

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Warner Bros. Entertainment, Inc.,
et al.,

Plaintiff,

v.

Jason Tusa, et al.,
Defendant.

2:21-cv-05456-VAP-ASx

**Order GRANTING Motion for
Default Judgment
(Dkt. 32)**

REDACTED

United States District Court
Central District of California

Before the Court is Plaintiffs Amazon Content Services, LLC, Columbia Pictures Industries, Inc., Disney Enterprises, Inc., Netflix Studios, LLC, Open 4 Business Productions, LLC, Paramount Pictures Corporation, Screen Gems, Inc., Sony Pictures Animation, Inc., Universal City Studios, LLC, Universal City Studio Productions, LLLP, Universal Content Productions, LLC, Universal Television, LLC, and Warner Bros. Entertainment, Inc.’s (“Plaintiffs”) Motion for Default Judgment. (Dkt. 32, “Motion”). Defendant Jason Tusa (“Tusa” or “Defendant”) has not opposed the Motion. (Dkt. 23).

Having considered the papers filed in support of the Motion, the Court finds this matter appropriate for resolution without oral argument pursuant to Local Rule 7-15. The Court **GRANTS** the Motion.

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I. BACKGROUND

A. Factual Background

Plaintiffs and their affiliates produce and distribute “a significant portion of the world’s most sought-after” movies and television programs. (Dkt. 1). Plaintiffs bring this copyright infringement action against Defendant Jason Tusa for the alleged operation of an unauthorized digital streaming service, Altered.Carbon TV (“Altered Carbon”), that Plaintiffs claim infringes upon their Copyrighted Works.¹ (Dkt. 32). According to Plaintiffs, Tusa’s subscribers access infringing content through Altered Carbon applications that “download directly onto smart TVs, computers, and mobile devices.” (Dkt. 1, ¶ 29). In exchange for a subscription fee of seven to ten dollars per month, Plaintiffs allege that Tusa “provides his subscribers with an internet protocol television (“IPTV”) service that includes nearly 2,600 channels as well as pay-per view events.” (*Id.*, ¶ 2). Plaintiffs claim that, despite Tusa’s knowledge that he has no license from Plaintiffs to do any of this, Tusa’s infringing conduct has gone “on and on.” (*Id.*)

According to Plaintiffs, Altered Carbon is not Tusa’s first “offering that infringes Plaintiffs’ rights.” (Dkt. 13, at 4) (“Within the last year, Tusa has operated at least three other unauthorized streaming services—Area 51, Singularity Media, and Digital UniCorn Media”). Plaintiffs confronted Tusa about his first infringing service in June 2020 by serving him with a cease-

¹ The Copyrighted Works include, but are not limited to, movies and television programs such as “The Accountant,” “Friends,” and “The Hangover Part II.”

1 and-desist letter. (See Declaration of Van Voorn, “Van Voorn Dec.,” Dkt. 15,
2 ¶ 32). As a result, Tusa shut Area 51 down and negotiated a Settlement
3 Agreement with Plaintiffs on October 12, 2020, in which Tusa agreed to halt
4 and not resume his infringing services. (*Id.* ¶ 36). Nevertheless, the
5 following month, Tusa launched another allegedly infringing program,
6 Singularity Media. (*Id.*, ¶ 33). Plaintiffs again confronted Tusa who
7 thereafter shut Singularity Media down on or around July 11, 2020. (*Id.*, ¶
8 35).

9
10 On October 20, 2020, approximately a week after the Settlement
11 Agreement was executed, Plaintiffs discovered that Tusa launched a third
12 infringing service, Digital UniCorn Media. (*Id.*, ¶ 37). Plaintiffs sent Tusa
13 another letter on November 18, 2020 regarding his infringing activities and
14 breach of the parties’ Settlement Agreement. (*Id.*, ¶ 39). Tusa denied any
15 involvement with Digital UniCorn Media. (*Id.*, ¶¶ 39-40).

16
17 On February 26, 2021, Plaintiffs’ investigative team identified Tusa’s
18 latest infringing service, Altered Carbon. (*Id.*, 41-48). Plaintiffs’ investigation
19 revealed that Tusa had taken several steps to conceal his role in Altered
20 Carbon, including using only privacy-protected web domains, accepting
21 cryptocurrency, and warning customers it would be “too risky” to post
22 channel listings online. (*Id.*, ¶ 42). According to Plaintiffs, “Tusa is a
23 recidivist mass infringer [who] has made clear that he will not stop his
24 unlawful conduct unless and until the Court issues an injunction ordering
25 him to do so.” (Dkt. 1, ¶ 3).

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B. Procedural Background

On July 6, 2021, Plaintiffs commenced this action against Defendant Jason Tusa alleging claims for: (1) Direct Copyright Infringement; (2) Contributory Copyright Infringement by Knowingly and Materially Contributing to the Infringement of the Copyrighted Works; (3) Intentionally Inducing the Infringement of the Copyrighted Works; and (4) Breach of Contract. (Dkt. 1, ¶ 1).

Plaintiffs served Tusa with the Summons and Complaint on July 10, 2021. (Dkt. 21). Tusa’s original deadline to file an Answer to the Complaint was August 2, 2021. (Dkt. 27). Tusa engaged counsel, however, who sought and received a stipulation to extend Tusa’s deadline to answer or otherwise respond to August 12, 2021. (Dkt. 25). Fed. R. Civ. P. 12. Despite being served with all relevant papers and receiving an extension of his answer deadline, Tusa has not answered or responded to the Complaint.

On August 16, 2021, Plaintiffs moved for, and on August 17, 2021, the Clerk of Court entered, default against Tusa. Tusa was on notice of Plaintiffs’ Application for Entry of Default and Default by Clerk given the proper service of these documents on August 17, 2021. (Dkt. 31). On September 13, 2021, Tusa was also served with Plaintiffs’ Notice of Motion and Motion for Default Judgment. (Dkt. 33). On August 16, 2021, this Court granted Plaintiffs’ Motion for Preliminary Injunction, restraining and enjoining Tusa from, directly or secondarily, infringing any of Plaintiffs’ Copyrighted Works. (Dkt. 28).

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2 **II. LEGAL STANDARD**

3 **A. Local Rule 55-1**

4 Local Rule 55-1 provides that an application for default judgment
5 must be accompanied by a declaration in compliance with Federal Rule of
6 Civil Procedure 55(b) setting forth, *inter alia*, when and against what party
7 the default was entered and the identification of the pleading to which
8 default was entered. Plaintiffs have provided this. (See Declaration of
9 Rose Leda Ehler, “Ehler Dec.,” Dkt. 32-1).

10 **B. Default Judgment**

11 Federal Rule of Civil Procedure 55 authorizes the Court to enter a
12 default judgment against a party who “fail[s] to plead or otherwise defend” a
13 claim. Fed. R. Civ. P. 55 (a)-(b)(2). “Even if entry of default has been made
14 by the court clerk, granting a default judgment is not automatic; rather it is
15 left to the sound discretion of the court.” *PepsiCo v. Triunfo-Mex, Inc.*, 189
16 F.R.D. 431, 432 (C.D. Cal. 1999) (citing *Aldabe v. Aldabe*, 616 F.2d 1089,
17 1092 (9th Cir. 1980)).

18
19 In exercising its discretion to grant or deny an application for default
20 judgment, the Court considers the following factors: (1) the possibility of
21 prejudice to the plaintiff; (2) the merits of plaintiff’s substantive claim; (3) the
22 sufficiency of the complaint; (4) the sum of money at stake in the action; (5)
23 the possibility of a dispute concerning material facts; (6) whether the default
24 was due to excusable neglect; and (7) the strong policy underlying the
25 Federal Rules of Civil Procedure favoring decisions on the merits
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United States District Court
Central District of California

1 (collectively, “*Eitel* factors”). *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th
2 Cir. 1986). The merits of the plaintiff’s substantive claim and the sufficiency
3 of the complaint are often treated by courts as the most important *Eitel*
4 factors. *Mnatsakanyan v. Goldsmith & Hull APC*, No. 2:12-cv-04358-MMM-
5 PLAx, 2013 WL 10155707, at *10 (C.D. Cal. May 14, 2013).

6 7 **III. DISCUSSION**

8 Generally, upon default, the factual allegations of the complaint,
9 except those relating to the amount of damages, will be taken as true.
10 *Televideo Sys. Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987); see
11 also *DirecTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007); Fed. R.
12 Civ. P. 8(b)(6). Pursuant to Rule 8(b)(6), the Court accepts as true the
13 allegations in the unanswered Complaint and the statements in the
14 declarations submitted in support of Plaintiffs’ Motion for Default Judgment.

15
16 In applying the *Eitel* factors, the Court finds that Plaintiffs are entitled
17 to default judgment. The Court will discuss each factor in turn.

18 **A. Possibility of Prejudice to Plaintiff**

19 The first *Eitel* factor considers “whether the plaintiff will suffer
20 prejudice if default judgment is not entered.” *PepsiCo, Inc. v. California Sec.*
21 *Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). Here, Tusa has chosen
22 not to participate in this litigation or defend his conduct, and Plaintiffs
23 contend that, without a default judgment, “[they] will be deprived of any
24 remedy for the injuries Tusa’s massive infringement has caused them.”
25 (Dkt. 32, at 6). See *Star Fabrics, Inc. v. 3Free NYC, Inc.*, 2013 WL
26 12124095, at *2 (C.D. Cal. 2013) (noting that the first factor favors entry of

1 default where plaintiff would otherwise be unable to recover damages from
2 infringer). Although Tusa did shut down Altered Carbon after Plaintiffs filed
3 the present action, his conduct shows that he will not refrain from further
4 infringement absent an injunction. If Tusa is not enjoined, Plaintiffs argue
5 that Tusa “will simply rebrand his service and start his infringing conduct all
6 over again.” See *Warner Bros. Entm’t, Inc. v. Caridi*, 346 F. Supp. 2d 1068,
7 1071 (C.D. Cal 2004) (finding that the first factor favors default judgment
8 where there is a risk of continued infringement). Accordingly, this factor
9 weighs in favor of default judgment.
10

11 **B. The Merits of Plaintiffs’ Substantive Claims and Sufficiency of**
12 **the Complaint**

13 The second and third *Eitel* factors “require that a plaintiff state a claim
14 on which [the plaintiff] may recover.” *PepsiCo*, 238 F. Supp. 2d at 1175. On
15 June 23, 2021, Plaintiffs filed this lawsuit against Defendant alleging claims
16 for: (1) Direct Copyright Infringement; (2) Contributory Copyright
17 Infringement by Knowingly and Materially Contributing to the Infringement of
18 the Copyrighted Works; (3) Intentionally Inducing the Infringement of the
19 Copyrighted Works; and (4) Breach of Contract. (Dkt. 1). The Court will
20 address the merits of each claim in turn.
21

22 1. Direct Copyright Infringement

23 To establish a claim for direct copyright infringement, a plaintiff must
24 demonstrate: (1) it owns a valid copyright in a work, and (2) defendant’s
25 violation of plaintiff’s exclusive rights under the Copyright Act. 17 U.S.C. §§
26 106, 501; see also *Funky Films, Inc. v. Time Warner Entertainment Co.*,

1 L.P., 462 F.3d 1072, 1076 (9th Cir. 2006). “In addition, direct infringement
2 requires the plaintiff to show causation (also referred to as ‘volitional
3 conduct’) by the defendant.” *Perfect 10, Inc. v. Giganews Inc.*, 847 F.3d
4 657, 666 (9th Cir. 2017).

5
6 Plaintiffs have provided certificates of registration from the United
7 States Copyright Office, which presumptively establish the validity of the
8 Copyrights in question. (See Dkt. 13, at 11; Dkt. 16 “*Ehler Dec.*”); *Ent.*
9 *Research Group, Inc. v. Genesis Creative Group, Inc.*, 122 F.3d 1211, 1217
10 (9th Cir. 1997) (explaining that a certificate of registration bearing the
11 plaintiff’s name “creates a presumption of ownership of a valid copyright”).
12 Without contest, the Court accepts these certificates as proof of ownership.

13
14 As copyright holders, Plaintiffs have the exclusive rights to reproduce,
15 prepare, distribute, publicly perform, and import their exclusive rights. 17
16 U.S.C. §§ 106. Plaintiffs allege Tusa infringes their exclusive right to
17 perform the Copyrighted Works publicly. (Dkt. 13, at 12); 17 U.S.C. §§
18 106(4). By streaming the Copyrighted Works on Altered Carbon without
19 authorization, Defendant likely violates this exclusive right. Accordingly,
20 Plaintiffs are likely to be successful on their direct copyright claim.

21
22 2. Contributory Copyright Infringement by Knowingly and Materially
23 Contributing to the Infringement of the Copyrighted Works

24 To be held liable for contributory copyright infringement, a defendant
25 must show: (1) direct infringement by a third party; (2) actual or constructive
26 knowledge by the defendant that third parties were directly infringing; and

1 (3) material contribution by the defendant to infringing activities. *In re*
2 *Napster, Inc. Copy. Litig.*, 377 F. Supp. 2d 796, 801 (N.D. Cal. 2005).

3
4 First, as discussed in detail in the subsection above, direct copyright
5 infringement has been established.

6
7 Second, Tusa has actual knowledge of the third parties' infringement.
8 Tusa "systematically amasses thousands of live television channels"
9 containing Copyrighted Works that can only be lawfully accessed through a
10 limited number of legitimate services, "in specific geographic regions, and in
11 specific content packages." (Dkt. 1, ¶ 80). Despite Tusa's knowledge that
12 third parties are not authorized to reproduce Plaintiffs' Copyrighted Works to
13 make 24/7 channels or publicly perform Copyrighted Works by streaming
14 these channels en masse, Tusa continues to sell access to these streams to
15 his own subscribers. (*Id.*) In sum, Tusa knows, from sources such as his
16 correspondence with Plaintiffs and his having executed the Settlement
17 Agreement, that his subscribers have no authorization to receive the
18 streams of the Copyrighted Works he provides to those subscribers.
19 Therefore, the second element is satisfied here.

20
21 Third, Tusa materially contributes to the third parties' infringement.
22 Tusa "configures and promotes the use of the IPTV Service to connect
23 subscribers to unauthorized streams of Plaintiff[s'] Copyrighted Works,
24 including the 24/7 channels." (*Id.*, ¶ 81). The third parties behind these
25 unauthorized streams control the facilities and equipment used to copy and
26 stream performances of Plaintiffs' Copyrighted Works. (*Id.*) Those third

1 parties directly infringe Plaintiffs’ exclusive reproduction and/or public
2 performance rights by copying and/or publicly performing the Copyrighted
3 Works without Plaintiffs’ authorization. By operating the Altered Carbon
4 websites and supplying the IPTV Service, Tusa facilitates, encourages, and
5 enables the direct infringement of Plaintiffs’ Copyrighted Works. Thus, the
6 third element is also established.

7
8 In sum, Plaintiffs are also likely to succeed on their contributory
9 copyright infringement claim.

10
11 3. Intentionally Inducing the Infringement of the Copyrighted Works

12 A defendant may be held liable for copyright infringement under an
13 inducement theory where four elements are present: “(1) the distribution of a
14 device or product [by the defendant], (2) acts of infringement [by third
15 parties], (3) an object [of the defendant] of promoting [the device’s or
16 product’s] use to infringe copyright, and (4) causation.” *Columbia Pictures*
17 *Indus., Inc. v. Fung*, 710 F.3d 1020, 1032 (9th Cir. 2013) (hereinafter
18 “*Fung*”).

19
20 First, Tusa distributed and sold subscriptions to the Altered Carbon
21 service, which constitutes “the distribution of a device or product by the
22 defendant.” (Dkt. 32, at 17); *see also Fung*, 710 F3.D at 1033 (“[S]ervices
23 available on the Internet” provide a basis for inducement liability).

24 Therefore, the first element has been met.

1 Second, Tusa’s unlawful streaming service creates demand for
2 unauthorized reproductions of Plaintiffs copyrighted works to make the 24/7
3 channels. (*Id.*) Tusa thereby induced the direct infringement of Plaintiffs’
4 reproduction right. *Columbia Pictures Indus., Inc. v. Galindo*, No. 2:20-cv-
5 03129-SVW-GJS, 2020 WL 3124347, at *2 (C.D. Cal. 2020) (digital
6 reproductions for 24/7 channels likely directly infringed plaintiffs’ copyrights).
7 Thus, the second element is satisfied here.

8
9 Third, Tusa knowingly distributed the Altered Carbon service “with the
10 object of promoting its use to infringe copyright.” *Fung*, 710 F.3d at 1034
11 (quoting *Grokster*, 545 U.S. at 936-37). In January 2020, Tusa ran a
12 promotional raffle “sponsored by Altered Carbon” in which the top prize was
13 a subscription to Altered Carbon and compatible hardware device. (Dkt. 32,
14 at 9). Tusa’s associates also directed customers to Altered Carbon
15 boasting its reliability based on its status as “one of two main suppliers of all
16 US channels.” (*Id.*) As the Supreme Court said in *Grokster*, “entic[ing] or
17 persuad[ing] another to infringe ... by advertising” is the “classic case” of
18 inducing infringement. 545 U.S. at 935-36; *id.* at 936 (“[A]t common law a
19 copyright ... defendant who ‘not only expected but invoked [infringing use]
20 by advertisement’ was liable for infringement ‘on principles recognized in
21 every part of the law’” (quoting *Kalem Co. v. Harper Bros.*, 222 U.S. 55, 62-
22 63 (1911)); see Van Voorn Dec. ¶¶ 23-28 (Tusa and his affiliates’ conduct to
23 promote Altered Carbon for the purpose of infringement). Further, Tusa’s
24 repeated rebranding and relaunching on infringing services has shown that
25 he is “aiming to satisfy a known source of demand for copyright
26

1 infringement.” *Grokster*, 545 U.S. at 939. Therefore, the third element is
2 established here.

3
4 Fourth, “if one provides a service that could be used to infringe
5 copyrights, with the manifested intent that the service actually be used in
6 that manner, that person is liable for the infringement that occurs through
7 the use of the service.” *Fung*, 710 F.3d at 1037. Tusa distributed and
8 promoted the Altered Carbon service for infringing uses, and the infringing
9 conduct predictably followed. (Dkt. 32, at 18). Thus, the causation
10 requirement is satisfied.

11
12 Accordingly, Plaintiffs are likely to be successful on their copyright
13 claim under an inducement theory.

14
15 **4. Breach of Contract**

16 “To be entitled to damages for breach of contract, a plaintiff must
17 plead and prove: (1) a contract, (2) plaintiff’s performance or excuse for
18 nonperformance, (3) defendant’s breach, and (4) damage to plaintiff.” See
19 *First American Commercial Bancorp, Inc. v. Vantari Genetics, LLC*, No.
20 2:19-cv-04483-VAP (FFMx), 2020 WL 5027990, at *3 (C.D. Cal. 2020).

21
22 On October 12, 2020, Tusa signed a Settlement Agreement with
23 Plaintiffs. (Dkt. 32, at 19). A term of that Settlement Agreement required
24 Tusa to “cease infringing Plaintiff[s] [c]opyrighted [w]orks” and to “refrain
25 from doing so in the future.” (*Id.*) Plaintiffs complied with their obligations
26 under the settlement. (*Id.*) When Tusa subsequently launched his “follow-

1 on infringing IPTV streaming devices, including Altered Carbon,” however,
2 Tusa materially breached that agreement. (*Id.*) As a result, Plaintiffs
3 suffered both “irreparable harm and concrete damage in additional costs to
4 bring Tusa into compliance.” (*Id.*) Therefore, Tusa is likely liable for breach
5 of contract.

7 **C. The Sum of Money at Stake**

8 The fourth *Eitel* factor “takes into account the amount of money at
9 stake and the seriousness of the defendant’s conduct, which involves an
10 assessment of whether the recovery sought is proportional to the harm
11 which the defendant’s conduct has caused.” *Trustees of Teamsters Local*
12 *631 Sec. Fund for S. Nevada v. Knox Installation-Dismantling & Servs., Inc.*,
13 No. 2:12-cv-1689-JAD-GWF, 2013 WL 4857897, at *2 (D. Nev. Sept. 9,
14 2013). Where the harm has the potential to continue and its full magnitude
15 cannot be quantified, this *Eitel* factor weighs in favor of default judgment.
16 *Caridi*, 346 F. Supp. 2d at 1072 (holding that factor favored copyright owner
17 plaintiff when defendant’s conduct may be continuing).

18
19 Plaintiffs request statutory damages in the amount of \$16,350,000.
20 (Dkt. 32, at 19). This figure represents the statutory maximum of \$150,000
21 for willful infringement for Tusa’s direct infringement of each of the 109
22 Copyrighted Works listed in Exhibit A to the Complaint. (*Id.*) See 17 U.S.C.
23 § 504(c)(1)-(2) (range of damages for willful copyright infringement is \$750
24 to \$150,000 per work infringed). Here, Plaintiffs’ investigators used the
25 Altered Carbon service to obtain unauthorized streams of each of these 109
26 Copyrighted Works. (Van Voorn Dec., ¶ 10).

1
2 Strikingly, even the sample of representative works discussed above
3 constitutes only a small fraction of the thousands of Plaintiffs’ Copyrighted
4 Works that Tusa infringed and for which he would be liable if he were to
5 appear and litigate this case. Apparent from Tusa’s history of operating
6 infringing services—including his video-on-demand services, the
7 inducement of others to infringe the reproduction right by sourcing 24/7
8 channels from copies of Plaintiffs’ works, and the fact that Tusa offered
9 thousands of channels for around-the-clock streaming—is the massive
10 scale of Tusa’s infringement. (*Id.*, at 20). A complete accounting of the
11 scope of Tusa’s infringement would likely run to thousands of Plaintiffs’
12 Copyrighted Works, and Tusa’s repeated conduct in launching infringing
13 streaming services shows that Tusa’s conduct is continuous.

14
15 Therefore, this factor weighs in favor of entering default judgment.

16
17 **D. Possibility of a Dispute Concerning Material Facts**

18 “The fifth *Eitel* factor considers the possibility of dispute as to any
19 material facts in the case.” *PepsiCo*, 238 F.Supp.2d at 1177. Upon entry of
20 default by the clerk, the factual allegations of the complaint, except those
21 relating to the amount of damages, are taken as true. *Televideo Sys. Inc.*,
22 826 F.2d at 917-18. Here, Plaintiffs have adequately alleged Direct
23 Copyright Infringement, Contributory Copyright Infringement by Knowingly
24 and Materially Contributing to the Infringement of the Copyrighted Works,
25 Intentionally Inducing the Infringement of the Copyrighted Works, and
26 Breach of Contract in their Complaint. There is therefore little possibility of a

1 dispute concerning material facts, and thus this factor weighs in favor of
2 default judgment. *Elektra Entm't Grp. Inc. v. Crawford*, 226 F.R.D. 388, 393
3 (C.D. Cal. 2005) (“Because all allegations in a well-pleaded complaint are
4 taken as true after the court clerk enters default judgment, there is no
5 likelihood that any genuine issue of material fact exists.”).

6 7 **E. Possibility of Excusable Neglect**

8 “The sixth *Eitel* factor considers the possibility that the default resulted
9 from excusable neglect.” *PepsiCo*, 238 F.Supp.2d at 1177. Where the
10 defaulting party is “properly served with the Complaint, the notice of entry of
11 default, as well as the papers in support of the [default] motion,” the failure
12 to defend cannot be attributed to excusable neglect. *Shanghai Automation*
13 *Instrument Co. v. Kuei*, 194 F. Supp. 2d 995, 1005 (N.D. Cal. 2001). Here,
14 Defendant was served with the Complaint (Dkt. 21) as well as Plaintiffs’
15 Application for Entry of Default Against Defendant, the Declaration of Rose
16 Leda Ehler in Support of Plaintiffs’ Application for Entry of Default, and
17 Default by Clerk (Dkt. 31). Thus, there appears little likelihood that the
18 default resulted from excusable neglect. This factor also favors entry of
19 default judgment.

20 21 **F. The Strong Public Policy Favoring Decisions on the Merits**

22 Though “[c]ases should be decided upon their merits whenever
23 reasonably possible,” a defendant’s failure to respond “makes a decision on
24 the merits impractical if not impossible.” *Eitel*, 782 F.2d at 1472. As the
25 Federal Rules of Civil Procedure allow for termination of a case before a
26

1 hearing on the merits where a defendant fails to defend an action, this factor
2 also favors entry of default judgment against Defendant.

3
4 On balance, each of the *Eitel* factors favor entry of default. Therefore,
5 the Court enters default judgment against Defendant.

6
7
8 **G. Plaintiffs' Requested Relief**

9 Having granted Plaintiffs' Motion for Default Judgment as to Plaintiffs'
10 claims, the Court next considers Plaintiffs' requested relief. Federal Rule of
11 Civil Procedure 55(b)(2) "explicitly grants the district court wide latitude" in
12 providing relief in a default judgment. *James v. Frame*, 6 F.3d 307, 310 (5th
13 Cir. 1993); *Elektra Entm't*, 226 F.R.D. at 394.

14 1. Damages

15 Plaintiff requests that the Court enter a default judgment awarding: (1)
16 maximum statutory damages for willful infringement in the amount of
17 \$150,000 per work, for a total sum of \$16,350,000; (2) the confidential
18 liquidated damages "Settlement Sum" for breach of the parties' settlement
19 agreement; (3) post-judgment interest; and (4) attorneys' fees and costs.

20
21 a. Statutory Damages

22 The Court finds that statutory damages are suitable. In assessing the
23 appropriateness of the amount of damages, courts consider compensation
24 for lost profits, punishment of willful infringement, and deterrence of further
25 infringing activity. See *Philip Morris USA, Inc. v. Castworld Products, Inc.*,
26 219 F.R.D. 494, at 501-02 (C.D. Cal. 2003).

1
2 The Court has discretion to determine the amount of statutory
3 damages to be awarded pursuant to 17 U.S.C. § 504(c)(1)-(2). Plaintiffs
4 seek \$16,350,000 in statutory damages. (Dkt. 32, at 21). Section
5 504(c)(1)-(2) permits an award ranging from a minimum of \$750 up to
6 \$30,000 per infringed work. 17 U.S.C. § 504(c)(1). The maximum award
7 may be increased to \$150,000 per infringed work if the infringement was
8 willful. *Id.* at (c)(2). Willful infringement can be inferred from a defendant's
9 failure to defend. *Peer Int'l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332,
10 n.3 (9th Cir. 1990); see *Castworld Prods.*, 219 F.R.D. 494, 501 (C.D. Cal.
11 2003). Here, the Complaint alleges that Defendant willfully engaged in
12 direct and secondary copyright infringement. (Dkt. 1). Taking the
13 allegations in the Complaint as true, Section 504(c)(2) consequently permits
14 a damages award of up to \$150,000 per infringed work (\$150,000 for each
15 of 109 copyrights at issue, for a total of \$16,350,000). See 17 U.S.C. §
16 504(c)(2).

17
18 "In measuring the damages, the court is to be guided by 'what is just
19 in the particular case, considering the nature of the copyright, the
20 circumstances of the infringement and the like'" *Peer Int'l Corp. v. Pausa*
21 *Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir.1990) (quoting *F.W. Woolworth*
22 *Co. v. Contemporary Arts*, 344 U.S. 228, 232, 73 S.Ct. 222, 97 L.Ed. 276
23 (1952)).

24
25 In this case, the conduct at issue is particularly egregious. Defendant
26 signed a written settlement agreement in which he promised to never again

1 operate a similar illegal streaming service. Nevertheless, Defendant instead
2 relaunched and continued to operate his infringing business under a
3 different name. Defendant has thus shown that “a binding contractual
4 commitment will not deter his brazen infringement.” (Dkt. 1, ¶ 1). Plaintiffs
5 bring the present action because there is no other way to put an end to
6 Defendant’s infringement. Altered Carbon is now the fourth in a series of
7 infringing services through which Defendant makes money by exploiting
8 Plaintiffs’ rights. Considering the sheer volume of unauthorized content
9 available on the Altered Carbon service, “its availability round-the-clock and
10 Tusa’s widespread consumer base amassed over the course of operating
11 several streaming services,” Tusa infringed Plaintiffs’ Copyrighted Works on
12 a massive scale. Given such egregious conduct—which Defendant
13 compounded by failing to mount any defense or participate in discovery or
14 engage in settlement negotiations—a substantial financial penalty is
15 warranted. The Court awards \$2,500 for each of 109 copyrights at issue, for
16 a total of \$272,500. Despite the egregiousness of Defendant’s behavior in
17 this case, the Court declines to award the statutory maximum in damages
18 because the number of copyrighted works at issue would amount to an
19 excessively large award of \$16,350,000. *Contra Warner Bros. Ent. Inc. v.*
20 *Caridi*, 346 F. Supp. 2d 1068 (C.D. Cal. 2004) (awarding \$150,000 per
21 infringed work where there were only two works at issue).

22
23 The Court concludes that statutory damages of \$272,500 for direct
24 and secondary copyright infringement are sufficient to compensate Plaintiffs
25 for financial losses incurred from Defendant’s infringement of Plaintiffs’
26 Copyrighted Works and deter Defendant from future infringement.

United States District Court
Central District of California

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b. Confidential Liquidated Damages (Settlement Sum)

On October 12, 2020, Plaintiffs and Tusa executed a confidential Settlement Agreement which resolved claims arising from Tusa’s infringing operation of Area 51 and Singularity Media. (Dkt. 1 ¶ 3). The Settlement

Agreement mandated that Tusa, *inter alia*, [REDACTED] (Id., ¶ 97-98).

Pursuant to the terms of the Settlement Agreement, in the event of a breach by Tusa, [REDACTED] (Id., ¶ 99).

(Id.).

Plaintiffs have performed all obligations required of them under the Settlement Agreement or, to the extent Plaintiffs have not done so, their performance is excused. Thus, pursuant to Paragraphs 1 and 2 of the parties’ confidential Settlement Agreement, the Court concludes [REDACTED]

2. Injunctive Relief

Plaintiffs also request that the Court award a permanent injunction prohibiting Tusa from engaging in the same or similar conduct going forward and ordering the infringing domains to be turned over to Plaintiffs. The Copyright Act permits permanent injunctions to prevent future infringement,

1 so long as the terms are reasonable. See 17 U.S.C. §§ 502(a), 1203(b)(1).
2 To obtain such relief, a plaintiff must demonstrate: “(1) that it has suffered an
3 irreparable injury; (2) that remedies available at law, such as monetary
4 damages, are inadequate to compensate for that injury; (3) that, considering
5 the balance of hardships between the plaintiff and defendant, a remedy in
6 equity is warranted; and (4) that the public interest would not be disserved
7 by a permanent injunction.” *eBay Inc. v. MercExchange*, L.L.C., 547 U.S.
8 388, 391 126 S.Ct. 1837, 1839 (2006) (citations omitted). Central District
9 courts routinely grant such injunctions on motions for default judgment when
10 a plaintiff meets the requirements of *eBay*. See e.g., *Amini Innovation Corp.*
11 *v. KTY International Marketing*, 768 F.Supp.2d 1049, 1057 (C.D. Cal. 2011);
12 *Munhwa Broadcasting Corp. v. Create New Tech. Co.*, No. CV 14-04213
13 RGK (RZx), 2015 WL 12752536, at *8 (C.D. Cal. 2015); *Chan Luu Inc. v.*
14 *Guang Gao d/b/a Wrapbraceletshut.com*, No. CV 13-2997 FMO (JCx), 2014
15 WL 12567141, at *8 (C.D. Cal. 2014); *Nexon America Inc. v. Kumar*, No. CV
16 11-06991 ODW (PJWx), 2012 WL 1116328, at *7 (C.D. Cal. 2012).

17
18 The Court finds an injunction to be appropriate in this case. First,
19 Plaintiffs would be irreparably harmed by further infringement. Second,
20 monetary damages are inadequate to compensate Plaintiffs, as Tusa’s
21 refusal to participate in this case has deprived Plaintiffs of the opportunity to
22 determine their damages with precision. Third, considering the balance of
23 the hardships, Tusa’s distribution of infringing material means that an
24 injunction merely compels Tusa to comply with the law. Finally, the public
25 interest weighs in favor of an injunction, as permitting Tusa to infringe
26 copyrighted material serves no public interest whatsoever. The Court

1 therefore **GRANTS** Plaintiffs' request for a permanent injunction enjoining
2 Tusa from distributing Plaintiffs' infringing material. The specifics of the
3 injunction are set forth in the judgment that will be issued concurrently with
4 this Order.

5
6 **3. Attorneys' Fees and Costs**

7 Plaintiffs further request an award for attorneys' fees in the amount of
8 \$330,600 pursuant to Local Rule 55-3 and 17 U.S.C. § 505, which permits a
9 court to award reasonable attorneys' fees to the prevailing party in an action
10 under the Copyright Act. (Dkt. 32, at 27). The Court accepts Plaintiffs'
11 request that damages be calculated according to Local Rule 55-3. Plaintiffs'
12 counsel did not submit billing records in this case.

13
14 **a. 17 U.S.C. § 505**

15 The Ninth Circuit has noted five non-exclusive factors that a court
16 may consider in deciding whether to award attorneys' fees pursuant to §
17 505: (1) the degree of success obtained; (2) frivolousness; (3) motivation;
18 (4) objective unreasonableness; and (5) the need in particular
19 circumstances to advance considerations of compensation and deterrence.
20 *Caridi*, 346 F. Supp. 2d at 1074-75.

21
22 Each of the five factors weigh in favor of a fee award here. First,
23 Plaintiffs succeeded on the merits. Second, Plaintiffs' claims are not
24 frivolous. Third, Plaintiffs' claims are not brought for an improper purpose,
25 considering that Plaintiffs gave Tusa several opportunities to resolve the
26 matter short of court intervention. Fourth, Tusa's failure to cease his

United States District Court
Central District of California

1 infringement—even after settling—is unreasonable. And fifth, both Tusa
2 and other would-be infringers must be deterred.

3
4 Therefore, the Court concludes that an award of attorneys’ fees is
5 proper here.

6
7 b. Local Rule 55-3

8 Local Rule 55-3 provides that where the amount of judgment is over
9 \$100,000, an award of attorneys’ fees should be made in the amount of
10 \$5,600 plus two percent of the amount over \$100,000. L.R. 55-3. As the
11 amount of the (public) judgment is \$272,500, the rule dictates an award of
12 \$5,600 plus \$3,450, for a total of \$9,050. This amount is reasonable in light
13 of the fees incurred by Plaintiffs at this stage of the litigation.

14
15 Given the above, the Court finds that attorneys’ fees of \$9,050 are
16 appropriate.

17
18 **IV. CONCLUSION**

19 The Court **GRANTS** Plaintiffs’ Motion for Default Judgment. The
20 Court awards Plaintiffs \$272,500 in damages, injunctive relief, [REDACTED]
21 [REDACTED] and \$9,050 in attorneys’ fees.

22 **IT IS SO ORDERED.**

23
24 Dated: 10/25/21

25 *Virginia A. Phillips*
26 Virginia A. Phillips
United States District Judge