

Honorable Ricardo S. Martinez

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LHF PRODUCTIONS, INC.,

Plaintiff,

v.

PATRICIA HOLMES, an individual;
KDAYA JOHNSON, an individual;
THERESA PENNY, an individual;
SCOTT SWIBERG, an individual; and
THOMAS KINISON, an individual,

Defendants.

Civil Action No. 16-cv-0551RSM

DECLARATION OF DAVID A. LOWE IN
SUPPORT OF DEFAULT JUDGMENT
AGAINST KDAYA JOHNSON

I, David A. Lowe, declare as follows:

1. I am counsel for Plaintiff. I make this declaration in support of Plaintiff’s motion for default judgments and permanent injunctions.

2. To the best of my information and belief, the defaulted Defendant is not an infant or incompetent person.

3. Based on activity observed related to defaulted Defendant’s IP address and Defendant’s apparent non-military residence, after Internet searching based on the limited information available, Plaintiff does not believe Defendant is on active duty or subject to the Service member’s Civil Relief Act of 2003, but is unable to determine definitively whether or

1 not the Defendant is military service. However, due to Defendant's refusal to respond or
2 communicate with Plaintiff, Plaintiff is without a date of birth or social security number for
3 definite verification.

4 4. Because none of the defaulted Defendants have appeared personally or by a
5 representative, written notice is not required by Fed. R. Civ. P. 55(b)(2) and LR 55(b).

6 5. I am a member of LOWE GRAHAM JONES^{PLLC}, an actively practicing attorney in
7 good standing licensed by the State of Washington (WSBA No. 24,453). I am also admitted to
8 practice before various federal courts, including several U.S. District Courts, the U.S. Court of
9 Appeals for the Ninth Circuit and the U.S. Supreme Court.

10 6. I graduated from the University of Washington School of Law. I have more than
11 twenty (20) years of active litigation experience in both federal and state courts throughout the
12 country primarily in the areas of intellectual property, specifically including patent, trademark and
13 copyright litigation. I am a member of the Seattle Intellectual Property American Inn of Court
14 (part of the "Judge Linn Alliance" of specialty IP Inns of Court). I have been included in the
15 Washington SuperLawyers list, representing the top 5% of Washington attorneys, each year since
16 2007.

17 7. Attached as Exhibit A is a true and accurate summary of (a) the 2014 annual
18 AIPLA survey showing that mean (average) billing rate for a private law firm partner of
19 15-24 years of experience was \$468 per hour; and (b) the most recent June 2015 LexisNexis
20 Enterprise Legal Management Report showing the median partner billing rate for various legal
21 work (including IP work) at approximately \$450 per hour. My current, usual and collectable
22 hourly rate for intellectual property litigation matters in 2015 and 2016 is \$510. For purposes of
23 these cases, however, I have agreed to reduce my rate to \$450 per hour. Both rates, in particular
24 my reduced rate, fall within the noted ranges and are commensurate with rates charged in
25 Washington State for litigation counsel with my experience.

1 8. Further, I believe that the nature and complexity of the work supports the
2 requested billing rate. While there is certainly overlapping information used in similar cases,
3 which reduces attorney time, BitTorrent litigation involves complicated technology and research.
4 Plaintiff utilizes multiple observational tools in its enforcement efforts, which are understood and
5 utilized for due diligence investigation by counsel. As explained in detail in the technical
6 declaration of record, one tool is a specific and targeted proprietary software tool that directly
7 connects to infringers computers to identify by IP address the transmission of a copy or a part of a
8 copy of a digital media file associated with a hash value of Plaintiff's motion picture. It is on this
9 data that Plaintiff brings its claims—a direct confirmation that defendant is distributing Plaintiff's
10 motion picture by connecting to defendant's computer and downloading a portion of the motion
11 picture from the defendant. The IP addresses, hash values, dates, times and geolocation of this
12 activity are recorded in evidence logs, which were provided in this case. A second, different
13 "cross-reference" tool provides an independent, broad sweep of observed BitTorrent activity
14 associated with IP address but where no direct connection was made to the infringers computer to
15 confirm transmission of the noted media. Stated differently, this tool observes when an IP address
16 is listed with various resources as a source for particular media, but does not necessary confirm
17 the existence of the media on the computer associated with the IP address as is done with the
18 infringement evidence. The two resources are independent and neither relies on the other. This
19 information does not show data used to support Plaintiff's specific motion picture
20 download/distribution infringement claim. Rather, this data is a resource for confirming that the
21 IP address is an active and prolific infringing location, and it often proves useful in identifying
22 who the actual infringer is and when they were active by listing other content which is associated
23 with their IP address.

24 9. Plaintiff's counsel must not only be able to understand, but explain and apply the
25 forensic tools used in these cases. Understanding Copyright Law, including statutory
26 requirements and their application, benefits from litigation experience. The issues raised in these

1 cases often require extensive legal or other research to evaluate and address. This justifies \$450
2 per hour as reasonable and warranted in the Seattle area.

3 10. My firm has maintained records reflecting time spent on this litigation to date.
4 These records have been carefully reviewed, including actual time records of work performed
5 related directly to dealing with this case for each Defendant. Set forth below is a true and accurate
6 reproduction of the time entries compiled from our firms' timekeeping program reflecting
7 identified billings associated with the litigation to date solely in connection with Plaintiff's claims
8 against the defaulted Defendant. Because of the nature, complexity and scope of this action,
9 counsel has spent a considerable amount of time on this action that is not reflected below. For
10 example, counsel has not included all of the time spent in dealing with the Internet Service
11 Providers in connection with subpoena compliance. Rather than listing all of the time that we
12 expended on this action, counsel has erred on the side of exclusion in reporting the time spent in
13 connection with Plaintiff's claims against the defaulted Defendant. Also, and noteworthy, the
14 hours reflect total time claimed is only for the single defaulted defendant, which represents the
15 pro rata share of the total amount for the time spent for all named Defendants in the case as of the
16 time it was worked, except for time that was worked solely for the defaulted Defendant. As a
17 result, costs and fees to be assessed against the Defendant are notably less as the Defendant has
18 received the benefit of being part of a joined case.

19 **A. David A. Lowe, Esq. Billings**

Date	Hours	Rate	Amount	Description
4.15.16	.5	\$450	\$225	Review claims and facts regarding infringement, including analysis of BitTorrent activity; Outline, research and work on new complaint
5.17.16	.2	\$450	\$90	Review Order granting expedited discovery; Prepare subpoena to Comcast
6.29.16	.1	\$450	\$45	Review Comcast data on identity of subscribers; Work on notice letter
7.06.16	.1	\$450	\$45	Review and finalize notice letter

Date	Hours	Rate	Amount	Description
7.13.16	.4	\$450	\$180	Work on motion for extension of time and accompanying declaration
7.13.16	.7	\$450	\$315	Work on amended complaint, Review waiver and summons
7.14.16	.5	\$450	\$225	Review status of Doe, Work on motion for extension of time to answer complaint, supporting documents, and proposed order; Finalize and file
8.15.16	.3	\$450	\$135	Review and docket service information; Communication with process server regarding same; File summons
9.22.16	.6	\$450	\$270	Review status of claim; Prepare and file entry of default
1.25.17	.4	\$450	\$180	Review and revise motion for default judgment and accompanying papers
Total:	3.8	Allocated:	\$1710.00	

B. Associate Attorney Tim Billick Billings

Date	Hours	Rate	Amount	Description
1.24.17	1.3	\$250	\$325	Legal research regarding default judgment, copyright statutory damages and reasonable attorney's fees; Review file; Review default; Work on motion for default judgment including supporting declarations and proposed order
1.26.17	.6	\$250	\$150	Review, finalize, and file motion for default judgment and accompanying papers
Total:	1.9	Allocated:	\$475.00	

C. Legal Assistant Billings

Date	Hours	Rate	Amount	Description
6.29.16	.1	\$145	\$14.50	Work on notice letter
7.1.16	.1	\$145	\$14.50	Work on notice letter
7.14.16	.4	\$145	\$58.00	Prepare, print and mail waiver, request to waive summons, and amended complaint
8.15.16	.1	\$145	\$14.50	Prepare summons
8.17.16	.3	\$145	\$43.50	Provide summons, amended complaint to process server

Date	Hours	Rate	Amount	Description
9.22.16	.5	\$145	\$72.50	Work on Motion for Entry, Order of Entry, and Declaration
10.12.16	1.2	\$145	\$174.00	Work on Default Judgment papers
10.18.16	.2	\$145	\$29.00	Work on Default Judgment papers
Total:	2.9	Allocated:	\$420.50	

11. The total amount of attorneys' fees claimed in this case for the defaulted Defendant using counsel's normally charged rates is as noted above. The costs and fees sought in this case have been specifically limited to the time spent for this particular Defendant. I believe the sum requested for the defaulted Defendant (total of \$2,605.50) is both proper and reasonable in light of the nature and extent of this action.

12. Defaulted Defendant's allocated portion of the filing fee is \$23.53. Plaintiff paid \$50 for service of process as of record, along with \$70 to ISP Comcast for Defendant's subpoena data. Accordingly, Plaintiff is seeking a total of \$143.53 in costs. Exhibit B is a true and accurate copy of the cost receipts.

13. Attached as Exhibit C is a true and accurate copy of a November 4, 2015 social media Tweet posted by a known BitTorrent advocate belittling the Court's award of \$750 minimum statutory damages in *Dallas Buyers Club, LLC v. Madsen*, Case No. 14-cv-1153RAJ (Dkt. 55).

14. Attached as Exhibit D is a true and accurate copy of an August 9, 2016 social media Tweet posted by a known BitTorrent advocate belittling the Court's awards on the same day of \$750 minimum statutory damages against 19 defaulted defendants in *Dallas Buyers Club* cases. The post further encourages defendants to take default judgments rather than appear or otherwise resolve the case.

15. Attached as Exhibit E are true and accurate copies of default judgment orders in similar BitTorrent cases over the last year alone where the courts have awarded between \$2,250 and \$15,000 in statutory damages:

Jurisdiction	Case No.	Date	Statutory Damage Award
Oregon	15-cv-2017	9.15.16	\$7,500
Colorado	15-cv-2264	8.9.16	\$2,250
Illinois	15-cv-7536	8.3.16	\$8,000
Colorado	15-cv-1897	7.22.16	\$2,250
Florida	15-cv-1987	7.7.16	\$6,000
Florida	15-cv-2653	6.22.16	\$15,000
Florida	15-cv-2652	6.7.16	\$15,000
Florida	15-cv-2710	5.18.16	\$6,000
Colorado	15-cv-598	1.26.16	\$2,250
Oregon	15-cv-612	11.05.15	\$10,000
Oregon	15-cv-220	10.2.15	\$10,000

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 26th day of January, 2017.

s/David A. Lowe, WSBA No. 24,453

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served to all counsel or parties of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

s/ David A. Lowe

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