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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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11	ELEKTRA ENTERTAINMENT GROUP	)	Case No. CV 05-03160 DDP (Ex)
	INC., a Delaware	)	
12	corporation; ATLANTIC	)	<b>ORDER ENTERING DEFAULT JUDGMENT</b>
	RECORDING CORPORATION, a	)	
13	Delaware corporation; ARISTA	)	[Motion filed on 12/12/06]
	RECORDS LLC, a Delaware	)	
14	limited liability company;	)	
	BMG MUSIC, a New York	)	
15	general partnership; UMG	)	
	RECORDINGS, INC., a Delaware	)	
16	corporation; SONY BMG MUSIC	)	
	ENTERTAINMENT, a Delaware	)	
17	general partnership; and	)	
	PRIORITY RECORDS LLC, a	)	
18	California limited liability	)	
	company,	)	
19		)	
	Plaintiff,	)	
20		)	
	v.	)	
21		)	
	HELEN MCCOVERY,	)	
22		)	
	Defendants.	)	
23		)	

24

25 This matter is before the Court on the plaintiffs' motion for  
26 entry of default judgment against the defendant. After reviewing  
27 the materials submitted by the plaintiffs, the Court grants the  
28 motion.

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1 I. BACKGROUND

2 The plaintiffs, Elektra Entertainment Group Inc.; Atlantic  
3 Recording Corporation; Arista Records LLC; BMG Music; UMG  
4 Recordings, Inc.; Sony BMG Music Entertainment; and Priority  
5 Records LLC, are copyright owners or licensees of exclusive rights  
6 with respect to copyrighted sound recordings. The plaintiffs allege  
7 that the defendant used an online media distribution system to copy  
8 several of their copyrighted sound recordings and to distribute  
9 them to other users of the system. The plaintiffs allege that this  
10 constitutes direct copyright infringement.

11 On November 14, 2005, the Clerk of this Court entered the  
12 default of the defendant. The defendant has not appeared in this  
13 action. The plaintiffs state that they are informed and believe  
14 that the defendant is not an infant or incompetent person, or in  
15 active military service. (Mot. 5.) The plaintiffs move the Court  
16 for an entry of default judgment against the defendant. The  
17 judgment sought is:

18 The minimum statutory damages provided by Section 504  
19 of the Copyright Act (\$750) for each of the nine  
20 infringements alleged in the Complaint, for a total of  
21 \$6,750; An injunction pursuant to section 502 of the  
22 Copyright Act; and Costs, pursuant to section 505 of  
23 the Copyright Act, in the amount of \$301.85.

24 (Id. at 5.)

25 II. DISCUSSION

26 A. Procedural Requirements for Entry of Default Judgment

27 1. Legal Standard

28 Local Civil Rule 55-1 provides that an application to the  
Court for default judgment shall be accompanied by a declaration in

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1 compliance with Federal Rule of Civil Procedure 55(b)(1) and/or (2)  
2 and include the following:

- 3 (a) When and against what party, the default was entered;
- 4 (b) The identification of the pleading to which default was entered;
- 5 (c) Whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented by a general guardian, committee, conservator or other representative;
- 6 (d) That the Soldiers' and Sailors' Civil Relief Act of the 1940 (50 App. U.S.C. § 520) does not apply; and
- 7 (e) That notice has been served on the defaulting party, if required by Federal Rule of Civil Procedure 55(b)(2).

10 Local Civ. R. 55-1.

11 B. Analysis

12 The plaintiffs have shown that: (1) the defendant has failed  
13 to answer the Complaint or otherwise appear in the action; (2) the  
14 Clerk of Court entered default against the defendant on November  
15 14, 2005; (3) the defendant was not, at any time relevant to this  
16 action, an infant, an incompetent, or in the armed forces of the  
17 United states; and (4) the notice of motion and motion for entry of  
18 default judgment by the Court was served on the defendant in  
19 compliance with Federal Rule of Civil Procedure (55)(b)(2). Thus,  
20 the plaintiffs satisfy the procedural requirements for entry of  
21 default judgment. (Mot. 5.)

22 C. Substantive Basis for Entry of Default Judgment

23 1. Legal Standard

24 A court has discretion in determining whether to enter a  
25 default judgment. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir.  
26 1980). The Ninth Circuit in Eitel v. McCool outlined seven factors  
27 that courts may take into account when exercising their discretion  
28 as to the entry of a default judgment. 782 F.2d 1470, 1471-72 (9th

1 Cir. 1986). Accordingly, in exercising its discretion, the Court  
2 may be guided by the following factors: (1) the possibility of  
3 prejudice to the plaintiffs; (2) the merits of the plaintiffs'  
4 substantive claim; (3) the sufficiency of the Complaint; (4) the  
5 sum of money at stake; (5) the possibility of a dispute concerning  
6 material facts; (6) whether the default was due to excusable  
7 neglect; and (7) the strong policy underlying the Federal Rules of  
8 Civil Procedure favoring decisions on the merits. Id., see also  
9 Pepsico, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1174 (C.D.  
10 Cal. 2002).

11 2. Analysis

12 a. Possibility of Prejudice

13 The first Eitel factor calls on the Court to consider whether  
14 the plaintiffs will suffer prejudice if a default judgment is not  
15 entered. Here, potential prejudice to the plaintiffs favors  
16 granting a default judgment. In this case, if default judgment is  
17 denied, the defendant's conduct will remain unchecked, and the  
18 defendant will be free to pursue similar activities. Furthermore,  
19 the plaintiffs will likely be left without other recourse for  
20 recovery. Thus, this factor militates in favor of entering default  
21 judgment.

22 b. Substantive Merits and Sufficiency of the  
23 Complaint.

24 The next two Eitel factors essentially call upon the  
25 plaintiffs to state a claim upon which the plaintiffs may recover.  
26 See also Pepsico, 238 F. Supp. 2d at 1175. In the instant action,  
27 the plaintiffs allege that the defendant infringed upon the  
28 plaintiffs' copyrights in violation of the copyright laws of the

EXHIBIT  
F

1 United States. (Mot. 4.) Title 17 U.S.C. section 106 provides the  
2 copyright owner with the exclusive right to copy or distribute to  
3 the public the copyrighted work. Such works include sound  
4 recordings. 17 U.S.C. § 102(a)(7) (2000).

5 Title 17 U.S.C. section 501(a) provides that "anyone who  
6 violates any of the exclusive rights of the copyright owner as  
7 provided by sections 106 through 118 ... is an infringer of the  
8 copyright or right of the author, as the case may be." Section  
9 501(b) further provides that "[t]he legal or beneficial owner of an  
10 exclusive right under a copyright is entitled, subject to the  
11 requirements of section 411, to institute an action for any  
12 infringement of that particular right committed while he or she is  
13 the owner of it."

14 In their Complaint, the plaintiffs allege that the defendant  
15 has copied, distributed to the public, and made available for  
16 distribution the sound recordings at issue here.

17 Accordingly, the Court is inclined to find that the plaintiffs  
18 have pled a prima facie case establishing the defendant's copyright  
19 infringements in violation of section 501.

20 c. Amount at Stake

21 Under the fourth Eitel factor, the Court may consider the  
22 amount of money at stake in relation to the seriousness of the  
23 defendant's conduct. In the instant case, the plaintiffs seek  
24 \$6,750 in statutory damages under section 504, \$301.85 in costs  
25 pursuant to section 505, and a permanent injunction pursuant to  
26 section 502. The Court is inclined to find that this amount is  
27 proportionate to the seriousness of the defendant's conduct.  
28 Accordingly, this factor favors entry of default judgment.

1                   d.    Possibility of Dispute

2           The fifth Eitel factor the Court may consider is the  
3 possibility of dispute as to any material facts in the case. Upon  
4 entry of default, all factual allegations set forth in the  
5 Complaint, except those relating to the amount of damages, will be  
6 taken as true. TeleVideo Systems, Inc. v. Heidenthal, 826 F.2d 915,  
7 917-18 (9th Cir. 1987). Because the Clerk of Court entered default  
8 in this case on November 14, 2005, no genuine dispute as to any  
9 material facts exists. This factor weighs in favor of entering a  
10 default judgment.

11                   e.    Possibility of Excusable Neglect

12           In addition, it is improbable that the default resulted from  
13 excusable neglect on the part of the defendant. The defendant was  
14 properly served with a copy of the summons and complaint but failed  
15 to answer or otherwise appear in this action.

16                   f.    Policy for Deciding on the Merits

17           The final Eitel factor stems from the policy of the Federal  
18 Rules of Civil Procedure favoring decisions on the merits. Although  
19 the Court favors decisions on the merits, at times this is not  
20 practicable. Here, the defendant's failure to answer the  
21 plaintiffs' Complaint makes a decision on the merits impractical,  
22 if not impossible. The preference for rulings on the merits is not  
23 a requirement. Under Rule 55(a), termination of a case before a  
24 hearing on the merits is allowed whenever a defendant fails to  
25 defend an action. Thus, "the preference to decide cases on the  
26 merits does not preclude a court from granting default judgment."  
27 Pepsico, 238 F. Supp. 2d at 1177. Accordingly, the Court enters  
28 default judgment against the defendant.

1 C. The Plaintiffs' Remedies

2 Pursuant to Federal Rule of Civil Procedure 8(a)(3), the  
3 plaintiffs' demand for relief must be specific. As discussed  
4 previously, the plaintiffs seek statutory damages in the amount of  
5 \$6,750, costs in the amount of \$301.85, and a permanent injunction.

6 1. Statutory Damages

7 "It is well settled that a default judgment for money may not  
8 be entered without a hearing unless the amount claimed is a  
9 liquidated sum or capable of mathematical calculation." Davis v.  
10 Fendler, 650 F.2d 1154, 1161 (9th Cir. 1981). The Court has  
11 discretion in determining whether an evidentiary hearing is  
12 necessary or whether to rely on detailed affidavits or documentary  
13 evidence. Fed. R. Civ. P. 55(b)(2). In this case, the Court is  
14 inclined to find that a hearing is not necessary because the  
15 plaintiffs seek a specific award of statutory damages, as allowed  
16 under title 17 U.S.C. section 504.

17 Section 504(a) provides that "an infringer of copyright  
18 is liable for either - (1) the copyright owner's actual  
19 damages and any additional profits of the infringer ... or (2)  
20 statutory damages, as provided by subsection (c)." Subsection  
21 (c), in turn, provides, in pertinent part:

22 The copyright owner may elect, at any time before  
23 final judgment is rendered, to recover, instead of  
24 actual damages and profits, an award of statutory  
25 damages for all infringements involved in the action,  
26 with respect to any one work, for which any one  
infringer is liable individually, or for which any two  
or more infringers are liable jointly and severally,  
in a sum of not less than \$750 or more than \$30,000 as  
the court considers just.

27 17 U.S.C. § 504(c) (2000).

28 ///

1 Thus, for each violation of the copyright laws, the Court has  
2 discretion to award statutory damages in an amount not less than  
3 \$750 or more than \$30,000. Here, the plaintiffs ask for an award of  
4 the statutory minimum for each infringement. The Court, in  
5 exercising its discretion to award damages, grants the plaintiffs'  
6 request and awards them \$6,750 in statutory damages. By failing to  
7 answer the complaint or otherwise appear in the action, the  
8 defendant has made it extremely difficult for the plaintiffs to  
9 protect their interests.

10 2. Costs

11 Section 505, "the court in its discretion may allow the  
12 recovery of full costs by or against any party other than the  
13 United States or an officer thereof." The plaintiffs allege costs  
14 in the amount of \$301.85. The Court finds that the plaintiffs'  
15 request for \$301.85 for costs is reasonable.

16 3. Permanent Injunction

17 Permanent injunctive relief is appropriate where a defendant  
18 is given sufficient notice of the possibility that a default  
19 judgment will be entered yet fails to remedy the infraction that  
20 led to the initial entry of default. See SEC v. First Fin. Group,  
21 Inc., 659 F.2d 660, 669 (5th Cir. 1981). The plaintiffs have  
22 requested an injunction providing:

23 Defendant shall be and hereby is enjoined from directly or  
24 indirectly infringing Plaintiffs' rights under federal or  
25 state law in the Copyrighted Recordings and any sound  
26 recording, whether now in existence or later created, that  
27 is owned or controlled by the Plaintiffs (or any parent,  
28 subsidiary, or affiliate record label of plaintiffs)  
("Plaintiffs' Recordings")' including without limitation by  
using the Internet or any online media distribution system  
to reproduce (i.e., download) any of Plaintiffs'  
Recordings, to distribute (i.e., upload) any of Plaintiffs'  
Recordings, or to make any of Plaintiffs' Recordings



1 available for distribution to the public, except pursuant  
2 to a lawful license or with the express authority of the  
3 plaintiffs. Defendant also shall destroy all copies of  
4 those downloaded recordings transferred onto any physical  
5 medium or devise in defendant's possession, custody, or  
6 control.

7 (Mot. 10.)

8 Section 502 authorizes this Court to "grant temporary and  
9 final injunctions on such terms as it may deem reasonable to  
10 prevent or restrain infringement of a copyright." Based on the  
11 foregoing, the Court issues the injunction requested by the  
12 plaintiffs.

13 **III. CONCLUSION**


14 For the foregoing reasons, the Court enters default judgment  
15 against the defendant Helen McCovery in the amount of \$6,750,  
16 awards costs in the amount of \$301.85, and orders the defendant to  
17 comply with the permanent injunction as set forth above.

18 IT IS SO ORDERED.

19

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21 Dated: 1-30-06

  
DEAN D. PREGERSON  
United States District Judge

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