

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 22-61380-CIV-SINGHAL

CHRISTOPHER SADOWSKI,

Plaintiff,

v.

DIVERSE NEW MEDIA CORP
d/b/a THE FLORIDIAN,

Defendant.

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

THIS CAUSE is before the Court upon plaintiff Christopher Sadowski's ("Plaintiff") Motion for Default Final Judgment (the "Motion") (DE [18]). The Court has considered the Motion, has noted the Clerk's default against defendant Diverse New Media Corp d/b/a The Floridian ("Defendant"), and is otherwise advised in the premises.

Pursuant to Rule 55 of the Federal Rules of Civil Procedure, the Court concludes that Plaintiff has met his burden of showing that he is entitled to a final default judgment as to Defendant. Plaintiff has also met his burden of showing that he is entitled to permanent injunctive relief against Defendant as specified herein.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

I. Findings of Fact¹

1. Plaintiff is an award-winning photojournalist and is widely published in some

¹ A district court must exercise "independent judgment" in adopting a party's proposed findings. *Bright v. Westmoreland Cnty.*, 380 F.3d 729, 731–32 (3d Cir. 2004). In this case, the Court has independently analyzed the evidence presented and has adopted only those findings which the Court has independently deemed appropriate under the circumstances.

of the world's most important newspapers and magazines, including but not limited to, the New York Post, Daily Mail Online, Reader's Digest, USA Today, New York Times, Fox News, CBS News, NBC News, Boston Globe, Boston Herald, Los Angeles Times, Newsweek Magazine, and People Magazine.

2. For the past eighteen (18) years, Plaintiff has been self-employed as a high-end photographer who specializes in photo-documenting ordinary life and the human condition.

3. Plaintiff travels throughout the New York, New Jersey and Connecticut tri-state area taking photographs that tell a story about tragedy, hope, calamity, joy, discord and renewal.

4. Using state-of-the-art equipment, Plaintiff creates high-end photography licensed by some of the top publishers in this country. When commissioned for a job, Plaintiff spends countless hours capturing hundreds of photographs and then processing those photographs to ensure they meet customers' requirements.

5. Plaintiff maintains a commercial website (<http://www.csnyphoto.com>) which describes the photography services offered by Plaintiff, hosts a sample portfolio of photographs taken by Plaintiff, and invites prospective customers to contact Plaintiff to arrange for a professional photo shoot.

6. Plaintiff owns each of the photographs available for license on his website and serves as the licensing agent with respect to licensing such photographs for limited use by Plaintiff's customers. To that end, Plaintiff's standard terms include a limited, non-transferable license for use of any photograph by the customer only. Plaintiff's license terms make clear that all copyright ownership remains with Plaintiff and that his

customers are not permitted to transfer, assign, or sub-license any of Plaintiff's photographs to another person/entity.

7. In 2021, Plaintiff created a professional photograph (titled



“101521immigrants35CS”) (the “First Photograph”) of immigrants disembarking off a plane:

8. In 2021, Plaintiff created a professional photograph (titled “101521immigrants40CS” (the “Second Photograph”) of immigrants forming a line in front of buses:



9. In 2021, Plaintiff created a professional photograph titled “101521immigrants43CS” (the “Third Photograph”) of a bus from the Second Photograph driving away:



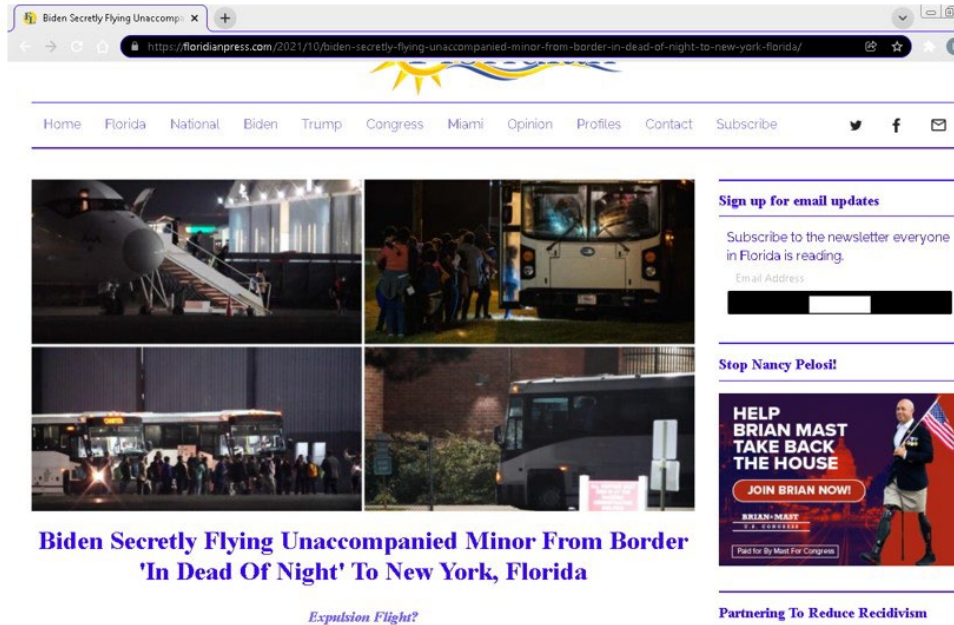
10. The First Photograph, Second Photograph, and Third Photograph are collectively referred to herein as the “Work.”

11. The Work was registered by Plaintiff with the Register of Copyrights on December 31, 2021 and was assigned Registration No. VA 2-288-279. A copy of the Certificate of Registration pertaining to the Work is attached to the Complaint as Exhibit A thereto.

12. Plaintiff is the owner of the Work and has remained the owner at all times material hereto.

13. Defendant is a statewide and national political media platform that covers governmental affairs, elections, public policy, and campaigns on Florida politics.

14. On October 19, 2021 (within the 90-day window between first publication and Plaintiff’s above-referenced copyright registration of the Work), Defendant published the Work on its website (at <https://floridianpress.com/2021/10/biden-secretly-flying-unaccompanied-minor-from-border-in-dead-of-night-to-new-york-florida/>):



15. A copy of the screenshot of Defendant's website, displaying the copyrighted Work, is attached to the Complaint as Exhibit B thereto.

16. Defendant is not and has never been licensed to use or display the Work. Defendant never contacted Plaintiff to seek permission to use the Work in connection with its website/advertising or for any other purpose.

17. Defendant utilized the Work for commercial use – namely, as the main photos included with one of its articles.

18. Upon information and belief, Defendants located a copy of the Work on the internet and, rather than contact Plaintiff to secure a license, simply copied the Work for its own commercial use.

19. Through his ongoing diligent efforts to identify unauthorized use of his photographs, Plaintiff first discovered Defendant's unauthorized use/display of the Work in February 2022.

20. Following Plaintiff's discovery of Defendant's infringement, Plaintiff (through

counsel) sent (via Federal Express and e-mail) one (1) infringement notice to Defendant to notify it of the impermissible use. Counsel sent at least one (1) subsequent e-mail and made several telephone calls to Defendant in an attempt to negotiate a reasonable license for the use of the Work. On September 23, 2022, Defendant (through its counsel) did respond to Plaintiff's counsel via e-mail and offered a nominal sum to resolve the matter. Subsequent attempts to communicate with Defendant were ignored.

II. Conclusions of Law

A. Applicable Legal Standards

Federal Rule of Civil Procedure 55 sets forth two steps to obtain a default judgment. First, when a defendant fails to plead or otherwise defend a lawsuit, the clerk of court may enter a clerk's default. Fed. R. Civ. P. 55(a). Second, after entry of the clerk's default, the Court may enter default judgment against the defendant so long as the defendant is not an infant or incompetent. Fed. R. Civ. P. 55(b)(2). "The effect of a default judgment is that the defendant admits the plaintiff's well-pleaded allegations of fact, is concluded on those facts by entry by the judgment, and is barred from contesting on appeal the facts thus established." *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987).

The Court must review the sufficiency of the complaint before determining if a moving party is entitled to default judgment. See *U.S. v. Kahn*, 164 F. App'x 855, 858 (11th Cir. 2006) (citing *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206) (5th Cir. 1975); *Tyco Fire & Sec., LLC v. Alcocer*, 218 F. App'x 860, 863 (11th Cir. 2007). "While a complaint . . . does not need detailed factual allegations," a plaintiff's obligation to show its entitlement to relief "requires more than labels and conclusions, and

a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). If the admitted facts are enough to establish liability, the Court must then ascertain the appropriate amount of damages and enter final judgment in that amount. See *Nishimatsu*, 515 F.2d at 1206. An evidentiary hearing on damages is not required by Rule 55, and it is within the Court’s discretion to choose whether to hold such a hearing. See Fed. R. Civ. P. 55(b)(2); *SEC v. Smyth*, 420 F.3d 1225, 1232 n.13 (11th Cir. 2005); *Tara Productions, Inc. v. Hollywood Gadgets, Inc.*, 449 F. App’x 908, 911-12 (11th Cir. 2011).

B. Copyright Infringement

The Copyright Act, 17 U.S.C. § 501(a), provides that “(a)nyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 [17 U.S.C. §§ 106-122] or of the author as provided in section 106A(a) [17 U.S.C. § 106A(a)]... is an infringer of the copyright or right of the author, as the case may be.” 17 U.S.C. § 501(a). “Copyright infringement has two elements: (1) ownership of a valid copyright, and (2) copying of protectable elements.” *Home Design Servs., Inc. v. Turner Heritage Homes Inc.*, 825 F.3d 1314, 1320 (11th Cir. 2016).

With respect to the first element, a certificate of registration “constitute[s] prima facie evidence of the validity of the copyright and of the facts stated in the certificate.” 17 U.S.C. § 410(c). “Proffering a copyright registration ‘shifts... the burden of proving the invalidity of the copyright’ to the defendant.” *Sohm v. McGraw-Hill Glob. Educ. Holdings, LLC*, 2016 U.S. Dist. LEXIS 126836, at *4 (S.D.N.Y. Sep. 16, 2016) (quoting *Fonar Corp. v. Domenick*, 105 F.3d 99, 104 (2d Cir. 1997)). Here, Plaintiff registered the Work pursuant to 17 U.S.C. § 411(a) with the Register of Copyrights as set forth above. By

virtue of its default, Defendant does not have any right to challenge Plaintiff's registration/ownership of a valid copyright.

The copying element of an infringement claim has two components. *Latimer v. Roaring Toyz, Inc.*, 601 F.3d 1224, 1232 (11th Cir. 2010). First, a plaintiff must demonstrate that the defendant copied the plaintiff's work as a factual matter. *Id.* Second, the plaintiff must establish "substantial similarity" between the allegedly infringing work and the elements of the copyrighted work that are legally protected. *Id.* at 1233.

Here, the screenshot of Defendant's website unequivocally shows Defendant's copying of the Work. Defendant's default further constitutes an admission as to such copying. There is no factual or subjective issue of "substantial similarity" here as Defendant copied and published a duplicate image of the Work. Thus, Defendant undisputedly copied Plaintiff's copyrighted Work and Plaintiff has met its burden on each element for the subject claim.

C. Willfulness

Willful infringement occurs when the defendant acts "with 'actual knowledge or reckless disregard for whether its conduct infringed upon the plaintiff's copyright.'" *Arista Records, Inc. v. Beker Enterprises, Inc.*, 298 F. Supp. 2d 1310, 1313 (S.D. Fla. 2003) (J. Cohn) (citing *Original Appalachian Artworks, Inc. v. J.F. Reichert, Inc.*, 658 F. Supp. 458, 464 (E.D.Pa.1987)). "Moreover, this Court may infer that Defendants willfully infringed Plaintiffs' copyrights because of Defendants' default." *Id.* at 1313 (citations omitted). When awarding increased damages in the context of Section 504(c)(2), "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).

Here, Plaintiff took the extra step of notifying Defendant of its infringement pre-lawsuit. Although Defendant responded to one of counsel's e-mails, it ignored further attempts to communicate about this matter. Defendant's refusal to pay a reasonable licensing fee and refusal to respond to multiple infringement notices demonstrates that Defendant had actual knowledge, or at least acted with reckless disregard, of the fact that its conduct infringed upon Plaintiff's exclusive copyrights in the Work.

Accordingly, Defendant's default and the well-pled facts of the Complaint, which are admitted by Defendant's default, establish that Defendant's infringement of the Work was willful and deliberate

D. Plaintiff's Damages

1. Actual Damages

Pursuant to 17 U.S.C. § 504(b), a "copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement." Actual damages are "often measured by the revenue that the plaintiff lost as a result of the infringement, which includes lost sales, lost opportunities to license, or diminution in the value of the copyright." *Lorentz v. Sunshine Health Prods.*, 2010 U.S. Dist. LEXIS 148752, at *12 (S.D. Fla. Sep. 7, 2010).

The copyright owner may also recover the fair market value of the licensing fee that would have been charged for the work that was infringed. *Id.* at 15. To demonstrate entitlement to a reasonable license fee, the fair market value of an infringed work may be established by "evidence of benchmark licenses, that is, what licensors have paid for use

of similar work.” *Thornton v. J. Jargon Co.*, 580 F. Supp. 2d 1261 (M.D. Fla. 2008) (citing *Montgomery v. Noga*, 168 F.3d 1282, 1295 n.19 (11th Cir. 1999)).

As set forth in the Sadowski Decl., Plaintiff created the Work pursuant to a Freelance Photographer Independent Contractor Agreement with NYP Holdings, Inc. (the publisher of the New York Post). The New York Post does not pay Plaintiff to license individual photographs created as part of an assignment, but rather pays him an all-inclusive rate for such assignments. Plaintiff retains full ownership of the photographs he creates and makes those photographs available to license to other media outlets and generally to the public.

Plaintiff’s recent licensing history with respect to the commercial use of his professional photographs includes the following:

Date	Licensee	Description	Amount
7/9/2020	CBS Broadcasting	Michael Cohen photograph	\$1,800.00
7/9/2020	Fox News	Michael Cohen photograph	\$2,100.00
10/20/2021	Fox News	Immigrants arriving on plane	\$2,000.00
10/21/2021	Fox News	Immigrants arriving on plane	\$4,000.00
10/05/2022	Trend Micro Inc.	Home Depot Front	\$2,000.00

True and correct copies of the foregoing licenses are attached to the Sadowski decl. as Composite Exhibit “1.” The photograph at issue here captured dozens of immigrants being secretly transported and flown into New York. The photograph was utilized by the New York Post (in addition to various other captured by Plaintiff) in an article titled “Biden secretly flying underage migrants into NY in dead of night”

(<https://nypost.com/2021/10/18/biden-secretly-flying-underage-migrants-into-ny-in-dead-of-night/>) that received national print and television coverage. Plaintiff is credited in the article as the author of the Work.

The Work is both extremely rare and valuable (as evidenced by the fact that Fox News paid Plaintiff \$2,000.00 and \$4,000.00 for a one-time right to re-use the same series of photographs captured by Plaintiff. Based on Plaintiff's normal licensing rates and the type of use at issue here (online publication), Plaintiff would have licensed the Work to Defendant for, at minimum, a \$3,000.00 annual license fee. Because Defendant displayed the Work from at least October 2021 through at least April 2022, Defendant would owe Plaintiff at least 1x annual licensing fees (as Plaintiff does not prorate his work) in a total amount of **\$3,000.00**.

Plaintiff further declared that the licensing fees alone do not take into contemplation the scarcity of the photograph, which also increases its value in this case. A scarce image typically demands a much higher fee than common image. In this case, Plaintiff situated himself in the right place at the right time (based on a tip from a confidential source) to capture a tremendously newsworthy series of photographs that received national attention. The photographs that Plaintiff captured are scarce and cannot be recreated. Indeed, a Google Images search for "Biden immigrant secret flights" (https://www.google.com/search?q=biden+immigrant+secret+flights&sxsrf=ALiCzsYWbjDPcNI36qngGok0sPAI2XV96g:1670717681667&source=lnms&tbm=isch&sa=X&ved=2ahUKEwj96r2vpPD7AhVCneAKHX5SD6gQ_AUoA3oECAEQBQ&biw=1201&bih=1280&pr=1#imgrc=-9GXPK-ZoQNjdM) results in very few (if any) relevant photographs that were not captured by Plaintiff on that particular night.

Corson v. Gregory Charles Interiors, LLC, 2020 U.S. Dist. LEXIS 142932, at *5-7 (S.D. Fla. Aug. 7, 2020) is instructive with respect to calculation of Plaintiff's actual damages:

Corson believes that the scarcity of this work should also be considered in this Court's evaluation. Corson employed several techniques that she perfected over her career including: "professional strobe lighting to give the photos a polished, yet natural look. Most images were shot on a tripod with custom lighting setups that [Corson's] years of experience shooting homes and interiors has allowed [her] to execute with precision and speed. Selecting the proper lenses and aligning the camera properly is crucial to high-end architectural photography." ECF No. [12-2] at 3. Corson "then spent 2 working days processing the approximately 400 photographs using [her] proprietary adjustments to color, contrast, levels, etc.; selected [her] favorites; made individual adjustments to those 92 files; then submitted them along with dozens of video clips to [her] editor." *Id.* The Court finds Corson's request for a scarcity multiplier of four is appropriate to reflect the fair market value of Corson's Work. See *Affordable Aerial Photography, Inc. v. VisitWPB.Com, Inc.*, No. 17-CV-81306-BB, 2018 U.S. Dist. LEXIS 227389, 2018 WL 6519104, at *2 (S.D. Fla. April 23, 2018) (J. Bloom) (applying a scarcity multiplier of six to an infringed work of photography); *Leonard v. Stemtech Int'l, Inc.*, 834 F.3d 376, 394 (3d Cir. 2016) (affirming a jury verdict of \$1.6 million where the sum included a multiplier of three to five times the benchmark because of the scarcity factor of a stem cell image). Therefore, Corson's actual damages are \$19,200.00 (the licensing fee over two years times a scarcity multiplier of four).

Following *Corson*, Plaintiff's actual damages are calculated by multiplying the lost licensing amount (\$3,000.00) by the relevant scarcity multiplier. Given the uniqueness and scarcity of the Work, Plaintiff submits that a scarcity multiplier of 5x is appropriate here. See, e.g., *Affordable Aerial Photography, Inc. v. VisitWPB.Com, Inc.*, 2018 WL 6519104, at *3 (S.D. Fla. Apr. 23, 2018) (awarding \$54,000 in statutory damages after applying scarcity multiplier of six to licensing fee and multiplier of three due to defendant's

willfulness); *Ermert v. Boca Dental Supply, LLC*, 2019 U.S. Dist. LEXIS 226572, at *6-7 (S.D. Fla. Mar. 29, 2019) (“I find that Plaintiff’s request to apply a scarcity multiplier of five is appropriate to reflect the photograph’s fair market value.”), *Reiffer v. Legendary Journeys, Inc.*, 2019 U.S. Dist. LEXIS 62401, at *9 (M.D. Fla. Apr. 10, 2019 (“[A] scarcity multiplier of five accounts for revenue lost as a result of Legendary Journeys’ unauthorized use of Mr. Reiffer’s Sydney Opera House work.”). This would result in actual damages of **\$15,000.00**.

Defendant’s failure to participate in this lawsuit has limited Plaintiff’s ability to conduct discovery to fully discover the extent of its infringement. Further, Defendant’s inaction and refusal to participate in this lawsuit suppressed the information necessary to fully calculate Plaintiff’s actual damages. Similarly, Defendant’s refusal to cooperate in this lawsuit has prevented Plaintiff from discovering any profits received by Defendant that would be recoverable pursuant to 17 U.S.C. § 504(b) in addition to Plaintiff’s actual losses. To establish Defendant’s profits subject to disgorgement under § 504(b), a “copyright owner is required to present proof only of the infringer’s gross revenue, and the infringer is required to provide his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.” 17 U.S.C. § 504(b). Defendant solely controls all information concerning its gross revenue related to its infringing uses of the Work, and it has stymied Plaintiff’s ability to present that evidence to the Court.

In view of the foregoing, actual damages are insufficient due to Defendant’s refusal to appear and participate in discovery, and Plaintiff thus elects to seek an award of statutory damages for Defendant’s willful infringement of Plaintiff’s copyrighted Work.

2. Statutory Damages for Copyright Infringement

Pursuant to 17 U.S.C. § 504(c), Plaintiff hereby elects to recover statutory damages for Defendants' infringement of Plaintiff's exclusive rights in the copyrighted Work, and enhancement of its statutory award based upon the willfulness of such infringement. Where (as here) willful infringement has occurred, courts will generally look to a plaintiff's actual damages and award 3x – 5x to properly account for statutory damages. See, e.g., *Corson v. Gregory Charles Interiors, LLC*, 2020 U.S. Dist. LEXIS 142932, at *5-7 (S.D. Fla. Aug. 7, 2020) (trebling the plaintiff's actual damages after applying a scarcity multiplier); *Joe Hand Promotions, Inc. v. Albur*, 2020 U.S. Dist. LEXIS 29309, at *16-17 (N.D. Ala. Feb. 20, 2020) ("Courts have generally upheld awards of three times the amount of the proper licensing fee as an appropriate sanction to ensure that the cost of violating the copyright laws is substantially greater than the cost of complying with them."); *Broad. Music, Inc. v. N. Lights, Inc.*, 555 F. Supp. 2d 328, 332 (N.D.N.Y. 2008) ("[T]o put infringers on notice that it costs less to obey the copyright laws than to violate them, a statutory damage award should significantly exceed the amount of unpaid license fees. As such, courts often impose statutory damages in an amount more than double unpaid licensing fees where the infringement was not innocent."); *Broad. Music, Inc. v. Prana Hosp'y, Inc.*, 158 F. Supp. 3d 184, 199 (S.D.N.Y. 2016) ("[C]ourts in this Circuit commonly award, in cases of non-innocent infringement, statutory damages of between three and five times the cost of the licensing fees the defendant would have paid."); *Broad. Music, Inc. v. George Moore Enters., Inc.*, 184 F. Supp. 3d 166, 171-72 (W.D. Pa. Apr. 25, 2016) ("Statutory damages serve the dual purposes of compensation and deterrence: they compensate the plaintiff for the infringement of its copyrights; and they deter future infringements by punishing the defendant for its

actions.”).

In cases of non-willful infringement, statutory damages may be awarded up to \$30,000.00 resulting from the infringement of the copyrighted Work. See 17 U.S.C. § 504(c)(1). However, as discussed above, Defendant’s conduct – as well as its decision not to defend against Plaintiff’s claim – demonstrates that its conduct is willful. Given the circumstances of the instant case, the Court finds that an award of statutory damages in the amount of **\$45,000.00** (\$15,000.00 x 3) under 17 U.S.C. § 504(c)(2) is appropriate to compensate Plaintiff for the damages suffered, to create a strong disincentive against infringers intentionally hiding the profits from their infringing conduct in the hope of earning more than they can be held accountable for in actual damages, and to deter future violations of copyright law.

Even assuming, arguendo, that this Court was not convinced of Plaintiff’s actual damages, it is well within this Court’s discretion to award substantial damages to the Plaintiff upon a finding of willfulness. For example, in *Corson v Brown Harris Stevens of the Hamptons, LLC*, the court found that willfulness entitled plaintiff to the enhanced statutory damages provided by 17 U.S.C. § 504(c)(2) (notwithstanding that the court found the plaintiff proved \$0.00 in actual damages):

So first the main issue was whether defendant's infringement was willful. I find here willfulness entitles plaintiff to the enhanced statutory damages provided by 17 U.S.C. Section 504(c)(2). The standard for willful infringement is not only knowledge on the defendant's part that what it did was infringement but also reckless disregard of the practice of protecting creativity, the very purpose of copyright. When the plaintiff can demonstrate, either directly or through circumstantial evidence, that defendant had knowledge that its actions constituted infringement, or recklessly disregarded that possibility, enhanced statutory damages for willful copyright infringement under 17 U.S.C. Section 504(c)(2) are

appropriate.

Plaintiff successfully proved that her photograph was copyright protected. It's clear that defendant, as a sophisticated business, knew there was copyright involved and did nothing to check those rights or to clear permission to reprint from the photographer.

I find that the infringement was willful, and I find that the conduct of indifference to the rights of others was egregious and that the statutory damages should be \$25,000. There were no actual damages.

Corson v. Brown Harris Stevens of the Hamptons, LLC, 2018 U.S. Dist. LEXIS 248214, at *8 – 9 (S.D.N.Y. Jan. 24, 2018). *Brown Harris Stevens of the Hamptons, LLC* was a fully litigated case in which, though the court found that plaintiff proved \$0.00 in actual damages, a finding of willfulness permitted statutory damages to be awarded, as “[t]he Supreme Court instructs that the statutory rule formulated after long experience not merely compels restitution of profit and reparation from injury but also a desire to discourage wrongful conduct.” *Id.* at * 9 (citing *F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 233 (1952)).

E. Costs and Attorneys’ Fees

Pursuant to 17 U.S.C. § 505, “the court in its discretion may allow the recovery of full costs by or against any party... the court may also award reasonable attorney’s fee to pay the prevailing party as part of the costs.” Upon entry of a final judgment, Plaintiff is the prevailing party in this action. In view of the willful nature of Defendant’s infringement and failure to defend or otherwise participate in this action, leading to unjustified delays and increased costs and fees, an award of full costs and attorney’s fees to Plaintiff is appropriate.

The Court finds that an award of attorneys’ fees and costs is appropriate here.

Defendant's willful conduct, failure to engage Plaintiff in an attempt to pay a reasonable licensing fee, and failure to participate in this lawsuit resulted in unnecessary fees and costs being incurred. The Court has reviewed the declaration of Plaintiff's counsel filed together with the Motion and finds such declaration to support the amount of fees and costs being sought.

The Court finds that the costs sought by the Motion (\$586.65) are taxable against Defendant. These costs consist of the filing fee for this lawsuit and the service of process costs.

Having concluded Plaintiff is entitled to attorneys' fees, the Court must now determine the reasonableness of Plaintiff's requested fee amount. "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). "This number is called the lodestar." *Ela v. Destefano*, 869 F.3d 1198, 1203 (11th Cir. 2017). "[T]here is a strong presumption that the lodestar is the reasonable sum the attorneys deserve." *Id.* But "[u]ltimately, the computation of a fee award is necessarily an exercise of judgment, because there is no precise rule or formula for making these determinations." *Villano v. City of Boynton Beach*, 254 F.3d 1302, 1305 (11th Cir. 2001).

The Court has performed the lodestar analysis and finds that Plaintiff's counsel reasonably expended 9.50 hours (with 0.95 of those hours being expended by a paralegal in Plaintiff's counsel's office and 4.70 hours being expended by an associate attorney) in connection with pursuing this matter. The Court further finds that \$450.00 is a reasonable hourly rate for Plaintiff's counsel (Daniel DeSouza), that \$300.00 is a reasonable hourly

rate for the junior associate attorney, and that \$125.00 is a reasonable hourly rate for the paralegal in this action given the complexity of the matter, the results obtained, and the experience of Plaintiffs' counsel which the Court found to be substantial.

Mr. DeSouza is a 2004 graduate of the George Washington University Law School who is admitted to both the Florida Bar and the New York Bar. He previously worked at Milbank, Tweed, Hadley & McCloy LLP (from 2004 – 2010) and Becker & Poliakoff, PA (from 2010 – 2014) before forming DeSouza Law, PA in 2014 and jointly forming CopyCat Legal PLLC in 2019. He is admitted to a multitude of federal courts throughout the country and has extensive experience litigating cases in both federal and state court.

In addition to Mr. DeSouza, a junior associate (Lauren Hausman) also billed time on this matter. She is a 2021 graduate of Elon University School of Law. She graduated third in her class with *magna cum laude* distinction, served on law review, and is in the Order of Barristers. She is admitted to the Florida Bar and both the United States District Court for the Southern District of Florida and the United States District Court for the Middle District of Florida.

Given the above, the Court has calculated the lodestar amount to be \$3,261.25.

F. Permanent Injunction

Pursuant to 17 U.S.C. § 502(a), “[a]ny court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.” 17 U.S.C. § 502. Injunctions are regularly issued pursuant to Section 502 because “the public interest is the interest in upholding copyright protections”; and courts also regularly issue injunctions as part of default judgements.

Arista Records, 298 F. Supp. 2d at 1314 (entering permanent injunction against defendants with respect to plaintiff's copyrighted work, including plaintiff's work to be created in the future).

Here, Defendant's conduct has caused, and any continued infringing conduct will continue to cause, irreparable injury to Plaintiff, such that Plaintiff has no adequate remedy at law. For example, the ability of Defendant to use Plaintiff's Work for its own commercial benefit without compensation to Plaintiff greatly impairs the market value of the Work, since others competing in that business or in related business areas, will not want to obtain a license to Plaintiff's work if it is already associated with a competing business; and potential licensees of Plaintiff will not want to pay license fees to Plaintiff if they see other commercial enterprises taking and using Plaintiff's photographs for its own commercial purposes without paying any fee at all.


Accordingly, this Court will enter a permanent injunction against Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with Defendant, prohibiting them from (a) directly or indirectly infringing Plaintiff's copyright or continuing to market, offer, sell, dispose of, license, lease, transfer, publicly display, advertise, reproduce, develop, or manufacture any work derived or copied from Plaintiff's copyrighted photograph or to participate or assist in any such activity; and (b) directly or indirectly reproducing, displaying, distributing, otherwise using, or retaining any copy, whether in physical or electronic form, of any copyrighted photograph owned by Plaintiff.

III. Conclusion

For the foregoing reasons, Plaintiff is entitled to the entry of final default judgment.

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion for Default Final Judgment (DE [18]) is **GRANTED**. Final judgment and a permanent injunction shall be entered by separate order.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida this 13th day of January 2023.



RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies Furnished Counsel via CM/ECF