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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 PARAMOUNT PICTURES
CORPORATION; UNIVERSAL CITY
14 STUDIOS PRODUCTIONS LLLP;
UNIVERSAL CONTENT
15 PRODUCTIONS LLC; UNIVERSAL
TELEVISION LLC; WARNER BROS.
16 ENTERTAINMENT INC.;
COLUMBIA PICTURES
17 INDUSTRIES, INC.; DISNEY
ENTERPRISES, INC.; NETFLIX
18 STUDIOS, LLC; NETFLIX US, LLC;
and NETFLIX WORLDWIDE
19 ENTERTAINMENT, LLC,

20 Plaintiffs,

21 vs.

22 DOES 1-10 d/b/a PRIMEWIRE,

23 Defendants.
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27
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Case No. 2:21-cv-09317-MCS-SK

**SUPPLEMENTAL BRIEF
REGARDING REQUIREMENT OF
BOND UNDER FEDERAL RULE
OF CIVIL PROCEDURE 65(c)**

Judge: Hon. Mark C. Scarsi
Crtrm.: 7C

1 Pursuant to the Court's direction at the January 3, 2022 hearing on the Motion
2 for Preliminary Injunction, Plaintiffs respectfully submit this supplemental brief on
3 the question whether Rule 65(c) requires the Court to order the posting of a bond.
4 *See* ECF No. 28.

5 **I. Under Ninth Circuit Law, The Court Has Discretion To Not Require A**
6 **Bond, Provided The Court States Its Reasons For Not Requiring One**

7 Federal Rule of Civil Procedure 65(c) provides that the Court may issue a
8 preliminary injunction "only if the movant gives security in an amount that the court
9 considers proper to pay the costs and damages sustained by any party found to have
10 been wrongfully enjoined or restrained." The Ninth Circuit has held that "[d]espite
11 [Rule 65(c)'s] seemingly mandatory language," district courts are invested "with
12 discretion as to the amount of security required, *if any*." *Johnson v. Couturier*, 572
13 F.3d 1067, 1086 (9th Cir. 2009) (quoting *Jorgensen v. Cassidy*, 320 F.3d 906, 919
14 (9th Cir. 2003)) (emphasis in original); *see also Diaz v. Brewer*, 656 F.3d 1008,
15 1015 (9th Cir. 2011) (same). *Diaz* is the Ninth Circuit's most recent published
16 opinion on this question. More recent unpublished opinions are in accord. *See, e.g.,*
17 *2Die4Kourt v. Hillair Cap. Mgmt.*, 692 F. App'x 366, 369 (9th Cir. 2017).

18 The Ninth Circuit also has said that a district court should give "a clear
19 statement . . . concerning its reasons for requiring or not requiring a bond."
20 *Language Line Servs., Inc. v. Language Servs. Assocs., Inc.*, 500 F. App'x 678, 682
21 (9th Cir. 2012).

22 Other Circuits have held that Rule 65(c) requires the district court to order the
23 posting of a security bond. *See Zambelli Fireworks Mfg. Co., Inc. v. Wood*, 592
24 F.3d 412, 426 (3d Cir. 2010) (while "the amount of the bond is left to the discretion
25 of the court, the posting requirement is much less discretionary" (citation omitted));
26 *BankDirect Cap. Fin., LLC v. Cap. Premium Fin., Inc.*, 912 F.3d 1054, 1057 (7th
27 Cir. 2019) ("Rule 65(c) makes the effectiveness of a preliminary injunction
28 contingent on the bond having been posted."). *See generally* 11A Charles Alan

1 Wright & Arthur R. Miller, Federal Practice & Procedure § 2954 (3d ed. 2021
2 update) (collecting cases).

3 The split of authority may be more apparent than real. Rule 65(c) states the
4 amount of the bond should be set at an amount “the court considers proper.” A
5 court may “consider” the “proper” amount to be zero, for example, where there is no
6 showing the defendant stands to sustain damages (or damages the plaintiff will be
7 unable to pay) if it is later determined the injunction should not have issued. *See*
8 *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 882–83 (9th
9 Cir. 2003) (rejecting appellate argument that bond was required because plaintiff
10 “did not . . . ask the court to set a bond or submit any evidence as to what damages
11 she might incur as a result of the injunction”).

12 **II. In This Case, It Would Be Proper To Require No Bond Or, If A Bond Is**
13 **Required, A Bond In The Amount Of No More Than \$50,000**

14 Sound reasons support granting Plaintiffs’ Motion without the necessity of a
15 bond or, at most, a bond in the amount of \$50,000.

16 First, “the likelihood of success on the merits, as found by the district court,
17 [may] tip[] in favor of a minimal bond or no bond at all.” *People of State of Cal. ex*
18 *rel. Van De Kamp v. Tahoe Reg’l Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.
19 1985), *amended*, 775 F.2d 998 (9th Cir. 1985); *see also 2Die4Kourt*, 692 F. App’x
20 at 369 (finding district court did not abuse discretion by not requiring bond based on
21 likelihood of success on the merits).

22 Second, “[t]he district court may dispense with the filing of a bond when it
23 concludes there is no realistic likelihood of harm to the defendant from enjoining his
24 or her conduct.” *Jorgensen*, 320 F.3d at 919; *see also Warner Bros. Entmt. Inc. v.*
25 *Tusa*, No. 2:21-cv-05456-VAP-ASx, 2021 WL 4815947, at *4 (C.D. Cal. Aug. 16,
26 2021) (not requiring a bond when Defendant failed to appear to defend infringing
27 service because “the Court finds there is not sufficient evidence that Defendant will
28 incur any injury because of the injunction”); *China Cent. Television v. Create New*

1 *Tech. (HK) Ltd.*, No. CV 15-01869 MMM (MRWx), 2015 WL 3649187, at *14
2 (C.D. Cal. June 11, 2015) (no bond required where there was no realistic likelihood
3 that preliminary injunction would harm defendants, as “[t]he only harm defendants
4 will suffer . . . is that they will be unable to continue to profit from infringing
5 plaintiffs’ copyrights”).

6 Third, the Court may weigh Plaintiffs’ solvency in determining the proper
7 amount of a security bond. *See, e.g., Disney Enters., Inc. v. VidAngel, Inc.*, 224 F.
8 Supp. 3d 957, 978–79 (C.D. Cal. 2016) (rejecting request for \$50 million bond and
9 instead requiring a bond of \$250,000 because “Plaintiffs are well funded and
10 established giants in the entertainment industry. . . . [and] have considerable assets
11 to respond in damages if [defendant] is found to have been wrongfully enjoined”),
12 *aff’d*, 869 F.3d 848 (9th Cir. 2017). Here, Plaintiffs would be able to pay damages
13 to Defendants if it is later determined that the injunction should not have issued.

14 Plaintiffs respectfully request that the Court order that no bond is required.
15 Alternatively, if a bond is required, the Court should set it at a minimal amount.
16 Defendants have not appeared, but in their limited communications have said the
17 revenue they earn from the PrimeWire service is low. *See* ECF No. 20-3,
18 Declaration of Shannon Aminirad, Ex. B at 9. If a bond is required, the Court
19 should require the bond be no more than \$50,000, as Judge Walter required in
20 another case where Plaintiffs obtained a preliminary injunction. *Warner Bros.*
21 *Entmt. Inc. v. WTV Sys., Inc.*, 824 F. Supp. 2d 1003, 1015 (C.D. Cal. 2011).

22 DATED: January 5, 2022

MUNGER, TOLLES & OLSON LLP

25 By: /s/ Kelly M. Klaus

26 KELLY M. KLAUS

27 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I, Kelly M. Klaus, do hereby certify that service of this **SUPPLEMENTAL BRIEF REGARDING REQUIREMENT OF BOND UNDER FEDERAL RULE OF CIVIL PROCEDURE 65(c)** shall be made upon the Defendants, DOES 1-10 d/b/a PRIMEWIRE, by sending the aforementioned documents to the following email addresses:

admin@primewire.li
admin@primewire.ag
primewire.inbox@protonmail.com

Service shall be made on this day, January 5, 2022.

/s/ Kelly M. Klaus

Kelly M. Klaus