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 LIONS GATE FILMS INC.  
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10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**  
 12 **WESTERN DIVISION**

13  
 14 LIONS GATE FILMS INC.,

15 Plaintiff,

16 v.

17 AHMED SALEH, an individual; AMIEL  
 ELBAR, an individual; MUHAMMAD  
 18 JAVED ASHRAF, an individual; TOM  
 MESSCHENDORP, an individual;  
 19 JEROME GILLAN, an individual;  
 LUCAS LIM, an individual; and JOHN  
 20 DOES 1-4, inclusive,

21 Defendants.

Case No.: 2:14-cv-06033-MMM-AGR

**[PROPOSED] DEFAULT  
 JUDGMENT AS TO MUHAMMAD  
 JAVED ASHRAF, TOM  
 MESSCHENDORP AND LUCAS LIM**

1 On November 30, the Clerk entered default against Defendants Muhammad  
2 Javed Ashraf, Lucas Lim and Tom Messchendorp (collectively “Defaulting  
3 Defendants). On December 9, 2015, Plaintiff Lions Gate Films Inc. (“Lions Gate”)   
4 filed its Motion for Entry of Default Judgment against Defaulting Defendants (the  
5 “Motion”), and thereby moved this Court pursuant to Federal Rule of Civil  
6 Procedure 55(b)(2) to enter final judgment against Defaulting Defendants and each  
7 of them.

8 The Court has reviewed and considered the Motion, the accompanying  
9 Memorandum of Points and Authorities and the declaration of Christopher Varas,  
10 and has also reviewed the prior declarations of Edward Cho and Robert Wenokur  
11 and the other pleadings and records on file with the Court. After review and  
12 consideration of these materials and finding good cause, the Court hereby GRANTS  
13 Lions Gate’s Motion and enters Judgment against Defaulting Defendants and each of  
14 them as follows:

- 15 1. The Court accepts as true all of the allegations in Lions Gate’s First  
16 Amended Complaint relating to liability.
- 17 2. The Court has jurisdiction over the Parties to this action, and has  
18 jurisdiction over the subject matter hereof pursuant to 17 U.S.C. §501 and 28 U.S.C.  
19 §§ 1331 and 1338(a).
- 20 3. Service of process was properly made on each of Defaulting  
21 Defendants.
- 22 4. Lions Gate has been licensed the sole and exclusive right to distribute  
23 and exploit the feature motion picture “The Expendables 3” (the “Film”) in the  
24 United States and throughout North America. Lions Gate’s exclusive rights in the  
25 Film pursuant to this exclusive license include but are not limited to all rights in the  
26 United States and throughout North America to exploit the Film by means of direct  
27 exhibition in theaters, by means of the Internet and in all home video media, among  
28 other rights.

1           5.     The Film is the subject of United States Copyright Registration No.  
2 PAu003734299, issued on July 29, 2014. In addition, the screenplay for the Film is  
3 the subject of United States Copyright Registration No. PAu003704583, issued on  
4 July 10, 2013, which was valid, subsisting and in full force and effect before  
5 Defaulting Defendants' infringement began. The Film is a derivative work based on  
6 the registered screenplay.

7           6.     As set forth below, Defaulting Defendants and each of them began  
8 unlawfully disseminating the Film approximately three weeks before the Film's  
9 theatrical release in North America. In particular, each of Defaulting Defendants  
10 disseminated a copy of the Film that originated from a single digital file that was  
11 stolen and uploaded to the Internet without Lions Gate's authorization or consent  
12 (the "Stolen Film").

13           7.     Defendant Ashraf currently operates or previously operated websites at  
14 the domain names <limetorrents.com>, <limetorrents.net>, <limetorrents.cc> and  
15 <torrentdownload.biz>. Through these sites, Defendant Ashraf unlawfully and  
16 without Lions Gate's authorization disseminated the Stolen Film using the  
17 "BitTorrent" protocol, which is a type of peer-to-peer filesharing protocol. Prior to  
18 filing this lawsuit Lions Gate sent multiple demand letters to Defendant Ashraf  
19 demanding that he immediately cease his infringement but received no response, and  
20 the infringement did not stop.

21           8.     Defendant Lim currently operates or previously operated a website at  
22 the domain name <swankshare.com>. Through this website, Defendant Lim  
23 unlawfully and without Lions Gate's authorization disseminated the Stolen Film by  
24 hosting copies of the Film in one or more directories where users could download  
25 copies of the Stolen Film directly to their computers. Prior to filing this lawsuit  
26 Lions Gate sent multiple demand letters to Defendant Lim demanding that he  
27 immediately cease his infringement but received no response and the infringement  
28 did not stop.

1           9. Defendant Messchendorp currently operates or previously operated a  
2 website at the domain name <dotsemper.com>. Through this website, Defendant  
3 Messchendorp unlawfully and without Lions Gate’s authorization disseminated the  
4 Stolen Film in multiple ways. First, <dotsemper.com> hosted copies of the Stolen  
5 Film in one or more directories where users could download copies of the Stolen  
6 Film directly to their computers. Second, <dotsemper.com> also displayed an  
7 embedded viewing window in which users could stream copies of the Stolen Film  
8 directly to their screens. Prior to filing this lawsuit Lions Gate sent multiple demand  
9 letters to Defendant Messchendorp demanding that he immediately cease his  
10 infringement but received no response and the infringement did not stop.

11           10. By their actions described in Paragraphs 7-9 above, Defaulting  
12 Defendants and each of them have directly, contributorily and vicariously infringed,  
13 and have acted with willful and intentional disregard of, Lions Gate’s rights under  
14 the Copyright Act.

15           11. Lions Gate has sustained substantial and irreparable damage as a result  
16 of Defaulting Defendants’ actions.

17           12. The factors set forth in *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th  
18 Cir. 1986), support entry of default judgment against each of Defaulting Defendants.

- 19           a. Lions Gate will be prejudiced if default judgment is not entered  
20           against Defaulting Defendants because if the Court does not enter a  
21           default judgment in favor of Lions Gate, Defaulting Defendants will  
22           be allowed to avoid liability by not responding to Lions Gate’s  
23           claims.
- 24           b. Lions Gate has sufficiently alleged each of the claims in its First  
25           Amended Complaint and its claims are meritorious.
- 26           c. The amount of damages sought by Lions Gate against each of  
27           Defaulting Defendants is consistent with the allegations of knowing  
28           and willful conduct by each of them, their failure to respond to Lions

1 Gate's demands, their failure to participate in this lawsuit and the  
2 interest of deterring future unlawful conduct by Defaulting  
3 Defendants and others.

4 d. Lions Gate has established that no possibility of a genuine issue of  
5 material fact exists in this matter. Defaulting Defendants' default  
6 has established as true the allegations of material fact in Lions Gate's  
7 First Amended Complaint regarding liability.

8 e. The default entered against Defaulting Defendants was not the result  
9 of excusable neglect. Defaulting Defendants were on actual notice  
10 of Lions Gate's claims against them prior to the filing of this lawsuit  
11 and have not only been on actual notice of this lawsuit but have also  
12 been served with this Court's prior orders against them including the  
13 Temporary Restraining Order entered on August 4, 2014 (Dkt. No.  
14 17) and the Preliminary Injunction entered on August 8, 2014 (Dkt.  
15 No. 28). Defaulting Defendants were also personally served with  
16 process in accordance with this Court's order authorizing electronic  
17 service. (Dkt. No. 51.)

18 f. The policy favoring deciding cases on the merits does not prevent  
19 this Court from entering default judgment because, as Defaulting  
20 Defendants have failed to appear or respond in this matter, a decision  
21 on the merits as to Lions Gate's claims against them is impossible.

22 13. Defaulting Defendants are liable for each and every one of the causes of  
23 action asserted against them in Lions Gate's First Amended Complaint.

24 14. Defaulting Defendants and each of them, including without limitation  
25 their agents, servants, employees, officers, attorneys, successors, licensees, partners,  
26 and assigns and all those acting in active concert or participation with any of them,  
27 are permanently enjoined from:

28 a. Hosting, linking to, distributing, reproducing, performing, selling,

1 offering for sale, making available for download, streaming or  
2 making any other use of any copy or copies of the Stolen Film or any  
3 portion thereof in any form;

4 b. Taking any action that induces, causes or materially contributes to  
5 the direct infringement of Lions Gate’s rights in the Stolen Film by  
6 any third party, including without limitation hosting, linking to or  
7 otherwise providing access to any torrent files, trackers, links  
8 (including without limitation magnet links), hash values or other  
9 instruction sets of any kind that enable users to locate or access any  
10 “swarm” or other location where any copy or copies of the Stolen  
11 Film or any portion thereof are being distributed, reproduced,  
12 performed or otherwise exploited in any form; and

13 c. Operating any of the websites identified in this Judgment, or any  
14 other website on which Lions Gate’s rights in the Stolen Film are  
15 infringed.

16 15. Defaulting Defendants and each of them, including without limitation  
17 their agents, servants, employees, officers, attorneys, successors, licensees, partners,  
18 and assigns and all those acting in active concert or participation with any of them  
19 are hereby ORDERED to deliver to Lions Gate, at each Defaulting Defendant’s cost:

20 a. All hard copy and electronic copies of the Stolen Film and any  
21 images from or other portions of the Stolen Film, as well as any  
22 other images or films owned by Lions Gate, or any portions or  
23 modifications thereof, within the possession, custody or control of  
24 Defendants and any of them, pursuant to an appropriate protocol for  
25 identifying and retrieving all infringing electronically stored  
26 information within the possession, custody or control of Defaulting  
27 Defendants and each of them; and

28 b. Verifications executed under penalty of perjury confirming that

1 Defendants and each of them have complied with the requirements  
2 of subparagraphs 14(a) through 15(a) above and that no copies of the  
3 Stolen Film or any portions thereof remain within their possession,  
4 custody or control.

5 16. Defaulting Defendants and each of them, including without limitation  
6 their agents, servants, employees, officers, attorneys, successors, licensees, partners,  
7 and assigns and all those acting in active concert or participation with any of them,  
8 are permanently enjoined from effecting assignments or transfers, forming new  
9 entities or associations or utilizing any other device for the purpose of circumventing  
10 or otherwise avoiding the prohibitions set forth herein.

11 17. In accordance with 17 U.S.C. § 504(c)(2), the Court further AWARDS  
12 Lions Gate statutory damages severally against each of Defaulting Defendants as  
13 follows:

- 14 a. Lions Gate is AWARDED statutory damages of \$150,000 (one  
15 hundred fifty thousand dollars) against Defendant Muhammad Javed  
16 Ashraf;
- 17 b. Lions Gate is AWARDED statutory damages of \$150,000 (one  
18 hundred fifty thousand dollars) against Defendant Lucas Lim;
- 19 c. Lions Gate is AWARDED statutory damages of \$150,000 (one  
20 hundred fifty thousand dollars) against Defendant Tom  
21 Messchendorp.

22 18. The Court further AWARDS Lions Gate its reasonable attorneys' fees  
23 severally against each of Defaulting Defendants as follows:

- 24 a. Lions Gate is AWARDED attorneys' fees in the amount of \$9,600  
25 (nine thousand six hundred dollars) against Defendant Muhammad  
26 Javed Ashraf;
- 27 b. Lions Gate is AWARDED attorneys' fees in the amount of \$9,600  
28 (nine thousand six hundred dollars) against Defendant Lucas Lim;

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c. Lions Gate is AWARDED attorneys’ fees in the amount of \$9,600 (nine thousand six hundred dollars) against Defendant Tom Messchendorp.

19. The Court further AWARDS Lions Gate its reasonable recoverable costs to be evidenced by a bill of costs.

20. The Court further AWARDS Lions Gate post-judgment interest severally against each of Defaulting Defendants on the aggregate sum of the statutory damages, attorneys’ fees and costs awarded against that defendant.

21. This Court retains jurisdiction of this matter for the purposes of making any further orders necessary or proper for the enforcement of this Judgment and the punishment of any violations thereof.

22. The Court expressly determines that there is no just reason for delay in entering final judgment as to each of Defaulting Defendants.

23. In accordance with the foregoing, the Court hereby directs entry of JUDGMENT against Defaulting Defendants, and each of them, pursuant to Fed.R.Civ.P. 54 and 55(b)(2).

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Margaret M. Morrow  
United States District Judge