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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UN4 PRODUCTIONS, INC.,

11 Plaintiff,

12 v.

13 LIBAN HARO, *et al.*,

14 Defendants.
15

Case No. C17-0892RSL

ORDER GRANTING IN PART UN4'S
MOTIONS FOR DEFAULT
JUDGMENT

16
17 **I. INTRODUCTION**

18 This matter comes before the Court on plaintiff UN4's motions for default
19 judgment against defendants Andrei Saar (Dkt. #49), Andrey Savin (Dkt. #51), and Eric
20 McClain (Dkt. #53). Having reviewed the relevant briefing and the remainder of the
21 record, UN4's motions for default judgment are GRANTED IN PART and DENIED IN
22 PART.
23

24 **II. BACKGROUND**

25 The three motions for default judgment that are the subject of this Order are just
26 a portion of the more than one hundred default judgment motions filed by plaintiff's
27 counsel in twenty-six cases before the undersigned. All of the cases assert essentially
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ORDER GRANTING IN PART MOTIONS
FOR DEFAULT JUDGMENT - 1

1 the same causes of action based on remarkably similar allegations, although the motion
2 picture at issue, the owner of the copyright, and the defendants vary. For purposes of
3 these motions, UN4 alleges that 60 individual defendants unlawfully infringed its
4 exclusive copyright to the motion picture *Boyka Undisputed 4*, which it developed and
5 produced, by copying and distributing the film over the Internet through a peer-to-peer
6 network using the BitTorrent protocol. Plaintiff served internet service providers
7 (“ISP”s) with subpoenas in order to identify the alleged infringers. Amended complaints
8 identifying defendants by name were subsequently filed.
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11 Defendants Saar, Savin, and McClain (collectively “Defendants”) are named in
12 the same complaint because, given the unique identifier associated with a particular
13 digital copy of *Boyka Undisputed 4* and the timeframe in which the internet protocol
14 address associated with each Defendant accessed that digital copy, UN4 alleges the
15 named Defendants were all part of the same “swarm” of users that reproduced,
16 distributed, displayed, and/or performed the copyrighted work. According to UN4,
17 Defendants directly or indirectly shared, downloaded, and distributed a single unique
18 copy of *Boyka Undisputed 4* that had been seeded to the torrent network at some
19 undefined point in the past.
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23 Defendants did not respond to UN4’s complaint. The Clerk of Court therefore
24 entered default against Defendants at UN4’s request. See Dkts. #45-47. UN4 now seeks
25 judgment against each Defendant.
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III. DISCUSSION

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2 Federal Rule of Civil Procedure 55(b) authorizes a court to grant default
3 judgment. Prior to entering judgment in defendant’s absence, the Court must determine
4 whether the allegations of a plaintiff’s complaint establish his or her liability. Eitel v.
5 McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). The court must accept all well-pled
6 allegations of the complaint as established fact, except allegations related to the amount
7 of damages. TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).
8
9 Where the alleged facts establish a defendant’s liability, the court has discretion, not an
10 obligation, to enter default judgment. Alan Neuman Productions, Inc. v. Albright, 862
11 F.2d 1388, 1392 (9th Cir. 1988). If plaintiff seeks an award of damages, it must provide
12 the Court with evidence to establish the amount. TeleVideo Sys., 826 F.2d at 917-18.
13

A. Liability Determination.

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

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6 “(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s
7 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money
8 at stake in the action; (5) the possibility of a dispute concerning material
9 facts; (6) whether the default was due to excusable neglect, and (7) the strong
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
11 Defendants. UN4 may be prejudiced without the entry of default judgment as it will be
12 left without a legal remedy. See Landstar Ranger, Inc. v. Parth Enters., Inc., 725 F.
13 Supp.2d 916, 920 (C.D. Cal. 2010). UN4’s complaint sufficiently alleges a claim of
14 direct copyright infringement, and Defendants did not present any evidence or argument
15 to the contrary. Additionally, the Court finds there is a low probability that default against
16 Defendants was due to excusable neglect: Defendants were given ample opportunity to
17 respond to the filings in this matter between the time they were served with UN4’s
18 complaint and the date of this Order. Finally, although there is a strong policy favoring
19 decisions on the merits, the Court may consider Defendants’ failure to respond to UN4’s
20 requests for default and default judgment as admissions that the motions have merit. LCR
21 7(b)(2).
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26 The Court acknowledges that a dispute concerning the material facts alleged by
27 UN4, including the identity of the alleged infringers, could arise in this case. The Court
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1 also acknowledges that the amount at stake may be significant depending on the means
2 of each Defendant. UN4 seeks enhanced statutory damages in the amount of at least
3 \$1,500 along with attorneys' fees in excess of \$1,550 and costs in excess of \$150 from
4 each individual Defendant. Notwithstanding these considerations, the Eitel factors
5 weigh in favor of granting default judgment against Defendants.
6

7 C. Appropriate Relief.

8
9 UN4 requests entry of a default judgment against each Defendant providing the
10 following three categories of relief: (1) permanent injunctive relief; (2) statutory
11 damages; and (3) attorney's fees and costs. Each category is discussed below.
12

13 i. *Permanent Injunctive Relief*

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

2 Plaintiff requests an award of statutory damages in the amount of at least \$1,500
3 against each Defendant for his or her participation in the BitTorrent swarm that resulted
4 in the unauthorized download and/or distribution of the seed file containing *Boyka*
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6 *Undisputed 4*. Although the actual economic damages associated with a lost video rental
7 are likely minimal, plaintiff correctly points out that Congress has authorized statutory
8 damages in significant amounts to compensate for difficult-to-prove downstream losses
9 and to deter future infringement. Los Angeles News Serv. v. Reuters Int’l, Ltd., 149
10 F.3d 987, 996 (9th Cir. 1998) (quoting Peer Int’l Corp. v. Pausa Records, Inc., 909 F.2d
11 1332, 1336 (9th Cir. 1990)). Under 17 U.S.C. § 504(c)(1), the Court may award
12 statutory damages “for all infringements involved in the action, with respect to any one
13 work, . . . for which any two or more infringers are liable jointly and severally, in a sum
14 of not less than \$750 or more than \$30,000 as the court considers just.” The Court has
15 wide discretion when determining the amount of statutory damages and takes into
16 consideration the amount of money requested in relation to the seriousness of the
17 defendant’s conduct, whether large sums of money are involved, and whether “the
18 recovery sought is proportional to the harm caused by defendant’s conduct.” Curtis v.
19 Illumination Arts, Inc., 33 F. Supp.3d 1200, 1212 (W.D. Wash. 2014) (citing Landstar,
20 725 F. Supp. 2d at 921).
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26 Copyright violations come in all shapes and sizes, from the unauthorized copying
27 of a Halloween word puzzle for a child’s party to the unauthorized manufacture and sale
28 of millions of bootleg copies of a new release. While Defendants’ alleged copyright

1 violation is of concern in that it represents a theft of intellectual property, it is a
2 relatively minor infraction causing relatively minor injury. UN4 has not shown that any
3 of the Defendants is responsible for the “seed” file that made UN4’s copyrighted work
4 available on the BitTorrent network, nor has UN4 presented evidence that Defendants
5 profited from the infringement in any way. Given the range of statutory damages
6 specified in the Copyright Act, the Court finds that an award of \$750 for the swarm-
7 related infringements involved in this action is appropriate. Each of the Defendants is
8 jointly and severally liable for this amount.
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11 This award is in line with the awards made by other courts in the Ninth Circuit
12 and appears adequate to deter Defendants from infringing on plaintiff’s copyright in the
13 future.¹ Plaintiff argues that a significantly higher award is necessary to force people
14 like Defendants to appear and participate in these BitTorrent cases. Plaintiff apparently
15 wants the Court to raise the statutory damage award to an amount that is at or above the
16 anticipated costs of defending this action. A defendant may, however, decide that
17 conceding liability through default is the best course of action given the nature of the
18 claims and the available defenses. The “punishment” for that choice is the entry of
19 default judgment and an award of damages under the governing standards. As discussed
20 above, those standards lead to the conclusion that the minimum statutory penalty should
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26 ¹ UN4 has presented no evidence that Defendants will not be dissuaded from infringing in the future. The
27 judgment entered in this case, including statutory damages, attorney’s fees, and costs, may be recovered
28 by garnishing Defendants’ wages and/or seizing and selling their non-exempt property. This is a steep
penalty for having been too lazy to go to the local Redbox or too cheap to pay a few dollars for an
authorized download. Plaintiff offers no evidence to support its contention that personal liability for a
judgment in excess of \$500 is of no consequence to the judgment debtor.

1 apply in this case. Plaintiff offers no support for the proposition that participation in
2 federal litigation should be compelled by imposing draconian penalties that are out of
3 proportion to the harm caused by Defendants' actions or any benefits derived therefrom.
4 Statutory damages are not intended to serve as a windfall to plaintiffs and will not be
5 used to provide such a windfall here.
6

7 The Court will award UN4 \$750 in statutory damages for the infringements
8 involved in this action, for which defendants are jointly and severally liable.
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10 iii. *Attorneys' Fees and Costs*

11 Finally, UN4 asks the Court to award between \$1,551.00 and \$1,796.00 in
12 attorneys' fees and \$153.00 in costs against each Defendant in this matter. Pursuant to
13 17 U.S.C. § 505, the Court "in its discretion may allow the recovery of full costs by or
14 against any party," and "may also award a reasonable attorney's fee to the prevailing
15 party as part of the costs."
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18 The Court agrees that UN4 should be awarded attorneys' fees. Courts consider
19 several factors, including "(1) the degree of success obtained, (2) frivolousness,
20 (3) motivation, (4) objective unreasonableness (legal and factual), and (5) the need to
21 advance considerations of compensation and deterrence," when making attorneys' fee
22 determinations under the Copyright Act. Smith v. Jackson, 84 F.3d 1213, 1221 (9th Cir.
23 1996) (citing Jackson v. Axton, 25 F.3d 884, 890 (9th Cir. 1994)). Because UN4 has
24 succeeded on its non-frivolous direct infringement claim² and because an award would
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28 ² Despite the entry of default, the Court specifically declines to enter judgment in plaintiff's favor on its indirect and contributory infringement claims.

1 advance considerations of compensation and deterrence, UN4 is entitled to attorneys'
2 fees.

3 However, despite counsel's efforts to allocate the fees and costs to each
4 individual defendant, the overall fee request is problematic. Courts determine the
5 amount of a fee award by determining a "lodestar figure," which is obtained by
6 multiplying the number of hours reasonably expended on a matter by a reasonable
7 hourly rate. Intel Corp. v. Terabyte Int'l, Inc., 6 F.3d 614, 622 (9th Cir. 1993). Courts
8 may then adjust the lodestar with reference to factors set forth in Kerr v. Screen Extras
9 Guild, Inc., 526 F.2d 67, 69-70 (9th Cir. 1975), to the extent those factors are not
10 already subsumed in counsel's hourly rates or the number of hours expended on the
11 litigation. The relevant Kerr factors here are: (1) the time and labor required; (2) the
12 novelty and difficulty of the questions; and (3) the skill requisite to perform the legal
13 services properly.

14 1. *Reasonableness of Rate Requested*

15 In the Ninth Circuit, the determination of a reasonable hourly rate "is not made
16 by reference to rates actually charged the prevailing party." Chalmers v. City of Los
17 Angeles, 796 F.2d 1205, 1210 (9th Cir. 1986). Instead, the reasonable hourly rate is
18 determined with reference to the prevailing rates charged by attorneys of comparable
19 skill and experience in the relevant community. Blum v. Stenson, 465 U.S. 886, 895
20 (1984). "Generally, when determining a reasonable hourly rate, the relevant community
21 is the forum in which the district court sits." Camacho v. Bridgeport Fin., Inc., 523 F.3d
22 973, 979 (9th Cir. 2008). Courts may also consider "rate determinations in other cases,

1 particularly those setting a rate for the plaintiffs’ attorney” as “satisfactory evidence of
2 the prevailing market rate.” United Steelworkers of Am. v. Phelps Dodge Corp., 896
3 F.2d 403, 407 (9th Cir. 1990).

4 Identifying counsel’s hourly rate is more challenging than it should be. His
5 hourly rate for “normal” intellectual property cases is now \$545/hour, but he has agreed
6 to a reduced rate of \$350/hour in this case. Dkt. #50 at ¶7. In a similar BitTorrent matter
7 involving another copyright holder, counsel stated that his reduced rate was \$450/hour
8 (LHF Prods., Inc. v. Acosta, C16-1175RSM, Dkt. #71 at ¶7), which is the rate he posits
9 is “reasonable and warranted in the Seattle area” in this case (Dkt. #50 at ¶9). The Court
10 assumes, based on the fee calculation charts set forth in counsel’s declarations, that he
11 seeks an hourly rate of \$350 in this case. This hourly rate is generally within the norm
12 for BitTorrent cases in this district and is a reasonable rate for the type of formulaic
13 legal work performed in these matters.

14 2. Reasonableness of Hours Requested

15 Turning to the reasonableness of the hours requested, plaintiff has the burden of
16 documenting the hours expended on this matter and establishing their reasonableness.
17 Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). The Court will exclude hours that are
18 “excessive, redundant, or otherwise unnecessary” and therefore not reasonably
19 expended. Id. at 434. Counsel has attempted to calculate the hours spent in connection
20 with UN4’s claims against each individual Defendant by dividing the total number of
21 hours spent on collective efforts by the total number of defendants at the time the action
22 was taken. Time spent working solely in pursuit of claims against an individual are
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1 allocated wholly to that individual. Dkt. #50 at ¶10. Taking Saar as an example, counsel
 2 seeks compensation for the following activities:

Activity	Attorney Time	Legal Assistant Time
Review evidence of BitTorrent activity giving rise to potential claims	.4 hours	
Prepare complaint and supporting exhibits	.4 hours	
Prepare and file motion to expedite discovery	.4 hours	
Communicate with client	.1 hours	
Review Court orders	.2 hours	
Prepare subpoena and letter to ISPs	.1 hours	.3 hours
Review ISP response and prepare communications with Defendant	.1 hours	.2 hours
Review Defendant's "status and history"	.3 hours	
Prepare amended complaint and review	.6 hours	
Prepare, review, and file waivers and/or summons	.9 hours	.3 hours
Review file	≈ .1 hours	
Prepare and file motion for default	≈ .2 hours	
Prepare and file motion for default judgment	1 hour	
Total:	4.8 hours	.8 hours

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 18 These seemingly modest time expenditures mask the reality of counsel's fee request.

19
 20 Until recently, the BitTorrent cases filed in this district all proceeded in a similar
 21 manner.³ The original complaints list Doe defendants, identified only by IP addresses,
 22 and allege infringement of the client's exclusive rights in a specified motion picture.

23
 24 Groups of Doe defendants are named in the same complaint because they allegedly
 25 infringed the same digital copy of the copyrighted material by participating in the same
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 28 ³ The Honorable Thomas S. Zilly has required certain additional disclosures or proffers in BitTorrent cases pending before him. See Venice PI, LLC v. O'Leary, C17-0988TSZ, Dkt. # 32.

1 BitTorrent “swarm.” The nearly identical complaints are accompanied by nearly
2 identical motions for expedited discovery. Once the Court grants leave to conduct
3 expedited discovery, subpoenas are served on the ISP associated with the addresses
4 identified in the log attached to the complaint as Exhibit B. Once in possession of the
5 Doe defendants’ identities, counsel attempts to obtain a settlement of the claims and
6 files amended complaints against any non-settling defendants. Service, additional
7 settlements, and defaults/default judgments follow, with the exception of a handful of
8 defendants who are actively litigating the cases in this district. On occasion, counsel
9 seeks an extension of time in which to serve.
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12 Almost every filing in this cause of action was essentially copied from scores of
13 other cases filed by the same counsel. There is nothing wrong with utilizing form
14 documents to pursue identical infringement claims arising from identical activities. As
15 has been previously noted, however, it is wrong for UN4’s counsel to file identical
16 complaints and motions with the Court and then expect the Court to believe that he
17 labored over each filing. LHF Prods., C16-1175RSM, Dkt. #73 at 12. To arrive at his
18 per Defendant fee request, counsel divided time entries related to specific activities by
19 the number of defendants then in the case. When the relatively small time allotments set
20 forth in counsel’s declaration related to Kirwan are multiplied by the number of
21 defendants, counsel is seeking compensation for an excessive number of hours. Counsel
22 apparently spent 5.6 hours studying the log of infringing transactions and IP addresses
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1 that gave rise to this particular lawsuit.⁴ He spent another 5.6 hours generating a
2 complaint that is virtually identical to the complaints UN4 filed in other cases (not to
3 mention the scores of BitTorrent cases filed on behalf of other clients). Altering the
4 form complaint to initiate a new lawsuit is, at this point, a word processing chore: the
5 preparer checks to make sure the correct plaintiff and film are identified, changes the
6 number of Doe defendants in the caption, inserts the correct IP addresses in the section
7 of the complaint describing the defendants, and attaches the investigator's log regarding
8 the relevant swarm as Exhibit B. Charging 5.6 hours of attorney time for this task is
9 unreasonable. Counsel seeks to recover fees for another 4.2 hours spent preparing an
10 amended complaint that was identical to the original except for the caption and the
11 correlation of the IP addresses with the subscribers' names.

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15 A form pleading and motions practice such as this simply does not take the type
16 of expertise or time that is normally associated with intellectual property matters. Nor
17 does it justify the number of cumulative hours that counsel seeks here. Having reviewed
18 the billing records and dockets in this and other similar matters, the Court finds that the
19 bulk of the "legal" work in these cases was performed and compensated years ago, that
20 these actions now involve far more word processing than drafting or legal analysis, and
21 that the attorney time necessary to tailor documents to each case and/or individual is
22 minimal. The Court will award 1 hour, at an hourly rate of \$350, to compensate UN4
23 for counsel's time spent pursuing its claims against each named Defendant, and .8
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⁴ This case was originally filed against fourteen Doe defendants.

1 hours, at an hourly rate of \$145.00, to compensate UN4 for legal assistant time altering
2 pleadings, motions, and service documents. The Court is satisfied that an attorneys' fee
3 of \$466.00 per Defendant is reasonable and sufficient to cover the form-pleading work
4 required by this case.
5

6 3. *Costs*

7 UN4 requests \$153.00 in costs from each Defendant. Recovery of a pro rata
8 portion of the filing fee and the individual costs associated with the third-party
9 subpoena and service is appropriate.
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12 **IV. CONCLUSION**

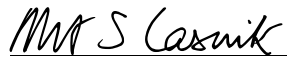
13 The Court, having reviewed the motions for default judgment and the remainder
14 of the record, finds adequate bases for default judgment. Accordingly, the Court hereby
15 finds and ORDERS:
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- 17 1. UN4's motions for default judgment are GRANTED IN PART and DENIED
18 IN PART.
- 19 2. Defendants Saar, Savin, and McClain are hereby permanently enjoined
20 infringing UN4's exclusive rights in the motion picture film *Boyka*
21 *Undisputed 4*, including without limitation by using the Internet to reproduce
22 or copy *Boyka Undisputed 4*, to distribute *Boyka Undisputed 4*, or to make
23 *Boyka Undisputed 4* available for distribution to the public, except pursuant
24 to lawful written license or with the express authority of UN4;
- 25 3. To the extent any unauthorized reproduction or copy of *Boyka Undisputed 4*
26 is in Defendants' possession or subject to their control, they are directed to
27 destroy it;
- 28 4. Defendants are jointly and severally liable for statutory damages in the
amount of \$750;

- 1 5. Defendant Andrei Saar is individually liable for attorneys' fees in the amount
2 of \$466.00 and costs in the amount of \$153.00.
- 3 6. Defendant Andrey Savin is individually liable for attorneys' fees in the
4 amount of \$466.00 and costs in the amount of \$153.00.
- 5 7. Defendant Eric McClain is individually liable for attorneys' fees in the
6 amount of \$466.00 and costs in the amount of \$153.00.

7 IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment in
8 favor of plaintiff and against defendants in the amounts specified in this Order.
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11 Dated this 14th day of March, 2019.

12 

13 Robert S. Lasnik

14 United States District Judge