

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

LEI TANG,

Plaintiff,

V.

THE INDIVIDUALS, PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A,”

Defendants.

Case No.: 0:23-cv-61976-WPD

Judge: William Dimitrouleas

Mag. Judge: Panayotta Augustin-Birch

**PLAINTIFF’S MOTION FOR ENTRY OF FINAL JUDGMENT BY DEFAULT AS TO
CERTAIN DEFENDANTS AND INCORPORATED MEMORANDUM OF LAW**

Pursuant to Rule 55(b) and 58(d) of the Federal Rules of Civil Procedure, Plaintiff Lei Tang (“Tang” or “Plaintiff” hereinafter), by and through its undersigned counsel, respectfully moves the Court for an entry of default judgment in favor of Plaintiff and against the Defendants identified on Schedule “A” to the Complaint numbered 1-12, 14-20, 22-26, 30-34, 36-38, 40-42, 44-49¹ (“Defaulting Defendants”). On January 12, 2024, the Clerk entered default against Defaulting Defendants for failure to answer or otherwise defend the instant suit. (DE 57). Because there are no allegations of joint liability or the possibility of inconsistent liability between the Defaulting Defendants, Plaintiff now moves for entry of a final default judgment.

I. BACKGROUND AND PROCEDURAL HISTORY

Plaintiff filed the instant civil action October 17, 2023, to combat the willful and intentional infringement of Copyright Registration Nos. VA0002250612 and VA0002250627,

¹ The exempted Defendants are either currently in good faith negotiations with Plaintiff (Def. No. 13, 43), have been subject to dismissal (Def. No. 27-29, 39) or the time to respond has not yet passed (Def. No. 35).

with effective registration dates of May 10 and 11, 2020, respectively. (DE 1 ¶¶ 5, 7). On November 1, 2023, Plaintiff moved for an order permitting expedited discovery. (DE 10). On November 17, 2023, the Court granted Plaintiff's motion by sealed order. (DE 22).

On November 1, 2023, Plaintiff moved for a Temporary Restraining Order Including a Temporary Injunction and a Temporary Asset Restraint. (D.E. 8). This Court granted Plaintiff's motion for temporary restraining Order on November 2, 2023. (D.E. 12). On November 14, 2023, Plaintiff filed his *Ex Parte* Application to Extend Temporary Restraining Order. (D.E. 20). On the same day, this Court granted Plaintiff's motion for extension of a temporary restraining order. (D.E. 21).

On December 7, 2023 and December 12, 2023, Defaulting Defendants were served with the Summons and a copy of the Complaint by email communication as authorized by this Court's Order on Alternate Service. (D.E. 32, 38, 39).² The time for Defendants to respond to the Complaint has expired. (Pittaway Decl. ¶ 7, attached hereto as "Exh. 1"). Defendants have not been granted any extensions of time to respond, nor have they served or filed an Answer or other response. (*Id.* at ¶ 8). To Plaintiff's knowledge, none of the Defendants are infants or incompetent persons, and, upon information and belief, the Servicemembers Civil Relief Act does not apply. (*Id.* at ¶ 9).

On December 6, 2023, Plaintiff moved for a Preliminary Injunction. (DE 30). On December 14, 2023, this Court entered a permanent injunction. (DE 46). Despite having been served, none of the Defaulting Defendants appeared for Plaintiff's Motion for Preliminary Injunction. (DE 45, 46). On January 12, 2024, Plaintiff filed his Motion for Clerk's Entry of

² Each group of Defendants were served as the discovery from the third-party platforms became available.

Default as to the remaining Defendants. (DE 56). On January 12, 2024, the Clerk of Court entered default as to the remaining Defendants. (DE 57).

Plaintiff now moves the Court to grant Final Default Judgment against Defendants and submits this Motion for Entry of Final Default Judgment. The requirements for entry of a default judgment have been met. Judgment on Plaintiff's claim of copyright infringement should be entered against the Defaulting Defendants and damages awarded in the statutory maximum of \$150,000 per defaulting defendant pursuant to 17 U.S.C. § 504(c)(2). In addition, pursuant to 17 U.S.C. § 502 a permanent injunction should be entered to permanently enjoin Defaulting Defendants from further infringement.

II. STATEMENT OF FACTS

A. Plaintiff's Copyright

Plaintiff is the owner of all rights in and to the valid Tang Works registration, U.S. federal copyright registration Nos. VA0002250612 and VA0002250627 to market, advertise and offer for sale "Diamond Painting Pens" used in arts and crafts. (DE 1 ¶ 9-10. Plaintiff sells its products via authorized distributors and retailers on the world wide web. (DE 7; DE 1 ¶ 15). Online sales using the images and marketing of the Tang Works has been significant and led to the sale of over 20,000 units by the filing of the Tang Declaration. (DE 7 ¶ 36; DE 1 ¶ 18). The use of the Tang Works is exclusive to Lei Tang. (DE 7 ¶ 30; DE 1 ¶¶ 13-15, 17). The Tang Works have been used to market and promote Lei Tang's items at a great expense to him. (DE 7 ¶ 11; DE 1 ¶ 14). The Tang Works are a signature of Plaintiff's quality goods, reputation and goodwill, and have never been abandoned. (DE 7 ¶¶ 28, 33-35; DE 1 ¶).

B. Defendants' Infringing Activities

The Defaulting Defendants' individual seller stores are illegally using the Tang Works as shown in the web pages for each defendant. (DE 7-1; DE 1 ¶¶ 26-34). The Defaulting Defendants' Infringing Products are being offered for sale to residents of the United States. (DE 7-1 at ¶ 36; DE 1 ¶ 26). Plaintiff reviewed and visually inspected the detailed web page captures and photographs reflecting the Tang Works and determined that the use of the Tang Works was not authorized. (DE 7 ¶¶ 20-21; DE 1 ¶¶ 26, 33). Defaulting Defendants do not have, nor have they ever had, the right or authority to use the Tang Works for any purpose. (DE 7 ¶ 20; DE 1 ¶¶ 26, 33). Despite their known lack of authority to do so, Defendants are using the Tang Works without authorization to promote, advertise, and market products through their respective Seller IDs. (DE 7 ¶¶ 20, 26; DE 1 ¶¶ 26, 33).

While the Defendants' true identities and locations are unknown to Plaintiff, Defendants are believed to be individuals and business entities who reside in the People's Republic of China or other foreign jurisdictions. (DE 8-1 ¶ 17, DE 7 ¶ 22; DE 1 ¶¶ 11, 25, 29). Tang accessed Defaulting Defendants' Internet based e-commerce stores operating under their respective seller identification names through Alibaba, AliExpress, Amazon, DHGate, eBay, etsy, Walmart, and Wish. (DE 7 ¶ 18; DE 1 ¶ 26). The product subject to the infringing marketing and display were put into a virtual shopping cart in the Defaulting Defendants' web stores. (DE 7 ¶¶ 17-21, 26). The opportunity to finalize payment was available via payment processors for Alibaba, AliExpress, Amazon, DHGate, eBay, etsy, Walmart, and Wish. (DE 7 ¶¶ 17-21, 23; DE 1 ¶¶ 26, 27). Plaintiff reviewed and visually inspected the detailed web page captures, photographs and prospective orders to determine that the images depicted were the Tang Works. (DE 7 ¶¶ 20, 21, 26). It was estimated that the Defaulting Defendants have used the Tang Works in the manner

depicted to market and sell hundreds or even thousands of products, amounting to substantial revenue from the sale of infringing items. (DE 7 at ¶ 36).

III. ARGUMENT

A. Jurisdiction and Venue are Proper in this Court

The jurisdiction of this Court is invoked under 17 U.S.C. §§ 101-1332, as the Plaintiff's cause of action arises under the Copyright Act; 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (copyright). (DE 1 at ¶¶ 1-2). *Palmer v. Braun*, 376 F.3d 1254, 1257 (11th Cir. 2004) (“Title 28, U.S.C., Section 1338 gives the district courts original jurisdiction over civil actions arising under federal copyright law.”). A federal court sitting in Florida may properly exercise personal jurisdiction if the requirements of (1) Florida's long-arm statute and (2) the Due Process Clause of the Fourteenth Amendment to the United States Constitution are both satisfied. *See Posner v. Essex Ins. Co., Ltd.*, 178 F.3d 1209, 1214 (11th Cir. 1999) (citing *Sculptchair, Inc. v. Century Arts Ltd.*, 94 F.3d 623, 626 (11th Cir. 1996)). If a plaintiff pleads sufficient facts to support the exercise of personal jurisdiction, the burden shifts to the defendant to make a *prima facie* showing of the inapplicability of the state's long-arm statute. *Easygroup Ltd. v. Skyscanner*, No. 20-cv-20062 at *9 (S.D. Fla., J. Cecilia Altonaga, Sep. 11, 2020) (citing *Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247, 1249 (11th Cir. 2000)).

This District has held that Defendants can be held liable for tortious acts in Florida that caused injury in Florida “by virtue of its website’s accessibility in Florida.” *See EasyGroup v. Skyscanner* No. 20-cv-20062 at *9 (citing *Licciardello v. Lovelady*, 544 F.3d 1280, 1283 (11th Cir. 2008)) (“We need not decide whether trademark injury necessarily occurs where the owner of the mark resides, as the Florida district courts have held, because in this case the alleged infringement clearly also occurred in Florida by virtue of the website's accessibility in

Florida.”)); *see also Cross Match Techs., Inc. v. Crossresolve, LLC*, No. 15-cv-81310, 2016 WL 3216541, at *4 (S.D. Fla., J. Kenneth Marra, June 10, 2016) (“Because [the plaintiff] establishes that [the defendant] maintains a website accessible in Florida that displays the allegedly infringing mark, [the plaintiff] makes out a *prima facie* case of personal jurisdiction under the long-arm statute.” (citations omitted)).

In the instant case, each Defaulting Defendant advertised, offered to sell, or offered to ship infringing products through an e-commerce store accessible to consumers in the United States, including in the State of Florida and this District. (DE 8-1 ¶ 13; DE 7 ¶ 26; DE 1 ¶¶ 2-4, 6, 24-26). Thus, the uncontested affidavits and supporting evidence establish that this Court has jurisdiction over the defendants. “A plaintiff seeking to obtain jurisdiction over a non-resident defendant initially need only allege sufficient facts to make out a *prima facie* case of jurisdiction.” *Posner v. Essex Ins. Co., Ltd.*, 178 F.3d 1209, 1214 (11th Cir. 1999) (citing *Electro Eng'g Prods. Co. v. Lewis*, 352 So. 2d 862, 864 (Fla. 1977)). “The district court must accept the facts alleged in the complaint as true, to the extent they are uncontroverted by the defendant's affidavits.” *Peruyero v. Airbus S.A.S.*, 83 F. Supp. 3d 1283, 1286 (S.D. Fla., J. Marcia Cooke, 2014) (citing *Consol. Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1291 (11th Cir. 2000)).

B. Default Judgment is Proper

Pursuant to Federal Rule of Civil Procedure 55(b)(2), the Court is authorized to enter a final judgment of default against a defendant who has failed to respond to a complaint. A “defendant, by his default, admits the Plaintiff’s well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established”. *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F. 3d 1298, 1307 (11th Cir. 2009) (quoting *Nishimatsu Const. Co., Ltd. v. Houston Nat’l Bank*, 515 F. 2d 1200, 1206 (5th Cir.

1975)). “Because a defendant is not held to admit facts that are not well pleaded or to admit conclusions of law, the Court must first determine whether there is a sufficient basis in the pleading for judgment to be entered.” *Luxottica Group S.p.A. v. Individual, P’ship or Unincorporated Ass’n*, 17-CV-61471, 2017 WL 6949260, at *2 (S.D. Fla., J. Cecilia Altonaga, Oct. 3, 2017); *see also Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987) (“[L]iability is well-pled in the complaint, and is therefore established by the entry of default . . .”). Thus, the entirety of the facts set forth in the Complaint (DE 1) are admitted by Defaulting Defendants.

1. Plaintiff Has Established Defendants’ Liability for Copyright Infringement

To establish copyright infringement, Plaintiff is required to prove two elements: “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349 (1991); *Compulife Software Inc. v. Newman*, 959 F.3d 1288, 1301 (11th Cir. 2020) (internal citation omitted). A plaintiff must show factual copying by either (1) direct evidence or (2) indirect evidence “demonstrating that the defendant had access to the copyrighted work and that there are probative similarities between the allegedly infringing work and the copyrighted work.” *See Newman*, 959 F.3d 1288, 1301 (11th Cir. 2020) (citing *BUC Int’l Corp. v. Int’l Yacht Council Ltd.*, 489 F.3d 1129, 1148 n.40 (11th Cir. 2007); *MiTek Holdings, Inc. v. Arce Eng’g Co.*, 89 F.3d 1548, 1554 (11th Cir. 1996)).

Where a plaintiff cannot establish that the alleged infringer had access to the copyrighted work, the plaintiff must meet a higher standard and show that the works are “strikingly similar.” *See Calhoun v. Lillenas Publ’g*, 298 F.3d 1228, 1232 n.6 (11th Cir. 2002) (citing *Herzog v. Castle Rock Ent.*, 193 F.3d 1241, 1249 (11th Cir. 1999)); *see also Olem Shoe Corp. v. Wash. Shoe Corp.*, 591 F. App’x 873, 885 (11th Cir. 2015) (“Striking similarity exists where the proof of similarity

in appearance is so striking that the possibilities of independent creation, coincidence and prior common source are, as a practical matter, precluded.”) (quoting *Corwin v. Walt Disney Co.*, 475 F.3d 1239, 1253 (11th Cir. 2007)).

In the instant case, Defendants have utilized identical or strikingly similar images to the Tang Works on their e-commerce websites. (DE 7 ¶¶ 20, 21, 26, 7-4, 7-5). A side by side was presented demonstrating the substantial similarity or identical nature of the infringement (DE 8-2). These Defendants operate and control the fully interactive commercial Internet websites and a supporting domain operating under their domain names identified on Schedule “A” hereto (collectively the “Subject Domain Names”). As such, Defendants are the active, conscious, and dominant forces behind the promotion, advertisement, and offering for sale, via the Subject Domain Names using the Tang Works.

(a) Ownership of a valid copyright

The registration of a copyright creates a *prima facie* presumption of validity of a copyright. 17 U.S.C. § 410(c); *Pohl v. MH Sub I LLC*, 770 Fed.Appx. 482, 486 (11th Cir. 2019). Thus, Plaintiff respectfully submits that he has evidenced his ownership to a valid copyright. (DE 7, 7-1, 7-2; DE 1 ¶¶ 9-10; 1-1; 1-2) This Court may take judicial notice of Plaintiff’s copyright registrations as published in the Copyright Office’s official registry under Fed.R.Evid. 201(b)(2). Courts may take judicial notice of facts within the public domain and public records if such facts and records are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” *Latimer v. Roaring Toyz, Inc.*, Case No.: 8:06-cv-1921-T-30 at 3 (M.D.Fla., J. James Moody Jr., Sept. 21, 2010) (“A copyright grants to the owner several exclusive rights, including the right to reproduce the copyrighted work and to distribute copies to the public.”).

(b) Copying of constituent elements of the work that are original

As to the second element, direct evidence of copying is only rarely available. “Of course, proof of access and substantial similarity raises only a presumption of copying which may be rebutted by the defendant with evidence of independent creation.” *Original Appalachian Artworks, Inc. v. Toy Loft, Inc.*, 684 F.2d 821 (11th Cir. 1982). Here, Defendants are willfully and deliberately reproducing Plaintiff’s Tang Works, either in their entirety or in substantially similar form, and willfully and deliberately displaying copies of the Tang Works to the public through their sale of products. (DE 7 at ¶¶ 20-21). Defendants’ unauthorized copies are identical or substantially similar to the Tang Works. (*Id.*). For example, it is readily apparent that many of Defaulting Defendants’ depictions reflect duplicate images with the same product positioning, the same shadows, fingernails and background. *See* 7-4, 7-5. Such blatant copying infringes upon Plaintiff’s exclusive rights under 17 U.S.C. § 106. As such, Plaintiff has satisfied the second element of his copyright infringement claim.

2. There is No Possibility of Inconsistent Liability

As set out above and as further detailed below, there are no allegations of joint and several liability with respect to damages. The Defaulting Defendants have not appeared and defaulted. Plaintiff’s request for an award of damages is uniform as to each Defaulting Defendant. Therefore, there is no possibility of inconsistent liability between the Defaulting Defendants, and an adjudication may be entered.

Entry of default judgment is proper under these circumstances and is often entered in multiparty intellectual property enforcement suits similar to the instant case based upon identical reasoning. *See Frugality Inc. v. The Individuals*, 21-cv-23025, at *3 (S.D. Fla., J. Beth Bloom, Mar. 8, 2022) (“Here, Plaintiff has stated in its Motion that there are no allegations of joint and

several liability with respect to damages. The Defaulting Defendants remaining in the case have not appeared and have defaulted. Therefore, there is no possibility of inconsistent liability between the Defaulting Defendants, and an adjudication may be entered. ”); *Max'is Creations, Inc. v. The Individuals*, 21-cv-22920, at *2-3 (S.D., Fla. J. Beth Bloom, Jan. 11, 2022); “*H*” *Safety Nailer LLC v. The Individuals*, 21-cv-22703, at *3 (S.D. Fla., J. Beth Bloom, Dec. 29, 2021) (same).

C. Entry of a Permanent Injunction is Appropriate

Permanent injunctive relief is appropriate where a Plaintiff demonstrates 1) it has suffered irreparable injury; 2) there is no adequate remedy at law; 3) the balance of hardship favors an equitable remedy; and 4) an issuance of an injunction is in the public’s interest. *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 391-3 (2006). The court previously found these factors in favor of Plaintiff when it entered the preliminary injunction in this matter. (DE 46). No change has occurred since then, and Plaintiff has carried its burden on each of the four factors warranting permanent injunctive relief. A permanent injunction will protect Plaintiff’s intellectual property interests, as well as prevent consumer confusion and deception in the marketplace.

As demonstrated herein and based upon the issuance of the temporary restraining order and preliminary injunction entered in this matter, Plaintiff carried its burden on each of the four factors and warrants permanent injunctive relief. Plaintiff is suffering, and will continue to suffer, irreparable injury if Defendants’ infringing activities are not permanently enjoined. (*See* Declaration of Lei Tang ¶¶ 27-37). Plaintiff has lost an immeasurable amount of goodwill, time, and money, as a result of the Defendants’ infringing activities. (DE 7 at ¶12). Defendants have unlawfully used the Tang Works’s goodwill to make a profit and will likely continue their

behavior unless the Court orders permanent injunctive relief. Such relief is not only to protect Plaintiff's reputation, but also to protect consumers from being deceived as to the quality and source of products advertised, marketed, and sold using the Tang Works.

Defendants have defaulted upon Plaintiff's factual allegations. Additionally, Plaintiff has no adequate remedy at law so long as Defendants continue to use the Tang Works in connection with the operation of the Subject Domain Names because Plaintiff will have no control of the use of the Tang Works in the marketplace. An award of money damages alone will not cure the injury to Plaintiff and the Tang Work's reputation and goodwill if Defendants' infringing actions continue. Moreover, it can hardly be said that Defendants face hardship in refraining from their willful infringement of the Tang Works, whereas Plaintiff faces hardship from loss of sales and its inability to control the use of the Tang Works. In reality, Defendants have no cognizable hardship, as they will be prohibited from infringement, which is an illegal act to begin with.

Finally, the public has an interest in the issuance of a permanent injunction against Defendants in order to prevent consumers from being misled by Defendants' products. *See Chanel, Inc. v. besumart.com*, 240 F. Supp. 3d 1283, 1291 (S.D. Fla., J. Cecilia Altonaga, 2016) (“[A]n injunction to enjoin infringing behavior serves the public interest in protecting consumers from such behavior.” (citation omitted)).

The Court has broad powers to compel measures necessary to enforce an injunction against infringement. *Animaccord Ltd. v. Individuals, Partnerships & Unincorporated Associations Identified on Schedule A*, 21-CV-21088, 2021 WL 3110021, at *6 (S.D. Fla., J. Beth Bloom, July 22, 2021). As part of the injunctive relief granted, this Court should order all listings and associated images of the Tang Works permanently removed from Defaulting Defendants' internet stores by the applicable internet marketplace platforms. Unless the listings and images

are permanently removed, Defaulting Defendants may continue infringing Plaintiff's intellectual property with impunity and market to the public with their illegal activities.

D. Plaintiff is Entitled to Monetary Damages

Pursuant to 17 U.S.C. § 504, a copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, plus the infringer's additional profits, or statutory damages. Actual damages can be measured by lost revenue or sales, lost opportunities to license, or diminution in the value of the copyright. *Lorentz v. Sunshine Health Prods.*, No. 09-cv-61529, at *12 (S.D. Fla., J. Federico Moreno, Sep. 7, 2010). However, obtaining disgorgement of an infringer's profits requires knowledge of the infringer's gross revenue. 17 U.S.C. § 504(b). Defendants control the information needed to accurately determine actual damages and where the lack of information regarding Defendants' sales and profits makes statutory damages especially appropriate in default judgment cases like the instant case. In addition, an award of statutory damages is an appropriate remedy despite a Plaintiff's inability to prove actual damages. *See Volkswagen Group of Am., Inc. v. Varona*, 19-cv-24838, 2021 WL 1997573, at *2 (S.D. Fla, Mag. J. Jonathan Goodman, May 18, 2021) (finding a statutory damages award particularly appropriate where Plaintiffs were unable to calculate actual damages); *Under Armour, Inc. v. 51nfljersey.com*, No. 13-cv-62809, 2014 U.S. Dist. LEXIS 56475, at *22-*23 (S.D. Fla. Apr. 23, 2014) (citing *Ford Motor Co. v. Cross*, 441 F.Supp.2d 837, 852 (E.D. Mich. 2006) (“[A] successful plaintiff in a trademark infringement case is entitled to recover enhanced statutory damages even where its actual damages are nominal or non-existent.”); *Playboy Enter., Inc. v. Universal Tel-A-Talk, Inc.*, No. 96-cv-6961, 1998 WL 767440, at *8 (E.D. Pa. Nov. 3, 1998) (awarding statutory damages where plaintiff failed to prove actual damages or profits).

In the instant case, Plaintiff is unable to ascertain the total value of actual damages. As explained by Plaintiff in his declaration:

I originally offered the goods depicted in my Tang Works for sale at a retail price of \$15.00 to \$20.00. As shown by Exhibit Four, most of the Defendants offer identical goods for sale utilizing my Tang Works without authorization at much lower price points. Due to the Defendants' unauthorized and infringing utilization of my Tang Works to sell the goods depicted therein, I have been forced to lower the retail price of the goods depicted in my Tang Works by approximately half. I am unable to restore the initial price point due to Defendants' continued unauthorized and infringing utilization of my Tang Works to sell the goods depicted therein in direct competition with me. My brand and business is irreparably harmed due to continued price erosion.

DE 7 ¶ 32. Thus, Plaintiff has the damages from sales lost to Defaulting Defendants, damages from lowering the price per unit, and immeasurable damages for the erosion of the Tang Works' goodwill. In addition, that the Defaulting Defendants escape the responsibility to disclose sales data or engage in the discovery process by virtue of their absence in this suit further erodes the ability to properly calculate damages. Defaulting Defendants should not be rewarded for their absence by awarding only actual damages or nominal damages to Plaintiff.

In addition to actual damages as described above, Lei Tang suffers continuous and ongoing damages which warrant a high statutory award. Specifically, each sale made by the Defendants through a webstore results in a direct loss to Lei Tang. (DE 7 ¶¶ 27-37; DE 1 ¶¶ 34). Customers persuaded to purchase a product by use of the Tang Works and complete the purchase from a Defendant represent a customer lost to Plaintiff not only for that specific sale, but also as an ongoing customer and a referring customer. (DE 7 ¶¶ 27-37). Thus, Plaintiff's damages are in perpetuity. Each sale made that forces Lei Tang to reduce his market price results in a direct loss to Lei Tang. (DE 7 ¶¶ 27-37). As demonstrated by the examples of how difficult it can be to compute actual damages, both past, present, and future, Lei Tang respectfully requests for this

Court to enter an award of the maximum statutory damages for willful infringement of Plaintiff's copyrighted works under 17 U.S.C. § 504(c).

E. Plaintiff is Entitled to Statutory Damages in an Amount Sufficient to Compensate for the Damages Incurred and to Deter Defendants

Courts maintain "wide discretion" in determining an award of statutory damages. *Fitzgerald Publ'g. Co., Inc. v. Baylor Publ'g. Co.*, 807 F.2d 1110, 1116 (2d Cir. 1986). In awarding statutory damages, Courts consider factors including: (1) the expenses saved and the profits reaped; (2) the revenues lost by the Plaintiff; (3) the value of the copyright; (4) the deterrent effect on others besides the defendant; (5) whether the defendant's conduct was innocent or willful; (6) whether a defendant has cooperated in providing particular records from which to assess the value of the infringing material produced; and (7) the potential for discouraging the defendant. *See Fitzgerald Publ'g.*, 807 F.2d at 1116–17; *PetMed Express, Inc.*, 336 F. Supp. 2d at 1220 (statutory damages are "especially appropriate in default judgment cases due to infringer nondisclosure").

Plaintiff is entitled to a statutory damages award of not less than \$750 or more than \$30,000 per work for non willful infringement. 17 U.S.C. § 504(c)(1). The Court in its discretion may increase an award for statutory damages up to \$150,000.00 when infringement was committed willfully. 17 U.S.C. § 504(c)(2). A defendant's intent can be of probative value for establishing willfulness, triggering an enhanced statutory award. *PetMed Express, Inc.*, 336 F. Supp. 2d at 1220. A defendant is deemed to have acted willfully where "the infringer acted with actual knowledge or reckless disregard" to a plaintiff's intellectual property rights. *See Arista Records, Inc. v. Beker Enter., Inc.*, 298 F. Supp. 2d 1310, 1312 (S.D. Fla. 2003).

This Court may award statutory damages "without holding an evidentiary hearing based upon affidavits and other documentary evidence if the facts are not disputed." *Perry Ellis Int'l*,

Inc. v. URI Corp., No. 06-cv-22020, 2007 WL 3047143, at *1 (S.D. Fla., J. K. Michael Moore, Oct. 18, 2007). An evidentiary hearing is not necessary where there is sufficient evidence on the record to support the request for damages. *See SEC v. Smyth*, 420 F.3d 1225, 1232 n.13 (11th Cir. 2005) (“Rule 55(b)(2) speaks of evidentiary hearings in a permissive tone . . . We have held that no such hearing is required where all essential evidence is already of record.”) (citations omitted) “Even for uninjurious and unprofitable invasions of copyright the court may, if it deems just, impose a liability within statutory limits to sanction and vindicate the statutory policy.” *F.W. Woolworth Co. v. Contemporary Arts*, 344 U.S. 228, 233 (1952). In awarding enhanced damages “deterrence of future violations is a legitimate consideration” because “defendants must not be able to sneer in the face of copyright owners and copyright laws.” *Cable/Home Communication Corp. v. Network Productions*, 902 F.2d 829, 851 (11th Cir. 1990) (internal quotation omitted).

1. A High Statutory Damages Award is Justified Due to the Acts of Infringement Having Taken Place on the Internet

Many courts, in this district and elsewhere, have awarded high damages where the predicate acts of infringement took place on the internet. *See Macklin v. Mueck*, 373 F. Supp. 2d 1334, 1335-36 (S.D. Fla. 2005) (awarding maximum damages of \$150,000 for each of two poems posted on the Internet on a default judgment); *Monster Energy Company v. Jing, et al.*, Case No. 2015-cv-00277 at * 7 (N.D. Ill. July 6, 2015) (“The internet platform defendants used, AliExpress.com, is a busy website that provides the potential to reach a vast customer base.”); *Luxottica Group S.p.A. v. Hao Li, et al.*, Case No. 16-cv-00487 at *16 (N.D. Ill., J. Manish Shah, Feb. 15, 2017) (“But even putting aside any evidence of defendant selling multiple products through multiple online sales platforms, defendant can reach a worldwide customer base on eBay alone.”). Here, Defaulting Defendants operate through busy ecommerce platforms including Alibaba, AliExpress, Amazon, DHGate, eBay, etsy, Walmart, and Wish. (DE 7 ¶¶ 17-18; DE 1 ¶

26). Consistent with the cited decisions, Plaintiff is entitled to a high statutory damages award due to Defendants' acts of infringement having taken place on the internet.

2. The Award of Statutory Damages Should be Sufficient to Deter Further Acts of Infringement

“In its broad discretion for determining statutory damages, the district court should consider both the willfulness of the defendant's conduct and the deterrent value of the sanction imposed.” *Cable/Home Communication Corp. v. Network Productions, Inc.*, 902 F.2d 829, 852 (11th Cir. 1990); *Illinois Bell Tel. Co. v. Haines & Co.*, 905 F.2d 1081, 1089 (7th Cir. 1990); *Bulgari, S. P.A. v. Xiaohong*, Case No. 15-cv-05148 at *5 (N.D. Ill., Oct. 15, 2015) (“This Court’s award, moreover, must be adequate to deter future infringement, intentional or unintentional, by the defendant and others similarly situated.”). Indeed, the Copyright Act's statutory damages provision is designed to discourage wrongful conduct. *F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 233 (1952).

A statutory damages award of \$150,000 per Defaulting Defendant, the maximum permitted for willful infringement under 17 U.S.C. § 504(c)(2), will serve to both compensate Plaintiff and to deter the Defaulting Defendants and others who are either now or may in the future infringe upon the Tang Works. This amount is consistent with decisions in similar cases involving smaller merchants who, as here, are forced to bring enforcement actions to protect their intellectual property against online pirating copyright infringers. *See Sun v. The Partnerships, et al.*, Case No. 19-cv-5705 at *4-5 (N.D. Ill., J. Elaine Bucklo, January 29, 2020) (awarding \$150,000 per defaulting defendant under the Copyright Act); *Safety Nailer LLC v. The Individuals*, 21-cv-22703, at *14 (S.D. Fla., J. Beth Bloom, Dec. 29, 2021) (awarding \$150,000 per Defaulting Defendant and finding that “This award is within the statutory range for a willful violation, and is sufficient to compensate plaintiff, punish the Counterfeit Defendants, and deter

Counterfeit Defendants and others from continuing to infringe Plaintiffs' copyrights.'"); *Max'is Creations, Inc. v. The Individuals*, 21-cv-22920 (S.D. Fla., J. Beth Bloom, Jan. 11, 2022) (same).

Significantly, if these Defaulting Defendants were held accountable for only the units verified as sold, it fails to compensate Plaintiff for the lost customer base in perpetuity. Any award from actual damages rewards the Defaulting Defendants who did not respond to the instant suit and did not provide any reciprocal discovery reflecting actual sales. The Defaulting Defendants should not get a windfall by failing to appear in this case and provide data which could assist in calculating damages. Therefore, an award that does not provide in excess of any potential actual damages fails to deter infringing conduct in the future. Therefore, this Court should award in excess of actual damages.

3. Plaintiff has previously received awards for infringement

Plaintiff respectfully submits that he has successfully prosecuted prior infringement actions and received awards. *Lei Tang v. The Individuals et. al*, Case No. 1:22-cv-22198 (S.D.Fla, Nov. 1, 2022, J. Robert Scola Jr.)(awarding \$150,000 per Defaulting Defendant); *Lei Tang v. The Individuals et. al*, Case No. 2:21-cv-14431 (S.D.Fla., Sept. 14, 2022, J. Aileen Cannon) Doc. 87)(awarding \$10,000 per Defaulting Defendant).

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court enter final default judgment against Defaulting Defendants, permanently enjoin Defaulting Defendants from further infringing activities; and award Plaintiff damages for each Defaulting Defendant in the amount of \$150,000 per Defaulting Defendant and any other relief the Court deems just and proper.

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Respectfully submitted this 16th day of January, 2024,

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