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5 **UNITED STATES DISTRICT COURT**

6 **DISTRICT OF NEVADA**

7 LHF PRODUCTIONS, INC., a Nevada ) Case No.: 2:16-cv-01918-JAD-NJK  
corporation, )  
8 Plaintiff, )  
)  
9 vs. )  
DERRICK BOUGHTON; JOSE )  
10 GALLEG0; TOM GYARFAS; DANIELL )  
TEMPLETON; KRISTINA WALSH; )  
11 JOHN WERBER, )  
Defendants, )

12 **PLAINTIFF’S MOTION FOR A DEFAULT JUDGMENT AGAINST DEFENDANTS**  
13 **DERRICK BOUGHTON, JOSE GALLEG0, TOM GYARFAS, DANIELL TEMPLETON**  
14 **AND KRISTINA WALSH**  
15 **(ORAL ARGUMENT REQUESTED)**

16 COMES NOW the Plaintiff LHF PRODUCTIONS, INC. (the “Plaintiff”), by and through  
17 its counsel of record, Charles C. Rainey of Hamrick and Evans, LLP, and hereby moves this court  
18 for the entry of a default judgment against Defendants DERRICK BOUGHTON, JOSE  
19 GALLEG0, TOM GYARFAS, DANIELL TEMPLETON AND KRISTINA WALSH (the  
20 “Defendants in Default”) pursuant to Fed. R. Civ. P. 55(b)(2), requesting an award of statutory  
21 damages pursuant to 17 U.S.C. § 504(c)(1) in the amount of Fifteen Thousand Dollars  
22 (USD\$15,000.00) per Defendant and further injunctive relief as described herein. This motion is  
23 based upon the attached memorandum of points and authorities, the attached Declaration of  
24 Attorney Charles C. Rainey, together with all pleadings and papers on file herein, and any  
25 arguments to be made at the hearing of this matter.

26 *Respectfully submitted this July 27, 2017.*

27 */s/ Charles C. Rainey*  
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HAMRICK & EVANS, LLP

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Despite being provided ample opportunity to respond to the present action, Defendants  
5 DERRICK BOUGHTON, JOSE GALLEGO, TOM GYARFAS, DANIELL TEMPLETON AND  
6 KRISTINA WALSH are in default, each having failed to timely respond to the Plaintiff's First  
7 Amended Complaint. The Plaintiff has made multiple attempts to elicit contact from the subject  
8 Defendants—sending multiple letters and various communications and personally serving each  
9 Defendant with a copy of the summons and First Amended Complaint. Nevertheless, none of the  
10 Defendants referenced herein have made any effort to answer or otherwise respond to the  
11 Plaintiff's allegations. In light of the Defendants' apparent failure to take any action with respect  
12 to the present lawsuit, the Plaintiff is left with no choice but to seek a default judgment.

13 Plaintiff now moves for default judgment against Defendants DERRICK BOUGHTON,  
14 JOSE GALLEGO, TOM GYARFAS, DANIELL TEMPLETON AND KRISTINA WALSH,  
15 requesting statutory damages pursuant to pursuant to 17 U.S.C. § 504(c)(1) in the amount of  
16 Fifteen Thousand Dollars (USD\$15,000.00) per Defendant and a permanent injunction enjoining  
17 each Defendant from directly or indirectly infringing Plaintiff's rights as to the Plaintiff's motion  
18 picture "LONDON HAS FALLEN", including without limitation using the Internet to reproduce,  
19 to distribute, to copy, or to publish the motion picture.

20 **II.**

21 **STATEMENT OF FACTS**

22 The Plaintiff brought the present suit upon discovering that its feature film "LONDON  
23 HAS FALLEN" had been pirated over the BitTorrent peer-to-peer file-sharing network and  
24 unlawfully copied millions of times amongst users throughout this jurisdiction, throughout the  
25 United States and throughout the world.

26 In an effort to track and identify the individual infringers responsible for the illegal  
27 copying and sharing of its motion picture, Plaintiff engaged the investigative services of  
28 MaverickEye. Doc. No. 1 at p. 7. MaverickEye employed its highly sophisticated software to

1 surveil Internet traffic within the BitTorrent network and thereby identify, analyze, archive and  
2 document unauthorized copying and distribution of the Plaintiff's motion picture. Doc No. 1 at pp.  
3 7-8.

4 The subject infringers (which includes the Defendants in this case) used BitTorrent client  
5 software to search for, copy and download unauthorized and infringing copies of the Plaintiff's  
6 motion picture. *See* Doc. No. 1 at pp 5-7. Each infringer then made those copies of the Plaintiff's  
7 motion picture available for downloading by other BitTorrent users, thus willfully joining in a  
8 collective effort (known as "a swarm") to replicate and distribute infringing copies of the  
9 Plaintiff's motion picture to one another as wells as tens of thousands of other peers within the  
10 swarm; this resulted in the unauthorized, viral dissemination of the Plaintiff's motion. *Id.*

11 Using geo-location information, MaverickEye then indexed the data by jurisdiction,  
12 allowing Plaintiff's counsel access to the full database of infringements occurring within the State  
13 of Nevada. *See* **DECLARATION OF CHARLES C. RAINEY**, at ¶ 12, attached as Exhibit "1"  
14 and incorporated herein by reference, (hereafter "Rainey Decl."). Then, weighing a number of  
15 factors, Plaintiff's counsel narrowed the pool of Defendants to the one to two percent (1-2%) of  
16 the most egregious infringers within each swarm. Rainey Decl. at ¶ 13. Plaintiff's counsel then  
17 further separated out those egregious infringers within each swarm into yet smaller groups of  
18 approximately ten (10) to thirty (30). Rainey Decl. at ¶ 14. In each group of ten (10) to thirty (30)  
19 infringers, the identified IP Addresses were caught sharing the same digital file, containing the  
20 same copy of the Plaintiff's motion picture, over the same peer-to-peer file sharing network, as  
21 part of the same so-called "swarm," within the same jurisdiction, within the same finite period of  
22 time (usually a period of about two weeks). Rainey Decl. at ¶ 16.

23 Still, in order to ensure the accuracy of the information collected, before filing the present  
24 lawsuit, Plaintiff's counsel transmitted the data sets related to the proposed Defendants to a third  
25 party consultant to review and confirm. Rainey Decl. at ¶ 17. The Consultant then reviewed the  
26 Defendant data provided by Plaintiff's counsel, crosschecked such data against the database  
27 compiled by MaverickEye, and confirmed the accuracy of the information. Rainey Decl. at ¶ 18.

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1 Only after confirming the accuracy of the data with both MaverickEye and an independent  
2 consultant, did the Plaintiff move forward with the present case. Rainey Decl. at ¶ 19.

3 Having conducted the foregoing due diligence, the Plaintiff filed the present case against a  
4 group of 18 Defendant IP Addresses on August 12, 2016. Doc No. 1 at Ex 1. Shortly thereafter,  
5 the Plaintiff promptly filed its ex parte motion seeking to open discovery for the limited purpose  
6 of discovering the true identities of the Defendants. Rainey Decl. at ¶ 21; *see also*. The Court  
7 subsequently granted the Plaintiff's motion for discovery, and the Plaintiff then served a subpoena  
8 upon the Defendants' Internet Service Provider ("ISP"). Rainey Decl. at ¶ 22.

9 The ISP responded to the aforementioned subpoena on or about June 17, 2016 with the  
10 names and contact information of each subscriber associated with the Defendant IP Addresses.  
11 Rainey Decl. at ¶ 23. Plaintiff's counsel immediately dispatched demand letters to each of the  
12 Defendants, notifying them of the pending litigation and further notifying them of their potential  
13 liability. Rainey Decl. at ¶ 24. To the extent that any Defendant failed to respond to the first  
14 demand letter, the Plaintiff dispatched a second round of demand letters to each of the Defendants  
15 approximately three weeks later. Rainey Decl. at ¶ 25. Where the ISP provided email or  
16 telephone contact information for the Defendants, the Plaintiff attempted to contact the Defendants  
17 by both email and telephone to confirm their receipt of the demand letters. Rainey Decl. at ¶ 26.  
18 Then, after allowing each of the Defendants ample time to respond to the allegations, the Plaintiff  
19 prepared its First Amended Complaint (the "FAC"), naming those remaining Defendants who had  
20 failed to settle or otherwise resolve the claims.

21 On November 21, 2016, the Plaintiff filed its FAC, identifying by name 11 Defendants.  
22 Doc No. 7. Shortly thereafter, the Plaintiff dispatched to each of the Defendants a third demand  
23 letter, providing each Defendant notice and a copy of the FAC. Rainey Decl. at ¶ 28. Following  
24 that, the Plaintiff proceeded to formally serve each of the Defendants with a copy of the summons  
25 and the FAC. DERRICK BOUGHTON, JOSE GALLEGO, TOM GYARFAS, DANIELL  
26 TEMPLETON AND KRISTINA WALSH (collectively referred to herein as the "Defendants in  
27 Default") were each personally served with a copy of the summons and the FAC. *See* Doc. Nos.  
28

1 12, 14, 15, 22 and 19. The Clerk has subsequently entered a clerk's default against each and  
2 every one of the foregoing Defendants in Default. *See* Doc No. 41.

3 Plaintiff now moves this Court for the entry of Default Judgment against each of the  
4 foregoing Defendants in Default, asking that this Court award the Plaintiff statutory damages  
5 pursuant to 17 U.S.C. § 504(c) in the amount of Fifteen Thousand dollars (USD\$15,000.00) and  
6 further injunctive relief as described herein.

7 **III.**

8 **LEGAL ARGUMENT**

9 **A. DEFAULT JUDGMENT IS WARRANTED IN THIS CASE**

10 Default judgment is appropriate "when a party against whom a judgment for affirmative  
11 relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or  
12 otherwise. . ." Fed. R. Civ. P. 55(a). Federal Rule of Civil Procedure 55(b)(2) provides that "a  
13 court may enter a default judgment after the party seeking default applies to the clerk of the court  
14 as required by subsection (a) of this rule." Fed.R.Civ.P. 55(b)(2).

15 Obtaining a default judgment is a two-step process governed by Federal Rule of Civil  
16 Procedure 55. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). First, Rule 55(a) provides,  
17 "When a party against whom a judgment for affirmative relief is sought has failed to plead or  
18 otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the  
19 party's default." Second, after the clerk enters default, a party must seek entry of default judgment  
20 under Rule 55(b). Upon entry of default, the court takes the factual allegations in the non-  
21 defaulting party's complaint as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th  
22 Cir. 1987) (*quoting Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977))

23 Once a default is entered against a party, all allegations other than damages are presumed  
24 to be true. *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977) citing *Pope v.*  
25 *United States*, 323 U.S. 1, 12, (1944). In cases involving multiple defendants, a district court has  
26 the authority to enter final judgment against some parties while allowing the suit to proceed  
27 against others, if it determines there is no just reason for delaying the entry of judgment. Fed. R.

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1 Civ. P. 54(b). This determination is within the discretion of the district court. *See Cartiss-Wright*  
2 *Corp. v. General Elec. Co.*, 446 U.S. 1, 8 (1980).

3 Nonetheless, while entry of default by the clerk is a prerequisite to an entry of default  
4 judgment, "a plaintiff who obtains an entry of default is not entitled to default judgment as a  
5 matter of right." *Warner Bros. Entm't Inc. v. Caridi*, 346 F. Supp. 2d 1068, 1071 (C.D. Cal. 2004)  
6 (citation omitted). Instead, whether a court will grant a default judgment is in the court's  
7 discretion. *Id.*

8 The Ninth Circuit has identified several relevant factors in determining whether to grant  
9 default judgment including: (1) the possibility of prejudice to the plaintiff; (2) the merits of the  
10 plaintiff's substantive claims; (3) the sufficiency of the complaint; (4) the sum of money at stake in  
11 the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was  
12 due to the excusable neglect; and (7) the strong policy favoring decisions on the merits. *Eitel*, 782  
13 F.2d at 1471-72.

#### 14 ***1. Eitel Factors Analysis***

15 The first of the foregoing factors weighs in favor of the Plaintiff, because, in the absence of  
16 a default judgment, the Plaintiff will be unable to litigate its claims; if plaintiff's motion for default  
17 judgment is not granted, plaintiff "will likely be without other recourse for recovery." *Teller v.*  
18 *Dogge*, 2:12-CV-591 JCM (GWF) (Sep. 30, 2014) (*Quoting PepsiCo, Inc. v. Cal. Security Cans*,  
19 283 F.Supp.2d 1127, 1177 (C.D. Cal. 2002)); *see also Adobe Sys. Inc. v. Marmeleto*s, 2009 WL  
20 1034143 at \*3 (N.D. Cal. Apr. 16, 2009).

21 The second and third *Eitel* factors also weigh in favor of the Plaintiff. Plaintiff's First  
22 Amended Complaint sets out a clear *prima facie* case against the Defendants for copyright  
23 infringement. *See* Doc. No 1. The Plaintiff's First Amended Complaint describes in detail the  
24 steps the Defendants took to infringe upon the Plaintiff's copyrights, and sets forth clear causes of  
25 action for Defendant's conduct. *Id.*

26 Under the fourth *Eitel* factor, the court considers the amount of money at stake in relation  
27 to the seriousness of defendant's conduct. *Id.* (*citing Cal. Security Cans*, 238 F. Supp. 2d at 1176).  
28 "This requires that the court assess whether the recovery sought is proportional to the harm caused

1 by defendant's conduct." *Trs. of Plumbers & Pipefitters Union Local 525 Health & Welfare Trust*  
2 *& Plan v. T.E.N. Mech. Corp.*, No. 2:10-cv-02258-RLH-NJK, 2013 WL 1249600 (D. Nev. March  
3 27, 2013) (quoting *Landstar Ranger, Inc. v. Parth Enter., Inc.*, 725 F. Supp. 2d 916, 921 (N.D.  
4 Cal. 2010)). However, as explained in more detail below, the relief sought herein is appropriate  
5 under 17 U.S.C. §§ 504-054 and the amount is commensurate with the seriousness of Defendants'  
6 deliberate misconduct. In the argument section below, entitled "statutory damages," Plaintiff  
7 demonstrates the basis its requested statutory award of Fifteen Thousand dollars (USD\$15,000.00)  
8 per Defendant, noting that this same award has been applied as the standard in other jurisdictions.  
9 As such, this factor weighs in favor of granting default judgment.

10 The fifth *Eitel* factors also weigh in favor of the Plaintiff. "Once the court clerk enters a  
11 default, the well-pleaded factual allegations of the complaint are taken as true, except for those  
12 allegations relating to damages." *Geddes*, 559 F.2d at 560. Given the sufficiency of the complaint,  
13 including evidence of plaintiff's copyright registration, defendant's willful infringement, and  
14 defendant's default, "no genuine dispute of material facts would preclude granting [plaintiff's]  
15 motion." *Teller*, 2:12-CV-591 (quoting *Cal. Security Cans*, 238 F. Supp. 2d at 1177).

16 Applying the sixth factor, there is no evidence to suggest that defendant's default is due to  
17 excusable neglect. Each of the Defendants was personally served with the summons and first  
18 amended complaint in this action. *See* Doc Nos. 12, 14, 15, 22 and 19. Moreover, long before  
19 effectuating personal service on the Defendants, the Plaintiff dispatched multiple letters to each of  
20 the Defendants, notifying them of this action. Rainey Decl. at ¶¶ 24-28. Even after, each  
21 Defendant had been served, and after the Default had been entered against those Defendants,  
22 Plaintiff served notice of the entry of those defaults upon each Defendant [Doc. No. 54]. Each of  
23 the Defendants has had more than enough time to respond to this action and yet has chosen not to  
24 do so. As such, the sixth factor weighs in favor of the Plaintiff.

25 While the seventh and final *Eitel* factor (considering the court's preference for deciding  
26 matters on the merits) weighs against the Plaintiff, this is unavoidable in the context of a Rule  
27 55(b) motion. The mere existence of Rule 55(b) "indicates that this preference, standing alone, is  
28 not dispositive." *Teller*, 2:12-CV-591 (quoting *Cal. Sec. Cans*, 238 F. Supp. at 1177 (internal



1 citation omitted)). Moreover, the failure of the Defendants to answer or otherwise respond "makes  
2 a decision on the merits impractical, if not impossible." *Id.*

3 Pursuant to the foregoing analysis, the Court should enter a default judgment against each  
4 Defendant in favor of the Plaintiff.

### 5 **B. STATUTORY DAMAGES**

6 For the reasons set forth below, and in keeping with Congressional intent and the facts of  
7 this case, Plaintiff seeks a statutory award of Fifteen Thousand dollars (USD\$15,000) against each  
8 Defendant—i.e., only 10% of the maximum \$150,000 allowed by law. The statutory award  
9 requested herein is justified in light of the Defendants' willful misconduct and necessary to deter  
10 future infringements. Also, as evidenced by the attached exhibits, there is ample persuasive  
11 authority from other jurisdictions to support a statutory award in the amount requested herein. *See*  
12 Exhibits, 1-A, 1-B, and 1-C.

13 A copyright owner "may elect, at any time before final judgment is rendered, to recover,  
14 instead of actual damages and profits, an award of statutory damages for all infringements  
15 involved in the action." 17 U.S.C. § 504(c). Where the copyright owner sustains the burden of  
16 proving, and the court finds, that infringement was committed willfully, the court has discretion to  
17 increase the award of statutory damages to a sum up to \$150,000. *Id.* at § 504(c)(2). "The court  
18 has wide discretion in determining the amount of statutory damages to be awarded, constrained  
19 only by the specified maxima and minima." *Peer Int'l Corp. v. Pausa Records, Inc.*, 909 F.2d  
20 1332, 1336 (9th Cir. 1990) (quoting *Harris v. Emus Records Corp.*, 734 F.2d 1329, 1335 (9th Cir.  
21 1984)). "Even for uninjurious and unprofitable invasions of copyright the court may, if it deems it  
22 just, impose a liability within [the] statutory limits to sanction and vindicate the statutory policy"  
23 of discouraging infringement. *F. W. Woolworth Co. v. Contemporary Arts*, 344 U.S. 228, 233  
24 (1952); see also *Peer Int'l*, 909 F.2d at 1337.

25 The Defendants conduct in this case was deliberate and willful. *See* Doc No. 7 at pp. 4-8.  
26 Proof of the Defendants' willful misconduct is already established through the pleadings and the  
27 Defendants failure to respond to those pleadings. *Id.*; see also *Geddes* 559 F.2d 560. "[A] willful  
28 infringer is exposed to a damage award higher not limited to [sic] the value of the copyright

1 holder's losses and/or the infringer's benefits. Statutory damages for willful infringement have a  
2 punitive component of which the court must be mindful." *Jackson v. Sturkie*, 255 F.Supp.2d 1096,  
3 1103 (N.D. Cal. 2003).

4         Meanwhile, and perhaps most notably, the damages award in this case must be sufficiently  
5 high to deter future infringement. For instance, a modest award of \$750 (which is the lowest  
6 allowed under the law) is unlikely to deter others from engaging in the same behavior as the  
7 Defendants did in this case. The Defendants represent a miniscule fraction of the total persons  
8 who infringed upon the Plaintiff's motion picture. Given that there are tens of thousands of  
9 individual infringers in Nevada alone, it is logistically impossible for the Plaintiff to pursue every  
10 last one. As such, the only way to deter future infringement is to set an immediate example of  
11 those few that we are actually able to prosecute – to show Nevadans that the Courts will not allow  
12 this jurisdiction to be a haven for rampant piracy.

13         The Defendants are participants in a global piracy ring composed of one hundred fifty  
14 million members – a ring that threatens to tear down fundamental structures of intellectual  
15 property. While the actions of each individual participant may seem innocuous, their collective  
16 action amounts to one of the largest criminal enterprises ever seen on earth. Make no mistake, this  
17 is a criminal enterprise, and each of the Defendants has played (albeit a small part) in that criminal  
18 enterprise. Despite the widespread availability of lawful digital media outlets (like Netflix, Hulu  
19 and Crackle), BitTorrent usage continues to grow unabated. Meanwhile, each year, our nation's  
20 film and television industries lose billions of dollars in revenue to Internet piracy.

21         As far back as 1999, Congress recognized the threat posed by digital peer-to-peer file-  
22 sharing, and, in response to this phenomenon, substantially increased the statutory damages of 17  
23 U.S.C. § 504(c) from \$100,000 to \$150,000 for the specific purpose of deterring such infringing  
24 activity. *See Digital Theft Deterrence and Copyright Damages Improvement Act of 1999*, P. L.  
25 No. 106-160, § 2, 113 Stat. 1774 (1999). After careful study, hearings and evaluation of evidence,  
26 the legislature increased the damages available to plaintiffs in actions such as this to both  
27 incentivize plaintiffs to bring actions and to act as a deterrence to those such as the defendant. *Id*;  
28 *Sony BMG Music Entertainment v. Tenenbaum*, 660 F. 3d 487, 500 (1st Cir. 2011), cert denied,

1 132 S Ct 2431 (2012). (Congress raised the available statutory damages with the specific intent of  
2 deterring unlawful peer-to-peer file sharing.)

3 Nevertheless, the Courts have thus far been unable to establish a clear deterrent to  
4 BitTorrent piracy. Usage continues to grow. BitTorrent users throughout our State and  
5 throughout our Country continue to illegally download and share movies, television shows and  
6 other copyrighted content (like the Plaintiff's motion picture) without payment and without  
7 authorization. The practice has become so commonplace that it is disregarded and shrugged off as  
8 an insignificant part of our everyday life.

9 However, if this pervasive culture of piracy is allowed to continue undeterred, it threatens  
10 to undo centuries of intellectual property law and unravel a core pillar of our economy. After all,  
11 the right to intellectual property was something so fundamental, so essential, to our nation's  
12 founding, that our founding father's found it necessary to include in the first article of the  
13 Constitution. U.S. Const. art. I, § 8, cl. 8.

14 For the foregoing reasons, the Plaintiff respectfully requests that this Court enter an award  
15 of statutory damages, pursuant to 17 U.S.C. § 504(c), against each of the Defendants DERRICK  
16 BOUGHTON, JOSE GALLEGO, TOM GYARFAS, DANIELL TEMPLETON AND KRISTINA  
17 WALSH in the amount of Fifteen Thousand dollars (USD\$15,000.00).

18 **C. PERMANENT INJUNCTIVE RELIEF**

19 The Copyright Act vests district courts with power to grant permanent injunctions as they  
20 "deem reasonable." 17 U.S.C. § 502(a) ("Any court having jurisdiction of a civil action arising  
21 under this title may . . . grant temporary and final injunctions on such terms as it may deem  
22 reasonable to prevent or restrain infringement of a copyright."). A permanent injunction is  
23 warranted when there is no reason to believe the infringing party will cease the infringement  
24 without an injunction. See, e.g., Broadcast Music, Inc. v. Blueberry Hill Family Restaurants, Inc.,  
25 899 F. Supp. 474, 483 (D. Nev. 1995) (Copyright Act) (citing Tempo Music v. Christenson Food  
26 & Mercantile Co., 806 F. Supp. 816, 821 (D. Minn. 1992)) (same); Superhype Publishing, Inc. v.  
27 Vasiliou, 838 F. Supp. 1220, 1226 (S.D. Ohio 1993) ) (same); Storz Performance, Inc. v. Moto  
28 Italia, No. 07-cv-2242 W(WMC), 2008 WL 4284402, at \*4 (S.D. Cal. Sept. 15, 2008) (Lanham

1 Act); *Sprint Nextel Corp. v. Thuc Ngo*, No. C-12-02764 CW (EDL), 2012 WL 4127296, at \*8  
2 (N.D. Cal. Sept. 18, 2012) (same). Generally, a permanent injunction will be granted when  
3 liability has been established and there is a threat of continuing violations. See *MAI Systems Corp*  
4 *v. Peak Computer, Inc.*, 991 F.2d 511, 520 (9th Cir. 1993); *Storz*, 2008 WL 4284402, at \*8.

5 Courts must consider the following factors in determining whether to issue a permanent  
6 injunction: (1) likelihood of irreparable injury if preliminary relief is not granted; (2) a likelihood  
7 of success on the merits; (3) balance of hardships; and (4) advancement of the public interest.  
8 *Winter v. N.R.D.C.*, 555 U.S. 7, 20 (2008). "An injunction is a matter of equitable discretion" and  
9 is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is  
10 entitled to such relief." *Id.* at 22, 32. A moving party is required to make a showing that all of  
11 these requirements have been met. *Am. Trucking Ass'n v. City of Los Angeles*, 559 F.3d 1046,  
12 1052 (9th Cir. 2009).

13 As explained above in detail, Plaintiff has demonstrated a strong likelihood of success on  
14 the merits by virtue of the Defendants' default. Furthermore, Plaintiff will suffer irreparable injury  
15 absent an injunction. Plaintiff has established that Defendants' use of BitTorrent has exposed the  
16 Plaintiff's motion picture to viral unauthorized dissemination by millions of additional peers. *See*  
17 *Doc 1*. Since each peer who downloads the motion picture serves as a source of the picture for  
18 future peers, the Defendants' continued use of BitTorrent will result in continued viral  
19 dissemination of the Plaintiff's motion picture to countless other peers. Thus, absent injunctive  
20 relief to force the deletion of each torrent file from the Defendants' computers (and from the  
21 computers of those persons utilizing the BitTorrent protocol in active concert or participation with  
22 the Defendants), infringement will continue unabated in exponential fashion. Monetary damages  
23 alone are simply inadequate. *See e.g. Microsoft Corp. v. Big Boy Distribution LLC*, 589 F. Supp.  
24 2d 1308, 1321 (S.D. Fla. 2008) ("Generally, a showing of copyright infringement liability and  
25 threat of future violations is sufficient to warrant entry of a permanent injunction.").

26 Injunctive relief is, thus, warranted.  
27  
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1           2.       A permanent injunction against each of the foregoing Defendants, enjoining them  
2 from directly or indirectly infringing Plaintiff's rights as to the Plaintiff's motion picture,  
3 including without limitation using the Internet to reproduce, to distribute, to copy, or to publish the  
4 motion picture.

5                               *Respectfully submitted as of July 27, 2017.*

6  
7   /s/ Charles C. Rainey  
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