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9

10 **THE UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
12

13 ABS-CBN CORPORATION, a
Philippines corporation,
14 ABS-CBN FILM PRODUCTIONS,
15 INC. d/b/a Star Cinema, a Philippines
corporation, and ABS-CBN
16 INTERNATIONAL CORPORATION,
a California corporation,

17 Plaintiffs,

18 v.

19 JOHN DOES 1–10 inclusive d/b/a THE
20 INDIVIDUALS, PARTNERSHIPS,
OR BUSINESS ASSOCIATIONS
21 IDENTIFIED AS FMOVIES.TO,
inclusive,

22 Defendants.
23

) Case No. 2:16-cv-08021-ODW-PLA
)
) **PLAINTIFFS’ NOTICE OF**
) **MOTION FOR ENTRY OF FINAL**
) **DEFAULT JUDGMENT AGAINST**
) **DEFENDANTS AND**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT**
) **THEREOF**

) *[Declaration of Seong H. Kim,*
) *Declaration of Elisha J. Lawrence,*
) *Declaration of Stephen M. Gaffigan,*
) *Declaration of Linda B. Romero,*
) *[Proposed] Order and [Proposed]*
) *Judgment submitted concurrently*
) *herewith]*

)
) Judge: Hon. Otis D. Wright, II
)

Date: May 1, 2017
Time: 1:30 p.m.
Courtroom: 5D

1 **TO ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on Monday, May 1, 2017, commencing at
3 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 5D, 350
4 W. 1st Street, Los Angeles, California 90012, before the honorable Otis D. Wright,
5 II, Plaintiffs, ABS-CBN Corporation, ABS-CBN Film Productions, Inc. d/b/a Star
6 Cinema, and ABS-CBN International (hereinafter collectively, “Plaintiffs” or “ABS-
7 CBN”) will and hereby do move the Court, pursuant to Federal Rule of Civil
8 Procedure 55, for an Order Granting Final Default Judgment against JOHN DOES
9 1–10 inclusive d/b/a the Individuals, Partnerships, or Business Associations
10 identified as “FMOVIES.TO” (“Defendants”).

11 ABS-CBN’s Motion is made pursuant to Federal Rule of Civil Procedure
12 55(b) and Local Rule 55 and is based on the following:

13 (a) On March 2, 2017, the Clerk entered a default as to Defendants. (Dkt.
14 24). To date, Defendants have not filed an Answer in this action.

15 (b) ABS-CBN is entitled to judgment against Defendants on all claims
16 pleaded in the Complaint (Dkt. 1), to wit: federal trademark counterfeiting and
17 infringement (Count I), false designation of origin (Count II), common law
18 trademark infringement (Count III), direct infringement of copyright (Count IV),
19 contributory infringement of copyright (Count V), and unfair competition under Cal.
20 Bus. & Prof. Statutes Sections 17200 and 17500 (Count VI). This Motion is also
21 based on the Declarations of Seong H. Kim, Elisha J. Lawrence, Stephen M.
22 Gaffigan, and Linda B. Romero, submitted herewith, the pleadings and papers in the
23 Court’s file, and any other matter that properly may be brought to the Court’s
24 attention at the time of or prior to hearing of this Motion.

25 (c) Defendants are not infants or incompetent persons and are not
26 represented by a general guardian, committee, conservator, or other representative.

27 (d) Defendants are not in the military service, and the Servicemembers
28 Civil Relief Act does not apply.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs submit this Memorandum of Points and Authorities in support of
3 their Motion for Entry of Final Default Judgment Against Defendants.

4 **I. INTRODUCTION**

5 Plaintiffs, ABS-CBN Corporation, ABS-CBN Film Productions, Inc. d/b/a
6 Star Cinema, and ABS-CBN International (hereinafter collectively, “Plaintiffs” or
7 “ABS-CBN”) initiated this action against DOES 1–10 inclusive d/b/a the
8 Individuals, Partnerships, or Business Associations identified as “FMOVIES.TO”
9 (“Defendants”) (the “Subject Domain Name”) through the filing of their Complaint
10 for federal trademark counterfeiting and infringement (Count I), false designation of
11 origin (Count II), common law trademark infringement (Count III), direct
12 infringement of copyright (Count IV), contributory infringement of copyright
13 (Count V), and unfair competition and false advertising under Cal. Bus. & Prof.
14 Statutes Sections 17200 and 17500 (Count VI). Defendants are in default, and the
15 prerequisites for a default judgment have been met. As relief, ABS-CBN seeks entry
16 of final default judgment finding Defendants liable on all counts of Plaintiffs’
17 Complaint. ABS-CBN prays such judgment includes the entry of a permanent
18 injunction, an award of statutory damages to ABS-CBN for Defendants’ willful
19 copyright infringement pursuant to 15 U.S.C. § 504(c), and an award of reasonable
20 attorneys’ fees and costs pursuant to 15 U.S.C. § 1117(a) and 15 U.S.C. § 505.¹
21 ABS-CBN also requests the Court cancel, or at ABS-CBN’s election, transfer the
22 Subject Domain Name at issue to ABS-CBN to ensure the associated website may
23 no longer be used as a means for illegally distributing ABS-CBN’s copyrighted
24 works and infringing ABS-CBN’s intellectual property rights.

25
26 _____
27 ¹ Although Plaintiffs’ Complaint includes a prayer for monetary damages for Counts
28 I, II, III, and VI, Plaintiffs hereby limit their request for Counts I, II, III, and VI to
entry of judgment on the claims for other monetary relief and the equitable relief
requested in the Complaint.

1

2 **II. STATEMENT OF FACTS**3 **A. Plaintiffs' Rights.**

4 ABS-CBN International is a California Corporation with its principal place of
5 business located at 150 Shoreline Drive, Redwood City, California 94065; ABS-
6 CBN International is a subsidiary of ABS-CBN Corporation. (Declaration of Elisha
7 Lawrence in Support of Plaintiffs' Motion for Entry of Final Default Judgment
8 ("Motion for FDJ") ["Lawrence Decl.,"] ¶ 2, filed herewith.) ABS-CBN Corporation
9 also owns ABS-CBN Film Productions, Inc. Both ABS-CBN Corporation and ABS-
10 CBN Film Productions, Inc. are organized under the laws of the Republic of the
11 Philippines ("the Philippines") with their principal places of business in Quezon
12 City, Philippines. (Id.) ABS-CBN Film Productions, Inc., is the owner of the
13 copyrights in and to the movies identified in paragraph 25 of the Complaint
14 (collectively, the "Copyrighted Works"). (Lawrence Decl. ¶ 4 and Exhibit 1
15 thereto.) ABS-CBN Corporation, ABS-CBN International, and ABS-CBN Film
16 Productions, Inc. all share exclusive rights in and to the ABS-CBN Copyrighted
17 Works. (Id.) All of ABS-CBN's Copyrighted Works are produced in the Philippines
18 and then initially aired through its broadcast facilities in the Philippines. (Lawrence
19 Decl. ¶¶ 4, 8.) ABS-CBN is the largest media and entertainment company in the
20 Philippines. (Lawrence Decl. ¶ 4.) ABS-CBN promotes and distributes such content
21 on the Internet. (Complaint ¶¶ 1, 28; Lawrence Decl. ¶ 4.)

22 Plaintiff ABS-CBN International is the owner of all rights in and to the
23 federally registered trademarks identified in Paragraph 5 of the Lawrence
24 Declaration and Paragraph 15 of the Complaint (the "ABS-CBN Registered Marks")
25 as well as the common-law trademark identified in Paragraph 6 of the Lawrence
26 Declaration and Paragraph 19 of the Complaint (the "Common Law Mark")
27 (collectively, the "ABS-CBN Marks"), which are used in connection with high
28 quality broadcast distribution services in the categories identified therein. (See

1 Complaint ¶¶ 15-23; Lawrence Decl. ¶¶ 5-6; see also United States Trademark
2 Registrations of the registered ABS-CBN Marks at issue attached as Exhibit 1 to the
3 Complaint, Dkt. 1-1.) ABS-CBN Corporation and ABS-CBN Film Productions, Inc.
4 share exclusive rights in and to the ABS-CBN Marks with ABS-CBN International.
5 (Complaint ¶ 24; Lawrence Decl. ¶ 6.) Moreover, ABS-CBN Corporation and ABS-
6 CBN Film Productions, Inc. are licensed to use and enforce the ABS-CBN Marks.
7 (Id.) The ABS-CBN Marks are symbols of ABS-CBN’s quality, reputation, and
8 goodwill and have never been abandoned. (Complaint ¶ 23; Lawrence Decl. ¶ 9.)
9 Furthermore, ABS-CBN has extensively used, advertised, and promoted the ABS-
10 CBN Marks in the United States in association with its services, and has carefully
11 monitored and policed the use of the ABS-CBN Marks. (Lawrence Decl. at ¶¶ 5-
12 10.) As a result of ABS-CBN’s efforts, members of the consuming public readily
13 identify services and audiovisual content bearing the ABS-CBN Marks as being
14 quality services and content sponsored and approved by ABS-CBN. (Id. at ¶ 11.)
15 Accordingly, the ABS-CBN Marks have achieved secondary meaning as identifiers
16 of high quality broadcast distribution services and audiovisual content.

17 **B. Defendants’ Infringing Acts.**

18 As alleged by ABS-CBN, admitted by default, and established by the
19 evidence submitted herewith, Defendants operate and control the Internet website
20 operating under the Subject Domain Name. (See Exhibits 2 through 3 to the
21 Complaint, Dkt. 1-2 through 1-3; Declaration of Linda B. Romero in Support of
22 Plaintiffs’ Motion for FDJ [“Romero Decl.”], filed herewith, ¶¶ 4-6; Declaration of
23 Stephen M. Gaffigan in Support of Plaintiffs’ Motion for FDJ [“Gaffigan Decl.”],
24 filed herewith, ¶ 3.). Defendants are the active, conscious, and dominant force
25 infringing the ABS-CBN Marks and facilitating access to illegal performances of
26 ABS-CBN’s Copyrighted Works. Defendants provide links on their website to
27 instant streams which perform ABS-CBN’s Copyrighted Works. (See Romero
28 Decl., ¶¶ 4-6; Dkt. 1-2 through 1-3.) When a user clicks on a link to one of ABS-

1 CBN's copyrighted movies, Defendants' website then streams and performs the full-
2 length version of the video. (See Id.) This includes, but is not limited to, the ABS-
3 CBN Copyrighted Works identified in paragraph 25 of the Complaint.

4 Further, as admitted by Defendants through default, at all times relevant,
5 Defendants have had full knowledge of ABS-CBN's ownership of the ABS-CBN
6 Marks and its Copyrighted Works, including its exclusive rights to use and license
7 such intellectual property and the goodwill associated therewith. (Complaint ¶¶ 44,
8 58, 68, 83, 99, 107.) Defendants do not have, nor have they ever had, the right or
9 authority to use the ABS-CBN Marks for any purpose. (See Lawrence Decl. ¶ 12.)
10 However, despite their known lack of authority to do so, Defendants are engaged in
11 the activity of promoting and otherwise advertising, offering for distribution, and
12 distributing ABS-CBN's Copyrighted Works under the ABS-CBN Marks using the
13 Internet website operating under the Subject Domain Name. (See Complaint ¶¶ 2, 4,
14 34-43, 44-67, 73-75, 81-84, 89-90, 95-99, 105-112, 119-121; Dkt. 1-2 through 1-3;
15 see also Lawrence Decl. ¶¶ 12-15, Romero Decl. ¶¶ 4-6, Gaffigan Decl. ¶ 3.)

16 Defendants stream the Copyrighted Works which are performed through a
17 viewer/player window within their website. (Romero Decl. ¶¶ 4-6, Gaffigan Decl. ¶
18 3.) The Copyrighted Works are not uploaded by the website's users because the
19 website does not permit users to alter the content. (Romero Decl. ¶ 6.) Further,
20 Defendants profit from the advertising revenue derived by driving users to their
21 website in order to access and view the pirated copies of ABS-CBN's Copyrighted
22 Works. (Lawrence Decl. ¶ 16; Gaffigan Decl. ¶ 6, and Exhibit 1 thereto.) The large
23 inventory of popular entertainment content available on Defendants' website,
24 including full-length copies of ABS-CBN's Copyrighted Works, are designed to
25 attract users to the infringing content and, thus, increase Defendants' profits from
26 the advertisers who pay Defendants based on the number of views that the
27 advertising receives. (Lawrence Decl. ¶ 16.) The infringement-driven traffic
28 increases the volume of online advertising impressions and transactions, and thereby

1 enables Defendants to charge advertisers higher rates, thus increasing revenues from
2 the advertising services used. (Id.)

3 ABS-CBN's representative, Elisha J. Lawrence, confirmed Defendants are
4 not and were never entitled to use the ABS-CBN Marks or broadcast or otherwise
5 perform the ABS-CBN Copyrighted Works offered for distribution under those
6 Marks. (See Lawrence Decl. ¶¶ 12-15).

7 **C. Procedural History.**

8 On October 27, 2016, ABS-CBN filed its Complaint against Defendants (Dkt.
9 1). On November 28, 2016 ABS-CBN filed its *Ex Parte* Application for Order
10 Authorizing Alternate Service of Process (Dkt. 15), which the Court granted on
11 December 27, 2016 (Dkt. 20). The Defendants were each served with their
12 respective Summons and a copy of the Complaint pursuant to Rule 4 of the Federal
13 Rules of Civil Procedure on December 28, 2016 via alternate service, as authorized
14 by the Court's December 27, 2016 Order Granting Plaintiffs' *Ex Parte* Application
15 for Alternate Service (Dkt. 20), as evidenced by the Proof of Service on file with
16 this Court (Dkt. 21). (Declaration of Seong H. Kim in Support of Plaintiffs' Motion
17 for FDJ ["Kim Decl."], filed herewith, ¶ 4.)

18 The time allowed for Defendants to respond to the Complaint has expired.
19 (Kim Decl. ¶ 5.) Defendants have not been granted any extension of time to
20 respond, nor have they served or filed an answer or other response. (Id.) To ABS-
21 CBN's knowledge, Defendants are not infants or incompetent persons, and, upon
22 information and belief, the Servicemembers Civil Relief Act does not apply. (See
23 Kim Decl. ¶¶ 6-7.) On March 1, 2017, ABS-CBN filed its Request for Entry of
24 Clerk's Default against Defendants and gave notice of this request (Dkt. 23). The
25 Clerk subsequently entered a default as to Defendants on March 2, 2017 (Dkt. 24)
26 for failure to appear, plead or otherwise defend pursuant to Rule 55(a) of the Federal
27 Rules of Civil Procedure. (Kim Decl. ¶ 8.) Accordingly, ABS-CBN now moves the
28 Court to grant Final Default Judgment against Defendants.

1 **III. ARGUMENT**

2 **A. Default Judgment Should be Entered Against Defendants.**

3 This Court has subject matter jurisdiction over this action pursuant to 17
 4 U.S.C. §§ 101 *et seq.*, 15 U.S.C. § § 1114 and 1125(a), and 28 U.S.C. §§ 1331,
 5 1338(a) & (b). (Complaint ¶¶ 7-11.) Personal jurisdiction over Defendants and
 6 venue in this Judicial District are proper under 28 U.S.C. § 1391 as Defendants
 7 direct business activities toward consumers within this District and cause harm to
 8 ABS-CBN's business through the fully accessible Internet website operating under
 9 the Subject Domain Name and because Defendants are non-resident aliens. (*Id.* at ¶¶
 10 10, 11.)

11 **1. Entry of Default Judgment is Proper.**

12 A court may order a default judgment pursuant to Fed. R. Civ. P. 55(b)
 13 following the entry of default by the court clerk under Rule 55(a). *See U.S. v.*
 14 *Rivera*, 2003 U.S. Dist. LEXIS 15823, **12-13 (C.D. Cal. July 18, 2003). Upon
 15 entry of default by the clerk, the well-pled factual allegations of a plaintiff's
 16 complaint, other than those related to damages, will be taken as true. *Televideo*
 17 *Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

18 Although the procedural requirements for a default² are satisfied, the decision
 19 to grant or to deny a request for default judgment lies within the court's sound
 20 discretion. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). When

21 _____
 22 ² Pursuant to the Federal Rules and the Local Rules for the Central District of
 23 California, a request of entry of default judgment requires a plaintiff to set forth: 1)
 24 when and against which party default was entered; 2) the identification of the
 25 pleadings to which default was entered; 3) whether the defaulting party is an infant
 26 or incompetent person, and if so, whether the person is adequately represented; 4)
 27 that the Servicemembers Civil Relief Act does not apply; and 5) that notice of the
 28 application has been served on the defaulting party, if required. FED. R. CIV. P.
 55(b)(2); C.D. Cal. L.R. 55-1. As previously mentioned in section II(C) of this
 Memorandum, and as set forth in the Declaration of Seong H. Kim, Plaintiffs have
 satisfied the procedural requirements for default judgment. (*See* p. 5, *supra*; Kim
 Decl. ¶¶ 4-10.)

1 exercising this discretion, the court is guided by the following factors:

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

9 United States v. Casey, 2000 U.S. Dist. LEXIS 15890, **1-2 (N.D. Cal. Sept. 25,
10 2000); State Farm Life Ins. Co. v. Canul, 2012 U.S. Dist. LEXIS 50313, *4 (E.D.
11 Cal. Apr. 10, 2012), citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

12 Nonetheless, despite this discretionary standard, "default judgments are more
13 often granted than denied." PepsiCo. v. Triunfo-Mex, Inc., 189 F.R.D. 431, 432
14 (C.D. Cal. 1999). In this case, the Complaint, pleadings, and declarations already on
15 file and those being filed in support of Plaintiffs' Motion for Entry of Final Default
16 Judgment clearly demonstrate that entry of default judgment pursuant to Rule 55 of
17 the Federal Rules of Civil Procedure should be entered against Defendants.

18 **2. Factual Allegations Establish Defendants' Liability.**

19 Title 15 U.S.C. § 1114(1) provides liability for trademark infringement if,
20 without the consent of the registrant, a defendant uses in commerce any
21 reproduction, counterfeit, copy, or colorable imitation of a registered mark which "is
22 likely to cause confusion, or to cause mistake, or to deceive." Brookfield Commc'ns,
23 Inc. v. W. Coast Entm't Corp., 174 F.3d 1036, 1046 n. 6 (9th Cir. 1999). In order to
24 prevail on its trademark infringement claim, ABS-CBN must establish (1) that it has
25 valid, protectable trademarks, and (2) that Defendants' use of the mark is likely to
26 cause confusion. Applied Info. Scis. Corp. v. eBay, Inc., 511 F.3d 966, 969-70 (9th
27 Cir. 2007). See also Brookfield Communs., Inc., 174 F.3d at 1047 n. 6 (9th Cir.
28 1999).

1 To prevail on a claim of false designation of origin under Section 43(a) of the
2 Lanham Act, ABS-CBN must prove Defendants used in commerce, in connection
3 with any goods or services, any word, term, name, symbol or device, or any
4 combination thereof, or any false designation of origin, which is likely to deceive as
5 to the affiliation, connection, or association of Defendants with ABS-CBN, or as to
6 the origin, sponsorship, or approval, of Defendants' services by ABS-CBN. 15
7 U.S.C. § 1125(a)(1). See Brookfield Communs., Inc., 174 F.3d at 1046 n. 6. As with
8 trademark infringement claims, the test for liability for false designation of origin
9 under Section 43(a) is also "whether the public is likely to be deceived or confused
10 by the similarity of the marks" at issue. Two Pesos, Inc. v. Taco Cabana, Inc., 505
11 U.S. 763, 780 (1992); see also Brookfield Commc'ns, Inc., 174 F.3d at 1046 n. 6,
12 1047 n. 8 (holding the same legal standard applies to Sections 32(1) and 43(a) of the
13 Lanham Act).

14 Whether a defendant's use of the plaintiff's trademarks created a likelihood of
15 confusion between a plaintiff's and defendant's services is also the determining
16 factor in the analysis of trademark infringement under the common law of
17 California. See M2 Software, Inc. v. Madacy Entm't, 421 F.3d 1073, 1080 (9th Cir.
18 2005) ("The test of trademark infringement under state, federal, and common law is
19 whether there will be a likelihood of confusion.")

20 ABS-CBN's Complaint also sets forth a cause of action for direct and
21 contributory infringement of copyright. To prevail on its direct copyright
22 infringement claim, ABS-CBN must "satisfy two requirements to present a prima
23 facie case of direct copyright infringement: (1) they must show ownership of the
24 allegedly infringed material, and (2) they must demonstrate that the alleged
25 infringers violated at least one exclusive right granted to copyright holders under 17
26 U.S.C. § 106." A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1013 (9th Cir.
27 2001). Similarly, to prevail on a claim of contributory infringement of copyright, a
28 plaintiff must establish: (1) direct infringement; (2) that defendant had knowledge of

1 the direct infringement; and (3) that defendant intentionally induced, encouraged or
2 materially contributed to the direct infringement. See MGM Studios Inc. v.
3 Grokster, Ltd., 545 U.S. 913, 930 (2005); see also A&M Records, 239 F.3d at 1020.

4 For ABS-CBN to prevail under a claim of unfair competition brought under
5 Cal. Bus. & Prof. Code § 17200, the “Ninth Circuit has consistently held that state
6 claims of unfair competition brought pursuant to Cal. Bus. & Prof. Code § 17200
7 are ‘substantially congruent’ to claims brought under the Lanham Act. Cleary v.
8 News Corp., 30 F.3d 1255, 1262-63 (9th Cir. 1994). In other words, the likelihood
9 of confusion test also governs state law claims of unfair competition. Mattel v.
10 MCA Records, Inc., 296 F.3d 894, 902 n.2 (9th Cir. 2002).” Switchmusic.com., Inc.
11 v. U.S. Music Corp., 416 F. Supp. 2d 812, 827 (C.D. Cal. 2006). Finally, to prevail
12 on a claim for false advertising under Section 17500 of the California Business and
13 Professions Code, a plaintiff must show that with intent to perform services, “the
14 defendant made a statement concerning those services that is untrue or misleading,
15 which is known, or which by the exercise of reasonable care should be known, to be
16 untrue or misleading.” Conifer Secs, LLC v. Conifer Capital LLC, 2003 U.S. Dist.
17 LEXIS 5859, *6 (N.D. Cal. Apr. 1, 2003). Use of a trademark or trade dress that is
18 likely to cause confusion constitutes a violation of 17500. Id. at *7, citing Faberge,
19 Inc. v. Saxony Prods., Inc., 605 F.2d 426, 428 (9th Cir. 1979) (“In order to obtain
20 relief under 15 U.S.C. § 1114 or the relevant California statutes, Cal.Bus. &
21 Prof.Code § 17500 and Cal.Civ.Code § 3369, a plaintiff must show that the
22 defendant used a trademark or trade dress likely to cause confusion between the
23 parties' products.”)

24 The well-pled factual allegations of ABS-CBN’s Complaint, including
25 specifically those pled in Paragraphs 2, 4, 34-43, 44-67, 73-75, 81-84, 89-90, 95-99,
26 105-112, 119-121, properly allege the elements for each of the above claims.
27 Moreover, the factual allegations in ABS-CBN’s Complaint, substantiated by
28 evidence submitted herewith, conclusively establish Defendants’ liability under each

1 claim asserted in the Complaint. Accordingly, Default Judgment pursuant to Rule 55
2 of the Federal Rules of Civil Procedure should be entered against Defendants.

3 **B. Plaintiffs' Requested Relief Should Be Granted.**

4 **1. Entry of a Permanent Injunction is Appropriate.**

5 The Trademark Act authorizes a district court to issue an injunction
6 "according to the principles of equity and upon such terms as the court may deem
7 reasonable," to prevent violations of trademark law. 15 U.S.C. § 1116(a). See Levi
8 Strauss & Co. v. Shilon, 121 F.3d 1309, 1314 (9th Cir. 1997). Indeed, "[i]njunctive
9 relief is the remedy of choice for trademark and unfair competition cases, since there
10 is no adequate remedy at law for the injury caused by a defendant's continuing
11 infringement." Century 21 Real Estate Corp. v. Sandlin, 846 F.2d 1175, 1180 (9th
12 Cir. 1988). Moreover, even in a default judgment setting, injunctive relief is
13 available. Louis Vuitton Malletier, S.A. v. Absolutee Corp., Ltd., 2010 U.S. Dist.
14 LEXIS 139351, **1-2 (N.D. Cal. Apr. 19, 2010) (granting permanent injunctive
15 relief upon entry defendants' default judgment where plaintiff asserted claims for
16 trademark infringement and false designation of origin under Lanham Act); Philip
17 Morris U.S.A. Inc. v. Castworld Prods., 219 F.R.D. 494, 502 (C.D. Cal. 2003)
18 (same); see also Pepsico, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1177-78
19 (C.D. Cal. 2002). Pursuant to 15 U.S.C. § 1116, this Court should permanently
20 enjoin the Defendants from infringing upon any of ABS-CBN's intellectual property
21 rights, including the ABS-CBN Marks and Copyrighted Works.

22 Permanent injunctive relief is appropriate where ABS-CBN demonstrates (1)
23 it has suffered irreparable injury; (2) there is no adequate remedy at law; (3) the
24 balance of hardships favors an equitable remedy; and (4) an issuance of an
25 injunction is in the public's interest. eBay Inc., v. MercExchange, LLC, 547 U.S.
26 388, 391 (2006). As demonstrated herein, ABS-CBN has clearly carried its burden
27 on each of the four factors, warranting permanent injunctive relief, because
28 Defendants have unlawfully used ABS-CBN's goodwill to make a profit.

1 Accordingly, a permanent injunction against Defendants' counterfeiting and
2 infringing activities is appropriate and necessary.

3 Defendants' actions merit permanent injunctive relief, not only to protect
4 ABS-CBN's reputation, but also to protect consumers from being deceived as to the
5 quality and source of services offered and advertised under ABS-CBN's trademarks.
6 The facts alleged in ABS-CBN's Complaint, substantiated by the evidence
7 submitted herewith, show Defendants infringed and induced others to infringe the
8 ABS-CBN Marks by using them to advertise and promote illegal distribution
9 services of ABS-CBN's Copyrighted Works.

10 ABS-CBN will continue to suffer irreparable injury if Defendants' infringing
11 activities are not permanently enjoined. (Lawrence Decl. ¶¶ 17-24.) In trademark
12 cases, a showing that there is a high likelihood of confusion caused by trademark
13 infringement can be sufficient to establish irreparable harm to the trademark owner.
14 See Levi Strauss & Co. v. Sunrise Int'l Trading Inc., 51 F.3d 982, 986 (11th
15 Cir.1995) ("There is no doubt that the continued sale of thousands of pairs of
16 counterfeit jeans would damage LS & Co.'s business reputation and might decrease
17 its legitimate sales.") Furthermore, "[h]arm might be irremediable, or irreparable,
18 for many reasons, including that a loss is difficult to replace or difficult to measure,
19 or that it is a loss that one should not be expected to suffer. In the context of
20 copyright infringement cases, the harm to the plaintiff's property interest has often
21 been characterized as irreparable in light of possible market confusion." Salinger v.
22 Colting, 607 F.3d 68, 81 (2nd Cir. 2010); Merkos L'Inyonei Chinuch, Inc. v. Otsar
23 Sifrei Lubavitch, Inc., 312 F.3d 94, 96-97 (2d Cir. 2002); see also WPIX, Inc. v. ivi,
24 Inc., 765 F. Supp. 2d 594, 617-622 (S.D.N.Y. 2011) (granting injunction based on
25 streaming copyrighted TV programming over Internet). In any event, ABS-CBN's
26 Complaint alleges that Defendants' unlawful actions have caused ABS-CBN
27 irreparable injury, and will continue to do so if Defendants are not permanently
28 enjoined. (Complaint at ¶¶ 58, 70, 76, 78, 86, 93, 102, 115.) Defendants have

1 defaulted upon ABS-CBN's factual allegations in that respect.

2 Moreover, it can hardly be said that Defendants face hardship in refraining
3 from their willful infringement of ABS-CBN's trademarks and copyrights, whereas
4 ABS-CBN faces hardship from loss of sales and their inability to control their
5 reputation. In fact, Defendants have no cognizable hardship, as they will be
6 prohibited from promoting and offering distribution services of ABS-CBN's
7 Copyrighted Works under ABS-CBN's Marks and use of the Marks, which are
8 illegal acts to begin with. ABS-CBN has suffered irreparable harm while "[i]t is
9 axiomatic that an infringer of copyright cannot complain about the loss of ability to
10 offer its infringing product." WPIX, 765 F. Supp. 2d at 621; see also Anhing Corp.
11 v. Thuan Phong Co., 2015 U.S. Dist. LEXIS 97019, *73 (C.D. Cal. July 24, 2015),
12 citing Audi AG v. D'Amato, 469 F.3d 534, 550 (6th Cir. 2006) (noting that a
13 defendant suffers no hardship in merely "refraining from willful trademark
14 infringement,"); Cadence Design Sys., Inc. v. Avant! Corp., 125 F.3d 824, 830 (9th
15 Cir. 1997) (holding that it was reversible error for a district court to even consider
16 "the fact that an injunction would be devastating to [defendant's] business," because
17 "where the only hardship that the defendant will suffer is lost profits from an
18 activity which has been shown likely to be infringing, such an argument in defense
19 merits little equitable consideration.") Finally, the public has an interest in the
20 issuance of a permanent injunction against Defendants in order to prevent
21 consumers from being misled by Defendants' services. See Starbucks Corp. v.
22 Heller, 2014 U.S. Dist. LEXIS 165801, *25 (C.D. Cal. Nov. 26, 2014) ("[T]he most
23 basic public interest is the public's right not to be deceived or confused"), citing
24 Warner Bros. Entm't v. Glob. Asylum, Inc., 2012 U.S. Dist. LEXIS 185695, at *67
25 (C.D. Cal. Dec. 10, 2012). The public interest is protected by issuing an injunction
26 because ABS-CBN loses valuable incentives to continue to create programming if it
27 continues to be deprived of (1) control over its Copyrighted Works, (2) how and
28 where the Copyrighted Works get distributed, including Internet retransmissions

1 through negotiated licenses and their portals, and (3) potential revenue sources.
2 Protecting ABS-CBN's rights is consistent with, if not equivalent to, promoting the
3 public interest. See Salinger, 607 F.3d at 82; WPIX, 765 F. Supp. 2d at 621; Warner
4 Bros. Entm't, Inc. v. WTV Sys., 824 F. Supp. 2d 1003, 1015 (C.D. Cal. 2011) (“[i]t
5 is virtually axiomatic that the public interest can only be served by upholding
6 copyright protections and correspondingly, preventing the misappropriation of
7 skills, creative energies, and resources which are invested in the protected work”),
8 citing Apple Computer, Inc. v. Franklin Computer Corp., 714 F.2d 1240, 1255 (3rd
9 Cir. 1983). Ultimately, the permanent injunction will prevent consumer confusion
10 and deception in the marketplace, and will protect ABS-CBN's property interest in
11 its Marks and Copyrighted Works, which are the touchstones of trademark and
12 copyright law.

13 Furthermore, as admitted by Defendants through default, (i) the Subject
14 Domain Name is an essential component of Defendants' counterfeiting and
15 infringing activities; and (ii) the domain name itself is the means by which
16 Defendants further their counterfeiting and infringing schemes and cause harm to
17 ABS-CBN. (Complaint ¶ 43.) Therefore, in order to effectuate the injunction as a
18 practical matter, the Subject Domain Name should be ordered transferred to ABS-
19 CBN's control by Defendants, their Registrar, and/or Registry. Absent the transfer
20 of the Subject Domain Name, Defendants will remain free to continue infringing
21 ABS-CBN's trademarks and copyrights with impunity and will continue to benefit
22 from the Internet traffic to their website built through the unlawful use of the ABS-
23 CBN Marks and ABS-CBN's Copyrighted Works.

24 The All-Writs Act allows a district court to "issue all writs necessary or
25 appropriate in aid of their respective jurisdictions and agreeable to the usages and
26 principles of law." 28 U.S.C. § 1651(a). See also McCormick v. Am. Equity Inv.
27 Life Ins. Co., 2016 U.S. Dist. LEXIS 26272, *14 (C.D. Cal. Feb. 29, 2016).
28 Additionally, it authorizes courts, under extraordinary circumstances, to compel

1 action by non-parties who "are in a position to frustrate the implementation of a
2 court order or the proper administration of justice." In re Am. Online Spin-Off
3 Accounts Litig., 2005 U.S. Dist. LEXIS 45625, *7 (C.D. Cal. May 9, 2005), citing
4 United States v. New York Tel. Co., 434 U.S. 159, 174 (1977); see also United
5 States v. City of Detroit, 329 F.3d 515, 523 (6th Cir. 2003). If the Court were not to
6 eliminate the means by which Defendants are conducting their unlawful activities by
7 transferring the Subject Domain Name to ABS-CBN, the Defendants will continue
8 their infringing activities with impunity.

9 Furthermore, the Court's powers of equity are sufficiently broad to compel
10 measures necessary to enforce an injunction against infringement. See, e.g., Swann
11 v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15 (1971) ("Once a right and a
12 violation have been shown, the scope of a district court's equitable powers to
13 remedy past wrongs is broad, for. . . the essence of equity jurisdiction has been the
14 power of the Chancellor to do equity and to mould each decree to the necessities of
15 the particular case."); United States v. Bausch & Lomb Optical Co., 321 U.S. 707,
16 724 (1944) ("Equity has power to eradicate the evils of a condemned scheme by
17 prohibition of the use of admittedly valid parts of an invalid whole."). District courts
18 are expressly authorized to order the transfer or surrender of domain names in an *in*
19 *rem* action against a domain name. See 15 U.S.C. §§ 1125(d)(1)(C), (d)(2).
20 However, the remedy is by no means limited to that context. See, e.g., Philip Morris
21 USA v. Otamedia Ltd., 331 F. Supp. 2d 228, 230-31 n. 2 (S.D.N.Y. 2004)
22 (Yesmoke.com domain name transferred to plaintiff despite the fact that plaintiff did
23 not own a trademark in the term "Yesmoke" and noting that 15 U.S.C. § 1125
24 "neither states nor implies that an in rem action against the domain name constitutes
25 the exclusive remedy for a plaintiff aggrieved by trademark violations in
26 cyberspace."); Ford Motor Co. v. Cross, 441 F. Supp. 2d 837, 853 (E.D. Mich.
27 2006) (defendants ordered to disclose all other domain registrations held by them
28 and to transfer registration of a particular domain name to plaintiff in part under

1 authority of 15 U.S.C. § 1116(a)); see also eAdGear, Inc. v. Liu, 2012 U.S. Dist.
2 LEXIS 86364, *48 (N.D. Cal. June 21, 2012) (Order finding transferring domain
3 name reasonable and necessary relief in a trademark infringement action).

4 Defendants have created an Internet-based infringement scheme and are
5 profiting from the deliberate misappropriation of ABS-CBN's rights. Accordingly,
6 the Court should eliminate the means by which Defendants are conducting their
7 unlawful activities by transferring the Subject Domain Name to ABS-CBN, where it
8 may be disabled from further use as a platform for the illegal distribution of ABS-
9 CBN's Copyrighted Works under counterfeits of ABS-CBN's trademarks.

10 **2. Plaintiffs' Damages as to Count IV and V for Direct and**
11 **Contributory Infringement of Copyright**

12 ABS-CBN's Complaint also sets forth causes of action for direct and
13 contributory infringement of copyright under 17 U.S.C. § 504 and requested
14 statutory damages under 17 U.S.C. § 504(c). Defendants have defaulted on the well-
15 pled allegations of Count IV & V. Because Defendants failed to respond to ABS-
16 CBN's copyright infringement claims and participate in discovery, ABS-CBN
17 cannot demonstrate Defendants' actual revenue. Accordingly, ABS-CBN elects to
18 be awarded statutory damages within the provisions of Section 504(c) of the
19 Copyright Act, 17 U.S.C. § 504(c), enhanced to reflect the willful nature of the
20 Defendants' infringement, instead of an award of actual damages or profits.

21 Title 17 U.S.C. § 504(c) concerning statutory damages provides that a
22 copyright owner may elect an award of statutory damages at any time before final
23 judgment is rendered, "to recover, instead of actual damages and profits, an award
24 of statutory damages for all infringements involved in the action, with respect to any
25 one work, for which any one infringer is liable individually, or for which any two or
26 more infringers are liable jointly and severally, in a sum of not less than \$750 or
27 more than \$30,000 as the court considers just." 17 U.S.C. § 504(c)(1). In addition, if
28 the Court finds that Defendants' copyright infringement was willful, "the court in its

1 discretion may increase the award of statutory damages to a sum of not more than
2 \$150,000.” 17 U.S.C. § 504(c)(2). Pursuant to 17 U.S.C. § 504(c), ABS-CBN seeks
3 to recover an award of statutory damages as to Count IV and V of the Complaint.

4 The Court has wide discretion to set an amount of statutory damages.
5 Moroccanoil, Inc. v. Allstate Beauty Products, Inc., 847 F. Supp. 2d 1197, 1202
6 (C.D. Cal. 2012). Indeed, an award of statutory damages is appropriate, because
7 statutory damages may be elected whether or not there is adequate evidence of the
8 actual damages suffered by plaintiff or of the profits reaped by the defendant. Harris
9 v. Emus Records Corp., 734 F.2d 1329, 1335 (9th Cir. 1984). Further, the statutory
10 rule of damages, which was “formulated after long experience, not merely compels
11 restitution of profit and reparation for injury but also is designed to discourage
12 wrongful conduct.” F. W. Woolworth Co. v. Contemporary Arts, Inc., 344 U.S. 228,
13 233 (1952) (noting that “the discretion of the court is wide enough to permit a resort
14 to statutory damages for such purposes”).

15 A defendant’s intent can be of probative value for establishing willfulness,
16 triggering an enhanced statutory award. Earthquake Sound Corp. v. Bumper Indus.,
17 352 F.3d 1210, 1216-17 (9th Cir. 2003). A defendant is deemed to have acted
18 willfully where the defendant knowingly and intentionally infringes the plaintiff’s
19 intellectual property rights. See id., citing Comm. for Idaho's High Desert, Inc. v.
20 Yost, 92 F.3d 814, 825 (9th Cir. 1996). Willfulness may also be inferred from
21 Defendant’s default.³ See Adobe Sys. v. Taveira, 2009 U.S. Dist. LEXIS 127751,
22 *14 (N.D. Cal. Jan. 16, 2009) (finding that the un rebutted allegations contained in a
23 complaint establish that defendant's conduct was willful).

24 ABS-CBN is a renowned producer of quality entertainment content, including
25 television shows and movies. The evidence establishes Defendants willfully
26 infringed ABS-CBN’s copyrighted programming in order to attract visitors to their
27

28 ³ See Complaint ¶¶ 92, 108.

1 website, so that they may in turn profit from these visitors' page views in the form
2 of advertising revenue. In any event, Defendants have defaulted on Plaintiffs'
3 allegations of willfulness. (Complaint at ¶¶ 1, 6, 7, 58, 79, 92, 100, 114.) See
4 NewPark Mall LLC v. CRGE NewPark Mall, LLC, 2016 U.S. Dist. LEXIS 23987,
5 **12-13 (N.D. Cal. Feb. 25, 2016) (inferring willfulness from the Defendant's
6 default.) As such, this Court should award a significant amount of statutory damages
7 under the Copyright Act to ensure Defendants will not continue their intentional and
8 willful infringing activities.

9 The available evidence in this case demonstrates Defendants infringed at least
10 seven (7) of ABS-CBN's U.S. Registered Copyrights. (See Dkt. 1-3, generally;
11 Complaint at ¶ 25; Exhibit 1 to the Lawrence Declaration.) ABS-CBN requests the
12 Court award it \$30,000.00 per infringed work, for a total award amount of
13 \$210,000.00 against Defendants. The requested amount is the highest for non-
14 willful infringement, despite Defendants' default on allegations of willfulness.

15 **3. Plaintiffs' Attorneys' Fees and Costs Should Be Awarded.**

16 Title 15 U.S.C. § 1117(a) authorizes an award of attorneys' fees to a
17 prevailing party in "exceptional" cases. Although the term "exceptional" is not
18 defined in the statute, the Ninth Circuit has held that attorneys' fee awards are
19 available in cases "where the acts of infringement can be characterized as malicious,
20 fraudulent, deliberate, or willful." Rio Props. Inc., v. Rio Int'l Interlink, 284 F.3d
21 1007, 1023 (9th Cir. 2002). As outlined above, the Defendants' many acts of
22 infringement herein were engaged in maliciously and willfully. Furthermore, Title
23 17, U.S.C.A., § 505 provides that as a remedy for infringement in a civil action, the
24 court in its discretion may allow the recovery of full costs by or against any party
25 other than the United States or an officer thereof. 17 U.S.C. § 505. The court may
26 also award a reasonable attorney's fee to the prevailing party as part of the costs. Id.
27 Accordingly, Plaintiffs request the Court enter an award of attorneys' fees pursuant
28 to Local Rule 55-3 in the amount of \$7,800.

