant briefing and the remainder of the record, the Court finds as follows:

20  
21 **I. BACKGROUND**

22 This motion for default judgment is just one of the more than one hundred  
23 default judgment motions filed by plaintiff's counsel in twenty-six cases before the  
24 undersigned. All of the cases assert essentially the same causes of action based on  
25 remarkably similar allegations, although the motion picture at issue, the owner of the  
26 copyright, and the defendants vary. For purposes of this motion, UN4 alleges that 60  
27 individual defendants unlawfully infringed its exclusive copyright to the motion picture  
28

ORDER GRANTING IN PART MOTION  
FOR DEFAULT JUDGMENT - 1

1 *Boyka Undisputed 4*, which it developed and produced, by copying and distributing the  
2 film over the Internet through a peer-to-peer network using the BitTorrent protocol.  
3 Plaintiff served internet service providers (“ISP”s) with subpoenas in order to identify  
4 the alleged infringers. Amended complaints identifying defendants by name were  
5 subsequently filed.  
6

7 Defendant Al-Sultan was initially sued in the same complaint as twenty-two  
8 other individuals because, given the unique identifier associated with a particular digital  
9 copy of *Boyka Undisputed 4* and the timeframe in which the internet protocol address  
10 associated with each defendant accessed that digital copy, UN4 alleges that all of the  
11 defendants were all part of the same “swarm” of users that reproduced, distributed,  
12 displayed, and/or performed the copyrighted work. According to UN4, Al-Sultan and  
13 his co-defendants directly or indirectly shared, downloaded, and distributed a single  
14 unique copy of *Boyka Undisputed 4* that had been seeded to the torrent network at some  
15 undefined point in the past.  
16  
17  
18

19 Al-Sultan initially responded to UN4’s complaint (Dkt. # 49), but subsequently  
20 failed to participate in the Rule 26(f) conference or discovery. The Court issued an  
21 Order to Show Cause why default should not be entered against Al-Sultan for his failure  
22 to participate or respond to prior Court orders. Dkt. #129. Default was entered against  
23 him on March 4, 2019. Dkts. #131. UN4 now seeks judgment against Al-Sultan.  
24  
25

## 26 **II. DISCUSSION**

27 Federal Rule of Civil Procedure 55(b) authorizes a court to grant default  
28 judgment. Prior to entering judgment in defendant’s absence, the Court must determine

1 whether the allegations of a plaintiff's complaint establish his or her liability. Eitel v.  
2 McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). The court must accept all well-pled  
3 allegations of the complaint as established fact, except allegations related to the amount  
4 of damages. TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).  
5 Where the alleged facts establish a defendant's liability, the court has discretion, not an  
6 obligation, to enter default judgment. Alan Neuman Productions, Inc. v. Albright, 862  
7 F.2d 1388, 1392 (9th Cir. 1988). If plaintiff seeks an award of damages, it must provide  
8 the Court with evidence to establish the amount. TeleVideo Sys., 826 F.2d at 917-18.  
9

10  
11 A. Liability Determination.

12 The allegations in UN4's complaint establish Al-Sultan's liability for direct  
13 copyright infringement. To establish direct infringement, UN4 must demonstrate  
14 ownership of a valid copyright and that Al-Sultan copied "constituent elements of the  
15 work that are original." L.A. Printex Indus., Inc. v. Aeropostale, Inc., 676 F.3d 841, 846  
16 (9th Cir. 2012) (quoting Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361  
17 (1991)). Here, UN4 alleges it owns the exclusive copyright to the motion picture *Boyka*  
18 *Undisputed 4* and that Al-Sultan participated in a "swarm" to unlawfully copy and/or  
19 distribute the same unique copy of *Boyka Undisputed 4*. These allegations were  
20 established by entry of default against Al-Sultan. Accordingly, UN4 has established his  
21 liability for direct copyright infringement.  
22  
23  
24  
25  
26  
27  
28

1           B. Default Judgment is Warranted.

2           Having established liability, plaintiff must also show that default judgment is  
3 warranted. Courts often apply the factors listed in Eitel, 782 F.2d at 1471-72, to make  
4 this determination. Those factors are:

5                           “(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s  
6 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money  
7 at stake in the action; (5) the possibility of a dispute concerning material  
8 facts; (6) whether the default was due to excusable neglect, and (7) the strong  
9 policy underlying the Federal Rules of Civil Procedure favoring decisions on  
the merits.”

10           The majority of these factors weigh in favor of granting default judgment against Al-  
11 Sultan. UN4 may be prejudiced without the entry of default judgment as it will be left  
12 without a legal remedy. See Landstar Ranger, Inc. v. Parth Enters., Inc., 725 F. Supp.2d  
13 916, 920 (C.D. Cal. 2010). UN4’s complaint sufficiently alleges a claim of direct  
14 copyright infringement, and Al-Sultan did not present any evidence to the contrary.  
15           Additionally, the Court finds there is a low probability that default against Al-Sultan was  
16 due to excusable neglect: defendant initially responded and was given ample opportunity  
17 to participate in this matter but has apparently chosen not to do so. Finally, although there  
18 is a strong policy favoring decisions on the merits, the Court may consider Al-Sultan’s  
19 failure to participate and intransigence in the face of Court orders.  
20

21           The Court acknowledges that a dispute concerning the material facts alleged by  
22 UN4, including the identity of the alleged infringers, could arise in this case. The Court  
23 also acknowledges that the amount at stake may be significant depending on the means  
24 of the defendant. UN4 seeks enhanced statutory damages in the amount of at least \$750  
25  
26  
27  
28

1 along with attorneys' fees of \$1,796 and costs of \$142 from Al-Sultan. Notwithstanding  
2 these considerations, the Eitel factors weigh in favor of granting default judgment  
3 against defendant.

4  
5 C. Appropriate Relief.

6 UN4 requests entry of a default judgment against Al-Sultan providing the  
7 following three categories of relief: (1) permanent injunctive relief; (2) statutory  
8 damages; and (3) attorney's fees and costs. Each category is discussed below.

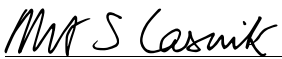
9  
10 i. *Permanent Injunctive Relief*

11 Permanent injunctive relief is appropriate. Section 502(a) of Title 17 of the  
12 United States Code allows courts to "grant temporary and final injunctions on such  
13 terms as it may deem reasonable to prevent or restrain infringement of a copyright." As  
14 part of a default judgment, courts may also order the destruction of all copies of a work  
15 made or used in violation of a copyright owner's exclusive rights. 17 U.S.C. § 503(b).  
16 Given the nature of the BitTorrent protocol and defendant's participation therein, the  
17 Court finds defendant possesses the means to continue infringing in the future. MAI  
18 Sys. Corp. v. Peak Comput., Inc., 991 F.2d 511, 520 (9th Cir. 1993) (granting  
19 permanent injunction where "liability has been established and there is a threat of  
20 continuing violations."). Consequently, the Court will issue a permanent injunction  
21 enjoining defendant from infringing UN4's rights in *Boyka Undisputed 4* and directing  
22 them to destroy all unauthorized copies of *Boyka Undisputed 4*.  
23  
24  
25  
26  
27  
28



- 1 1. UN4's motion for default judgment is GRANTED.
- 2 2. Defendant Al-Sultan is hereby permanently enjoined from infringing UN4's  
3 exclusive rights in the motion picture film *Boyka Undisputed 4*, including  
4 without limitation by using the Internet to reproduce or copy *Boyka*  
5 *Undisputed 4*, to distribute *Boyka Undisputed 4*, or to make *Boyka*  
6 *Undisputed 4* available for distribution to the public, except pursuant to  
7 lawful written license or with the express authority of UN4;
- 8 3. To the extent any unauthorized reproduction or copy of *Boyka Undisputed 4*  
9 is in defendant's possession or subject to his control, he is directed to destroy  
10 it;
- 11 4. Al-Sultan is jointly and severally liable along with defendants Kirwan,  
12 Penchev, Ramirez, Kuria, Morrison, Lim, Alhegni, Wentz, Gomez, Salzer,  
13 and Casses for statutory damages in the amount of \$750;
- 14 5. Defendant Mortedha Al-Sultan is individually liable for attorneys' fees in the  
15 amount of \$1,796<sup>1</sup> and costs in the amount of \$142.

16 Dated this 21st day of May, 2019.

17   
18 Robert S. Lasnik  
19 United States District Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28

---

<sup>1</sup> This amount includes the \$455 awarded to UN4 during discovery. Dkt. # 126.