UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MATTHEW WAKEM,

Plaintiff,

v. **Case No: 6:23-cv-2306-CEM-EJK**

SUFII DAY SPA CORPORATION,

Defendant.

REPORT AND RECOMMENDATION

This cause comes before the Court on Plaintiff's Motion for Entry of Final Default Judgment Against Defendant Suffi Day Spa Corporation (Doc. 25), filed August 29, 2024. Upon consideration, I respectfully recommend that the Motion be granted in part.

I. BACKGROUND

A. Factual Allegations

While a "default is not treated as an absolute confession by the defendant of [its] liability and of the plaintiff's right to recover," a defaulted defendant is deemed to have admitted the plaintiff's well-pleaded allegations of fact. *Tyco Fire & Sec., LLC v. Alcocer*, 218 Fed. App'x 860, 863 (11th Cir. 2007) (quoting *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)).[1] Accordingly, the Complaint (Doc. 1) alleges the following facts, which are assumed to be true.

[1] This Court adopted as binding precedent all Fifth Circuit decisions prior to October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc).

In 2009, Plaintiff Matthew Wakem created a photograph depicting a woman receiving a spa facial, entitled "asp_wakem_82058.jpg" ("Photograph"). (Doc. 1 ¶ 10.) On August 21, 2009, Plaintiff registered the Photograph with the Register of Copyrights and was assigned Registration Number VAu 997-528. (Doc. 1 ¶ 11.) A copy of the Photograph is shown below:

On or about June 3, 2022, Plaintiff discovered Defendant Suffi Day Spa Corporation's unauthorized use of the Photograph on its website. (Doc. 1 ¶ 16.) Defendant copied the Photograph from the internet to advertise, market, and promote its business activities. (Doc. 1 ¶ 4.) Following this discovery, Plaintiff notified Defendant in writing about the unauthorized use and unsuccessfully attempted to negotiate a reasonable license for the past and existing infringement. (Docs. 1 ¶ 23; 25 at 4.)

B. Procedural History

Plaintiff timely initiated this action on November 30, 2023, by filing the Complaint, which alleges one-count of copyright infringement. (Doc. 1.) On February 12, 2024, Plaintiff effectuated substituted service on Defendant by serving the Florida Secretary of State by certified mail pursuant to Florida Statute § 48.161(2). (Docs. 17; 17-1; 17-2.) After Defendant failed to appear or otherwise respond to the Complaint, the Clerk entered default on July 24, 2024. (Doc. 24.) Plaintiff has now moved for default judgment, seeking actual damages, statutory damages, and a permanent injunction preventing Defendant or any of its affiliates from committing any further infringement. (*See* Doc. 25 at 10–17.) To date, Defendant has not appeared in this case or responded to the Motion. The Motion is now ripe for review.

II. STANDARD

A district court may enter a default judgment against a properly served defendant who fails to defend or otherwise appear. Fed. R. Civ. P. 55(b)(2). The mere entry of a default by the Clerk does not, in itself, warrant a default judgment. *See Tyco Fire & Sec., LLC*, 218 F. App'x at 863. Rather, a defaulted defendant is deemed to have admitted only the plaintiff's well-pleaded allegations of fact. *Id.* "Thus, before entering a default *judgment* for damages, the district court must ensure that the well-pleaded allegations in the complaint, which are taken as true due to the default, actually state a substantive cause of action and that there is a substantive, sufficient basis in the

pleadings for the particular relief sought." *Id.* (emphasis in original). "Once liability is established, the court turns to the issue of relief." *Enpat, Inc. v. Budnic*, 773 F. Supp. 2d 1311, 1313 (M.D. Fla. 2011). Pursuant to Federal Rule of Civil Procedure 54(c), "'A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings,' and a court may conduct hearings when it needs to determine the amount of damages, establish the truth of any allegation by evidence, or investigate any other matter." *Id.* (citing Fed. R. Civ. P. 55(b)(2)).

If the plaintiff seeks damages, the plaintiff bears the burden of demonstrating entitlement to recover the amount of damages sought in the motion for default judgment. *Wallace v. The Kiwi Grp., Inc.*, 247 F.R.D. 679, 681 (M.D. Fla. 2008). Unlike well-pleaded allegations of fact, allegations relating to the amount of damages are not admitted by virtue of default; rather, the court must determine both the amount and character of damages. *Id.* (citing *Miller v. Paradise of Port Richey*, *Inc.*, 75 F. Supp. 2d 1342, 1346 (M.D. Fla. 1999)). Therefore, even in the default judgment context, "[a] court has an obligation to assure that there is a legitimate basis for any damage award it enters[.]" *Anheuser Busch, Inc. v. Philpot*, 317 F.3d 1264, 1266 (11th Cir. 2003); *see also Adolph Coors Co. v. Movement Against Racism and the Klan*, 777 F.2d 1538, 1544 (11th Cir. 1985) (explaining that damages may be awarded on default judgment only if the record adequately reflects a basis for an award of damages). Typically, the law requires an evidentiary hearing to fix the amount of damages, unless a plaintiff's claim against a defaulting defendant is for a liquidated sum or one capable of mathematical calculation. *See Adolph Coors*, 777 F.2d at 1543–44. When all of the essential evidence

is of record, an evidentiary hearing on damages is not required. *SEC v. Smyth,* 420 F.3d 1225, 1232 n.13 (11th Cir. 2005).

III. DISCUSSION

A. Personal Jurisdiction

The Court has personal jurisdiction over Defendant because it is a Florida corporation that operates and conducts business in Seminole County, Florida. (Doc. 1 ¶ 9). Venue is proper in the Orlando Division because it encompasses actions arising from Seminole County. Local Rule 1.04.

B. Subject Matter Jurisdiction

The Court has original jurisdiction over Plaintiff's claim pursuant to 28 U.S.C. §§ 1131 and 1338(a), since the claim arises under the Copyright Act, 17 U.S.C. §§ 501–505. "The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (citation omitted). Here, federal question jurisdiction is apparent on the face of the Complaint. (*See* Doc. 1.)

C. Service of Process

On February 12, 2024, Plaintiff effectuated substituted service on Defendant by serving the Florida Secretary of State by certified mail pursuant to Florida Statute § 48.161(2). (Docs. 17; 17-1; 17-2); Fla. Stat. § 48.161(2). Defendant did not timely respond to the Complaint, and Plaintiff moved for and was granted a clerk's default

against Defendant, which was entered on July 24, 2024. (Docs. 22, 23, 24).

D. Copyright Infringement

An "author has a valid copyright in an original work at the moment it is created—or, more specifically, fixed in any tangible medium of expression." *Original Appalachian Artworks, Inc. v. Toy Loft*, 684 F.2d 821, 823 n.1 (11th Cir. 1982) (citing 17 U.S.C. § 102(a)). To establish a prima facie case for copyright infringement, a plaintiff must show: 1) ownership of a valid copyright; and 2) that the defendant copied constituent elements of the copyrighted work that are original. *Calhoun v. Lillenas Publ'g*, 298 F.3d 1228, 1232 (11th Cir. 2002) (citation omitted).

For the first prong, a "certificate of copyright registration made before or within five years after first publication of the work constitutes prima facie evidence of the validity of the copyright and of the facts stated in the certificate." 17 U.S.C. § 410(c). It is "within the discretion of the court" to determine the amount of evidentiary weight to accord a certificate of registration made more than five years after first publication of the work. *Id*. For the second prong, the plaintiff must establish that the "alleged infringer actually copied plaintiff's copyrighted material." *Latimer v. Roaring Toyz, Inc.*, 601 F.3d 1224, 1233 (11th Cir. 2010). In addition to factual proof of copying, the plaintiff must also prove "the copying of copyrighted material was so extensive that it rendered the offending and copyrighted works substantially similar." *Id*. (citation omitted).

As to the first prong, Plaintiff alleges that he created the Photograph in 2009. (Doc. 1 ¶ 10.) According to the registration certificate attached to the Complaint,

Plaintiff registered the Photograph with the Register of Copyrights, effective August 17, 2009. (Doc. 1-1 at 2.) Thus, Plaintiff owned a valid copyright of the Photograph within 5 years of the Photograph's first publication. 17 U.S.C. § 410(c). Accordingly, based on the well-pleaded allegations in the Complaint and the certificate of registration, the undersigned finds that Plaintiff has established that he owned a valid copyright.

As to the second prong, Plaintiff alleges that Defendant copied the Photograph and used the Photograph on the internet to market Defendant's business. (Doc. 1 ¶¶ 16–22.) In support of this contention, Plaintiff attached screenshots from Defendant's website showing its unauthorized use of the Photograph. (Doc. 1-2 at 2.) This evidence establishes that Defendant copied the Photograph and used the Photograph on the internet to promote its business, and it did not have Plaintiff's permission to do so. (Doc. 1-2.) Accordingly, based on the well-pleaded allegations contained in the Complaint and its attached exhibits, the undersigned finds that Plaintiff has established that Defendant copied Plaintiff's copyrighted Photograph. Therefore, the undersigned finds that Plaintiff has established that Defendant infringed upon Plaintiff's copyright, in violation of 17 U.S.C. § 501.

E. Damages

A copyright owner may choose between two types of damages: actual damages and profits, or statutory damages. *Jordan v. Time, Inc.*, 111 F.3d 102, 104 (11th Cir. 1997). Plaintiff requests $20,000 in actual damages and $60,000 in statutory damages.

(Doc. 25 at 15.) For the reasons discussed below, the undersigned recommends that Plaintiff be awarded statutory damages, but not in the amount requested.

1. Actual Damages

The Copyright Act allows a successful copyright owner to claim: (1) "actual damages suffered by him or her as a result of the infringement" and (2) "any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages." 17 U.S.C. § 504(b). Actual damages are "often measured by the revenue that the plaintiff lost as a result of the infringement." *Thornton v. J Jargon Co.*, 580 F. Supp. 2d 1261, 1276 (M.D. Fla. 2008) (citing *Montgomery v. Noga*, 168 F.3d 1282, 1295 n.19 (11th Cir. 1999)). Actual damages include lost sales, lost opportunities to license, and diminution in the value of the copyright. *Id*. However, a claim for lost profits may include a retroactive license fee measured by what the plaintiff would have earned by licensing the infringing use to the defendant. *See, e.g.*, *Montgomery*, 168 F.3d at 1295–96 (affirming jury award of actual damages based on a retroactive license fee). To demonstrate entitlement to a reasonable license fee, Plaintiff "must show that the thing taken had a fair market value." *Thornton*, 580 F. Supp. 2d at 1277 (citation omitted). A plaintiff presents sufficient evidence to support a fair market value determination when: (1) the plaintiff demonstrates prior compensation for use of the infringed work, or (2) the plaintiff produces evidence of benchmark licenses, that is, what licensors have paid for use of similar work. *Id*.

Plaintiff bases his request for actual damages on the amount he would have received had Defendant purchased a license to use the Photograph. (Doc. 25 at 11.) In

Plaintiff's declaration submitted with the Motion, Plaintiff declares that he would have charged Defendant $2,000 per year for use of the Photograph or a similar work. (Wakem Decl. (Doc. 25-3) ¶ 13.) Plaintiff provides "benchmark" evidence by stating that "the typical fee range I would receive for licensing the rights to use and display this Work on the internet is approximately $2,000.00. I would typically license the Work to an entity like [Defendant] for approximately $4,000.00 for a commercial, non-exclusive display over a two-year period." (*Id.*) Plaintiff further declares that Defendant has impermissibly used the Photograph from at least June 2022 to January 2023. (*Id.* ¶¶ 8, 12.) At the time the Motion was filed on August 29, 2024, Defendant was still infringing on Plaintiff's copyright. (Doc. 25 at 10.) According to Plaintiff, a $4,000 licensing fee alone does not consider the exclusivity and scarcity of the Photograph, which has now allegedly lost significant value due to Defendant's conduct. (*Id.* at 11–12.) Plaintiff states that the Photograph is exclusive and scarce not only because of its high quality, but also due to Plaintiff's intentional actions to limit access to the Photograph. (*Id.* at 12.)

Plaintiff also points out that Defendant publicly disseminated an attribution-free copy of the Photograph that can be accessed by others, causing the Photograph to lose significant value in its scarcity and exclusivity. (*Id.*) To that end, Plaintiff contends that his actual damages are $20,000.00, calculated by multiplying a licensing fee of $4,000 for the Photograph by a scarcity factor of five. (*Id.*) But the undersigned finds that Plaintiff is not entitled to a scarcity factor multiplier.

Plaintiff relies on four cases to support his request for a scarcity factor multiplier. (Doc. 25 at 12–13.) First, Plaintiff cites *Garden World Images Ltd. v. WilsonBrosGardens.com LLC.,* No. 1:19-cv-01035-AT, 2019 WL 8017802, at *4 (N.D. Ga. Oct. 31, 2019). In *Garden World Images*, the court considered the photograph scarce because the photographer was one of "very few photographers in the world [who] could capture such a photo at high quality." 2019 WL 8017802, at *4. Although the Photograph in the present case required skill to capture, the record does not support a conclusion that it could be captured by "very few photographers in the world."

Second, Plaintiff cites *Corson v. Gregory Charles Interiors, LLC*, No. 9:19-cv-81445, 2020 WL 6323863, at *2 (S.D. Fla. Aug. 7, 2020). In that case, the photographer provided the court with an abundance of facts to support the scarcity claim, such as "custom lighting setups" that relied on the photographer's years of experience and "processing the approximately 400 photographs using [her] proprietary adjustments to color, contract, levels, etc. . . ." *Id*. at *2. (alteration in original). Here, Plaintiff provided no such additional facts in either the Motion or the Complaint.

Third, Plaintiff cites *Leonard v. Stemtech Int'l Inc*, 834 F.3d 376, 394 (3d Cir. 2016). However, that case followed a jury trial, which is a markedly different procedural context than this case, where Defendant has not appeared to contest Plaintiff's claims.

Finally, Plaintiff cites *Lived in Images, Inc. v. Noble Paint & Trim, Inc.*, No. 6:15-cv-1221-Orl-40DAB, 2016 WL 791061, at *5 (M.D. Fla. Feb. 5, 2016), *report and recommendation adopted*, 2016 WL 761029 (M.D. Fla. Feb. 26, 2016). But the court in

Lived in Images, Inc. granted the photographer a total damages award of only $10,000, using a ten-fold multiplier to the photographer's $1,000 license fee value. 2016 WL 791061, at *5. In fact, the court made clear that, in cases involving copyrighted photographs, the Middle District of Florida considers an award ranging from $10,000 to $20,000 to be appropriate in light of case law from persuasive courts. *Id*. at *4.

In light of the foregoing, the undersigned finds that a scarcity factor multiplier is unwarranted, and that Plaintiff's actual damages amount to $4,000.00. Nevertheless, the undersigned recommends awarding Plaintiff statutory damages, as set forth below, rather than actual damages.

2. Statutory Damages

Title 17, United States Code, Section 504(c) provides:

> (1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, 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.
>
> (2) **In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than $150,000**…

17 U.S.C. § 504(c)(1)-(2) (emphasis added).

Plaintiff requests $60,00.00 in statutory damages due to Defendant's willful copyright infringement. (Doc. 25 at 14–15.) A finding of willful infringement justifies an award of heightened damages and attorney fees. *Chanel, Inc. v. Italian Activewear of Florida, Inc.*, 931 F.2d 1472, 1476 (11th Cir. 1991). Willful infringement occurs "when the infringer acted with 'actual knowledge or reckless disregard for whether its conduct infringed upon the plaintiff's copyright.'" *Wareka v. Luxury Lab LLC*, No. 8:23-cv-00665-CEH-SPF, 2023 WL 9119240, at *3 (M.D. Fla. Nov. 29, 2023) (quoting *Arista Recs., Inc. v. Beker Enterprises, Inc.*, 298 F. Supp. 2d 1310, 1312 (S.D. Fla. 2003)) (internal quotation marks omitted), *report and recommendation adopted*, 2024 WL 81815 (M.D. Fla. Jan. 8, 2024).

When the infringement is found to be willful, deterrence becomes a primary consideration in awarding damages. *Cable/Home Commc'n Corp. v. Network Prods., Inc.*, 902 F.2d 829, 851 (11th Cir. 1990). Yet statutory damages should not provide the plaintiff with a "windfall recovery." *McDermott v. El Sol Media Network, Inc.*, No. 6:22-cv-999-PGB-DAB, 2023 WL 2931277, at *4 (M.D. Fla. Feb. 8, 2023) (quoting *Peer Internat'l Corp. v. Luna Records*, 887 F. Supp. 560, 568–69 (S.D.N.Y. 1995)), *report and recommendation adopted*, 2023 WL 2931202 (M.D. Fla. Feb. 23, 2023). Instead, statutory damages should "bear some relationship to the actual damages suffered." *Id*. "When a plaintiff has adequately alleged willful copyright infringement in the complaint, a court may infer willfulness based on the defendant's default alone." *Wareka*, 2023 WL 9119240, at *3.

"The Court has wide discretion to set an amount of statutory damages." *Cable/Home Commc'n Corp.*, 902 F.2d at 851–52. While exercising this discretion, judges in this District have considered the following non-exclusive factors: 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. *Affordable Aerial Photography, Inc. v. Elegance Transp, Inc.*, No. 6:21-cv-1166-CEM-LHP, 2022 WL 2306182, at *6 (M.D. Fla. Feb. 23, 2022) (quoting *Bait Prods. Pty Ltd. v. Murray*, No. 8:13-cv-169-T-33AEP, 2013 WL 4506408, at *5 (M.D. Fla. Aug. 23, 2013)), *report and recommendation adopted*, 2022 WL 2306516 (M.D. Fla. Mar. 14, 2022).

The undersigned finds that Defendant's copyright infringement was willful. Plaintiff notified Defendant of the copyright violation, in writing, in October 2022 and demanded that Defendant cease infringing upon Plaintiff's work. (Doc. 25-3 ¶ 12.) Despite this notification, Defendant continued to infringe upon Plaintiff's copyright by using the Photograph, so Plaintiff provided Defendant with a second written notification in January 2023. (*Id.*) Because Plaintiff adequately alleges willful copyright infringement in the Complaint (Doc. 1 ¶¶ 14–29), this Court may infer willfulness based on Defendant's default alone. *Wareka*, 2023 WL 9119240, at *3. Thus, the undersigned finds that Defendant's copyright infringement was done with

"actual knowledge or reckless disregard for whether its conduct infringed upon the plaintiff's copyright." *Id*.

When considering Defendant's willful copyright infringement, Plaintiff's $4,000.00 lost license fee value as to the Photograph, Defendant's failure to participate in the discovery process, and the need to deter future violations of law, the undersigned recommends that Plaintiff's lost license fee be multiplied by three, for a total award of $12,000.00 in statutory damages. *See Cable/Home Commc'n Corp.*, 902 F.2d at 851–52; *Reiffer v. World Views LLC*, No. 6:20-cv-786-RBD-GJK, 2021 WL 1269247, at *5 (M.D. Fla. Mar. 1, 2021) (recommending a multiplier of three in calculating statutory damages when defendant willfully violated plaintiff's copyrights to a photograph and noting that applying a multiplier of three to actual damages is generally accepted in district courts within the Eleventh Circuit in willful copyright infringement cases involving photographs), *report and recommendation adopted*, 2021 WL 1264249 (M.D. Fla. Apr. 6, 2021); *Corson*, 2020 WL 6323863, at *3 (using a multiplier of three to award statutory damages when defendant willfully infringed on plaintiff's copyrighted photograph); *see also Joe Hand Promotions, Inc. v. Alburl*, No. 5:18-cv-1935-LCB, 2020 WL 836844, at *6 (N.D. Ala. Feb. 20, 2020) (noting that courts have generally upheld awards of three times the license fee as an appropriate sanction to ensure that the costs for a person to commit copyright infringement is substantially greater than the cost to comply with copyright laws); *Major Bob Music v. Stubbs*, 851 F. Supp. 475, 481 (S.D. Ga. 1994) (finding that when defendant's copyright infringement was willful, tripling

the amount defendant would have paid for a license fee is a just and modest award under 17 U.S.C. § 504(c)).

F. Attorney Fees and Costs

The Motion requests that Plaintiff be granted reasonable attorney fees and costs. (Doc. 25 at 17–18). However, a claim for attorney fees is not a standalone cause of action. *See Benhassine v. Star Taxi, Inc.*, No. 6:12-cv-1508-Orl-37GJK, 2014 WL 12628588, at *2 (M.D. Fla. Mar. 10, 2014) (finding that to determine the merits of a party's request for attorney fees before a Federal Rule of Civil Procedure 54(d)(2) motion is premature). Thus, the undersigned recommends that the Court deny the present request but grant leave for Plaintiff to file a motion for attorney fees.

G. Injunctive Relief

Plaintiff seeks to permanently enjoin the Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries, assigns, and all those in active concert and participation with Defendant from: 1) directly or indirectly infringing Plaintiff's copyrights or continuing to market, offer, sell, dispose of, license, lease, transfer, publicly display, advertise, reproduce, develop, or manufacture any works derived or copied from Plaintiff's copyrighted Photograph or to participate or assist in any such activity; and 2) directly or indirectly reproducing, displaying, distributing, otherwise using, or retaining any copy, whether in physical or electronic form, of the copyrighted Photograph owned by Plaintiff. (Doc. 25 at 17.)

A court may "grant . . . final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright." 17 U.S.C. § 502(a).

A plaintiff seeking a permanent injunction must demonstrate the following: 1) it has suffered an irreparable injury; 2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury; 3) considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and 4) the public interest would not be disserved by a permanent injunction. *Angel Flight of Ga., Inc. v. Angel Flight Am., Inc.*, 522 F.3d 1200, 1208 (11th Cir. 2008) (citing *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)).

The Plaintiff asserts that the Defendant's unlicensed use of the Photograph has caused irreparable injury because it impairs the market value of the work by potentially dissuading competing businesses from using the Photograph to market their businesses, and it may encourage others to use the Photograph without obtaining a license to do so. (Doc. 25 at 16.) The undersigned has recommended an award of damages that would sufficiently remedy the historic injury caused by Defendant's infringement, but those damages would not preclude further monetary and non-monetary injury if Defendant were to continue to use the Photograph without Plaintiff's permission.

Therefore, the undersigned finds that Plaintiff will continue to be harmed if Defendant is not enjoined from further use of the Photograph, there appears to be no other remedies at law that would adequately compensate Plaintiff while also ensuring that Defendant ceases its infringement, and Plaintiff would endure greater hardship than Defendant if Defendant's use of the Photograph were not enjoined. *Angel Flight of Ga., Inc.,* 522 F.3d at 1208. Finally, the undersigned determines that the public

interest would not be adversely affected if Defendant were to be enjoined from using the Photograph. *Id*. For these reasons, the undersigned finds that Plaintiff is entitled to a permanent injunction against Defendant, enjoining Defendant from further use of the Photograph. 17 U.S.C. § 502(a); *Angel Flight of Ga., Inc.,* 522 F.3d at 1208.

IV. RECOMMENDATION

Upon consideration of the foregoing, I **RESPECTFULLY RECOMMEND** that the Plaintiff's Motion for Default Judgment (Doc. 25) be **GRANTED IN PART** as follows:

1. **GRANT** the Motion to the extent that default judgment be entered in Plaintiff's favor against Defendant.
2. **DENY** the Motion to the extent that Plaintiff requests reasonable attorney fees and costs.
3. **AWARD** Plaintiff a total of $12,000.00 in statutory damages against Defendant, or alternatively, $4,000 in actual damages.
4. **ENJOIN** Defendant its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries, and assigns, and all those in active concert and participation with it, from:
    a. Directly or indirectly infringing the Plaintiff's copyright in the Photograph titled "asp_wakem_82058. jpg," with registration number VAu 997-528;
    b. Continuing to market, offer, sell, dispose of, license, lease, transfer,

publicly display, advertise, reproduce, develop, or manufacture any works derived or copied from the Photograph titled ““asp_wakem_82058. jpg,” with registration number VAu 997-528, or to participate or assist in any such activity; and

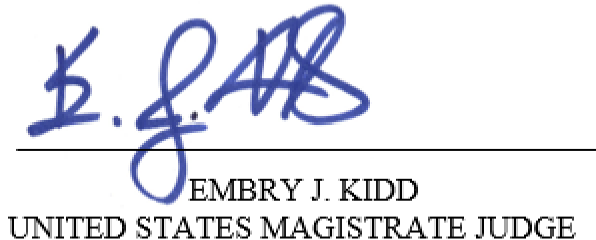
c. Directly or indirectly reproducing, displaying, distributing, otherwise using, or retaining any copy, whether in physical or electronic form, of the Photograph titled ““asp_wakem_82058. jpg,” with registration number VAu 997-528.

5. **GRANT LEAVE** for Plaintiff to file a subsequent motion to request reasonable attorney fees and costs.
6. **DENY** the Motion in all other respects.
7. **DIRECT** the Plaintiff to serve Defendant with a copy of the Court's Order on this Report and Recommendation at its last known address.
8. **DIRECT** the Clerk of Court to close the case.

NOTICE TO PARTIES

The party has fourteen days from the date the party is served a copy of this report to file written objections to this report's proposed findings and recommendations or to seek an extension of the fourteen-day deadline to file written objections. 28 U.S.C. § 636(b)(1)(C). A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1; 28 U.S.C. § 636(b)(1).

Recommended in Orlando, Florida on December 19, 2024.



EMBRY J. KIDD
UNITED STATES MAGISTRATE JUDGE