

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. 2:20-cv-06503-RGK (JDEx) Date June 23, 2021

Title *Clint Eastwood, et al. v. Sera Labs, Inc. et al.*

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. Williams (not present)

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiff:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings:** (IN CHAMBERS) Order Re: Plaintiff's Motion for Default Judgment [DE 67]

**I. INTRODUCTION**

On February 12, 2021, Plaintiffs Clint Eastwood and Garrapata, LLC ("Garrapata") (collectively, "Plaintiffs") filed a First Amended Complaint ("Complaint") against Mediatonas UAB ("Defendant") alleging (1) violation of common law right of publicity; (2) violation of California Civil Code § 3344; (3) false endorsement under the Lanham Act; (4) trademark infringement; (5) common law trademark infringement; (6) defamation; and (7) false light invasion of privacy. Defendant has neither answered nor otherwise responded to the Complaint. On March 18, 2021, the Clerk entered default against Defendant.

Presently before the Court is Plaintiffs' Motion for Default Judgment and Permanent Injunction ("Motion"). For the following reasons, the Court **DENIES without prejudice** Plaintiffs' Motion.

**II. FACTUAL BACKGROUND**

Plaintiffs allege the following:

Clint Eastwood is a worldwide icon of the entertainment industry. (Mot. Default J., 1:6-7, ECF No. 67). Garrapata owns the rights of publicity in Mr. Eastwood's name, image, likeness, and persona for all purposes other than the promotion of his movies. (*Id.* at 1:15-17). These rights include a federally registered trademark (U.S. Registration No. 3265483) in Mr. Eastwood's name for "entertainment services, namely, personal appearances and live performance and live recorded performances by a movie star and actor." (*Id.* at 1:18-22; Ex. 1, ECF No. 67-4). These rights also include a common law trademark in Mr. Eastwood's name. (Mot. at 1:23-25).

Defendant owns the websites ushealthynews.com and usmagazine-trending-news.com (*Id.* at 4:19-21). These websites feature a false "news article" which contains pictures of Mr. Eastwood and

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quotes him as saying that “he would be stepping away from the spotlight” to promote and sell a fictitious line of CBD products. (*Id.* at 3:6-8; Ex. 3, ECF No. 67-8). Further, Defendant sent emails linking to this article with the subject line, “Clint Eastwood Exposes Shocking Secret Today.” (Mot. at 2:7-8; Ex. 2, ECF No. 67-7). However, Mr. Eastwood did not endorse CBD products and he did not permit Defendant to appropriate his likeness for commercial use. (Eastwood Decl. ¶ 2, ECF No. 67:2; Bernstein Decl. ¶ 3, ECF No. 67:3).

Mr. Eastwood is a Los Angeles resident, and Garrapata is a California limited liability company. (Mot. at 7:6). Defendant is a Lithuanian private limited company. (*Id.* at 5:1-2).

On February 22, 2021, Plaintiffs served Defendant the Complaint via email to gb@mediatones.com and message to Skype ID g.bucinkas. (Proof Serv. ¶¶ 1-3, ECF No. 53). There is no indication that the transmission was unsuccessful. (*Id.*) Defendant did not respond. On May 7, 2021, Plaintiffs filed this Motion for Default Judgment. (Default by Clerk, ECF No. 59).

### **III. JUDICIAL STANDARD**

Federal Rule of Civil Procedure (“Rule”) 55(a) allows a court to enter a default judgment upon entry of default by the clerk and if a party has failed to plead or otherwise defend a case. Fed. R. Civ. P. 55(a). An applicant may seek a clerk-ordered judgment only when the claim is for an amount that is certain or capable of being made certain by computation. Fed. R. Civ. P. 55(b)(1). In all other cases, the applicant must apply for a court-order default judgment. *Id.* at 55(b)(2).

Local Rule 55-1 requires the court-ordered default judgment application to include: (1) when and against what party the default was entered; (2) the identification of the pleadings to which the default was entered; (3) whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented; (4) that the Servicemembers Civil Relief Act does not apply; and (5) that notice has been served on the defaulting party, if required by Rule 55(b)(2). C.D. Cal. L. R. 55-1.

Furthermore, an entry of default does not automatically entitle a plaintiff to a court-ordered judgment. *See Draper v. Coombs*, 792 F.2d 915, 924-25 (9th Cir. 1986). Rather, it is within the court’s discretion to grant or deny a default judgment. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). In exercising its discretion, the court may consider the following factors (collectively, the “*Eitel* factors”):

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

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*Id.* at 1471-72; *PepsiCo, Inc. v. Cal. Sec. Cans.*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002).

Lastly, for the purposes of default judgment, all well-pleaded factual allegations from the complaint, except those relating to the amount of damages, are assumed to be true. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### IV. DISCUSSION

As an initial matter, in considering a motion for default judgment, a court must first determine that it possesses “jurisdiction over both the subject matter and the parties.” *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). Plaintiff’s claim for trademark infringement clearly falls under the Court’s federal subject matter jurisdiction, and the Court has supplemental jurisdiction over the pendent state claims. As to personal jurisdiction, Defendant is allegedly a Lithuanian private limited company. However, deeming the facts in the Complaint true, the Court appears to have specific personal jurisdiction over Defendant.

##### A. Procedural Requirements

As stated in the judicial standard above, Rule 55(a) requires that certain procedural requirements are met to enter default judgment. Here, Plaintiffs filed a FAC in federal court on February 12, 2021. On February 22, 2021, Plaintiffs filed a Proof of Service for Defendant. Defendant failed to file an answer or otherwise respond to the Complaint. Defendant is an entity and not an infant or incompetent person. Defendant is not exempt under the Servicemembers’ Civil Relief Act. On March 18, 2021, the Clerk entered default against Defendant. On May 7, 2021, Defendant was properly serviced with notice of the Motion for Default Judgment.

##### B. The Eitel Factors

###### 1. Prejudice to Plaintiffs

Here, Defendant has not answered or otherwise responded to the Complaint. Accordingly, without a judgment, Plaintiffs will have no remedy for Defendant’s infringing activities. Plaintiffs will therefore be prejudiced if the Court does not grant default judgment. *See PepsiCo*, 238 F. Supp. 2d at 1177.

###### 2. Merits and Sufficiency of Plaintiffs’ Substantive Claims

The second two *Eitel* factors require that Plaintiffs “state a claim on which” they may recover. *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978). In analyzing these two factors, well-pleaded

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allegations regarding liability are accepted as true. *See Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002).

Plaintiffs bring claims for (1) violation of common law right of publicity; (2) violation of California Civil Code § 3344; (3) false endorsement under the Lanham Act; (4) trademark infringement; (5) common law trademark infringement; (6) defamation; and (7) false light invasion of privacy.

*a. Common Law Right of Publicity Claims*

To prevail on their California common law right of publicity claim, Plaintiffs must prove “(1) the defendant’s use of the plaintiff’s identity; (2) the appropriation of plaintiff’s name or likeness to defendant’s advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury.” *Laws v. Sony Music Entm’t, Inc.*, 448 F.3d 1134, 1138 (9th Cir. 2006). *See also Downing v. Abercrombie & Fitch*, 265 F.3d 994, 1001 (9th Cir. 2001).

Here, taking Plaintiffs’ allegations as true, Defendant used Mr. Eastwood’s name and likeness when Defendant included pictures of Mr. Eastwood, and fabricated quotes from Mr. Eastwood in an article that advertised CBD products. Plaintiffs did not consent to the use of Mr. Eastwood’s name or likeness to promote these products. Additionally, Plaintiffs allege that they incurred monetary damages equal to “the economic value of [Mr. Eastwood’s] name and likeness.” *See Solano v. Playgirl, Inc.*, 292 F.3d 1078, 1090 (9th Cir. 2002). Thus, Plaintiffs sufficiently state a claim for the common law right of publicity.

*b. California Civil Code § 3344 Claims*

Under California Civil Code § 3344, “any person who knowingly uses another’s name, voice, signature, photograph, or likeness, in any manner ... for purposes of advertising ... without such person’s prior consent ... shall be liable for any damages sustained by the person.” Cal. Civ. Code § 3344(a). Plaintiffs must “allege a knowing use by the defendant as well as a direct connection between the alleged use and the commercial purpose.” *Id.*

Here, Defendant knowingly posted the article that featured fabricated quotes from Mr. Eastwood and photos of Mr. Eastwood. Additionally, the overall purpose of the article was to sell CBD products, as evidenced by the links on the webpage that allowed viewers to purchase the CBD products featured in the article. Therefore, deeming the fact alleged as true, Plaintiffs have sufficiently stated this claim.

*c. Lanham Act and Common Law Trademark Infringement Claims*

The requisite elements for false endorsement and trademark infringement claims under the Lanham Act are identical to those of common law trademark infringement claims. *See Waits v. Frito-Lay, Inc.*, 978 F.2d 1093, 1107 (9th Cir. 1992). To prevail on these claims, Plaintiffs must show



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ownership of a “valid, protectable trademark” and that Defendant’s “use of the mark is likely to cause confusion” among consumers as to the source of the services. *Applied Info. Scis. Corp. v. eBay, Inc.*, 511 F.3d 966, 969 (9th Cir. 2007).

Here, Garrapata owns the rights of publicity in Mr. Eastwood’s name, image, likeness, and persona for all purposes other than the promotion of his movies. These rights also include a common law trademark in Mr. Eastwood’s name. Plaintiffs’ allege that Defendant’s use of Plaintiffs’ trademark in the form of pictures and quotes created “initial interest confusion” because it used Plaintiff’s trademark “in a manner calculated to capture attention.” See *Brookfield Commc’n, Inc. v. West Coast Entm’t. Corp.*, 174 F.3d 1036, 1062 (9th Cir. 1999). Based on these facts, Plaintiffs’ Lanham Act and common law trademark infringement claims have been adequately stated.

*d. Defamation and False Light Invasion of Privacy Claims*

The elements of defamation and a false light are identical. *Hawran v. Hixon*, 209 Cal. App. 4th 256, 277 (2012). To prevail, Plaintiffs must prove that there is “a publication that is false, defamatory, unprivileged, and that has a natural tendency to injure or that causes special damage.” *Appel v. Wolf*, 839 F. App’x 78, 80 (9th Cir. 2020).

Here, the article allegedly contained general false statements of fact, fabricated quotes attributed to Mr. Eastwood, and fabricated quotes attributed to other celebrities. Moreover, these statements negatively impacted Eastwood’s reputation. Mr. Eastwood neither provided these quotes nor consented to the dissemination of this allegedly false information. Finally, these statements exposed Eastwood to hatred, contempt, ridicule, and obloquy.

Taking these facts as true, the Court finds that Plaintiffs state a prima facie case for their claims. Accordingly, the first two *Eitel* factors weigh in favor of granting default judgment.

3. *The Sum of Money at Stake*

The Court next addresses the sum of money at stake in relation to the seriousness of Defendant’s conduct. *PepsiCo*, 238 F. Supp. 2d at 1176. Some courts have noted that “this [factor] requires the court to assess whether the recovery sought is proportional to the harm caused by defendant’s conduct.” *Nutramax Labs., Inc. v. Body Wise Int’l, Inc.*, No. 18-CV-2076 DOC, 2019 WL 3210095, at \*4, (C.D. Cal. Apr. 10, 2019). Further, courts disfavor default judgment “where the sum of money at stake is too large or unreasonable in relation to defendant’s conduct.” *Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998, 1012 (C.D. Cal. 2014).

Here, Plaintiffs seek recovery of approximately \$30 million in damages, including actual damages, punitive damages, and attorney’s fees and costs. In relation to Defendant’s conduct, this is an

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