

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

_____)	
AF HOLDINGS, LLC,)	
)	
Plaintiff/Counter-Defendant,)	
v.)	Civil Action No. 3:12-cv-01401-JBA
)	
ELLIOT OLIVAS,)	
)	OCTOBER 25, 2013
Defendant/Counter-Plaintiff.)	
_____)	

MOTION FOR DEFAULT JUDGMENT

Pursuant to Rule 55(b)(1); Rule 37(b); and 41(b) of the Federal Rules of Civil Procedure, the Defendant Elliot Olivas (“Defendant”), hereby moves the Court for entry of a default judgment with prejudice against AF Holdings based upon its failure to participate in discovery and to timely answer Defendant’s counterclaims.

Defendant further requests that this Court, 1) find AF Holdings, LLC, Prenda Law, Inc., John L. Steele, Paul A. Duffy, Paul R. Hansmeier and Mark Lutz to be jointly and severally liable for Defendant’s damages, including attorney’s fees and costs; 2) allow Defendant limited discovery for purposes of determining the Plaintiff’s assets; 3) to allow Defendant limited discovery for purposes of determining who controls the finances of the Plaintiff; and 4) pursuant to Fed.R.Civ.P. 55(b)(2), the Court conduct a hearing or motion practice as necessary and proper to determine the amount of damages properly due the Defendant.

In support of this Motion, the Defendant avers as follows:

1. On October 1, 2012, Plaintiff instituted this action against the Defendant alleging copyright infringement, contributory infringement and civil conspiracy.
2. On January 4, 2013, Plaintiff completed service on the Defendant.
3. On January 25, 2013, the Defendant filed and served his Answer and Counterclaims upon the Plaintiff.
4. On March 20, 2013, a pre-filing conference was held before this Court. During the conference, Plaintiff represented it would be filing a motion to dismiss Defendant’s Counterclaims.

5. On March 21, 2013, the Court issued a Scheduling Order requiring Plaintiff to file its motion to dismiss by April 4, 2013.
6. On April 3, 2013, Defendant attempted to discuss with Plaintiff initial disclosures under Rule 26 (a)(1) and delivered a letter to that effect.
7. On May 6, 2013, Plaintiff AF Holdings, LLC was found to be an alias of its counsel, Prenda Law, Inc., its principals, attorneys John L. Steele, Paul A. Duffy and Paul R. Hansmeier, and its paralegal, Mark Lutz (collectively, "Plaintiff"). *See*, ECF No. 25.
8. On June 4, 2013, Defendant contacted Plaintiff to inquire about his 26(f) Proposed Joint Pretrial Discovery Schedule.
9. On July 26, 2013, Defendant filed for entry of default for Plaintiff's failure to answer the counterclaims. The Court granted the entry of default on August 30, 2013.
10. Plaintiff has not responded to Defendant's discovery requests other than to inform Defendant that the matter was forwarded to Paul Duffy of Prenda Law, Inc.
11. To date, the Plaintiff has neither answered the Counterclaims nor indicated to Defendant any intention to do so, and the time for answering the Counterclaims has expired.

WHEREFORE, it is respectfully requested that based upon Defendant's Motion and Memorandum for Default Judgment, the docket as a whole, and good cause appearing therefore, that:

1. Plaintiff's claims against Defendant, including members of his household, are dismissed with prejudice;
2. The Court find Plaintiff has misused its copyright and that it is unenforceable and invalid;
3. Defendant is entitled to his attorney's fees and costs pursuant to 17 USC § 505 of the Copyright Act;
4. Defendant is entitled to punitive damages and such other relief as the Court deems appropriate;
5. Plaintiff AF Holdings, LLC, Prenda Law, Inc., John L. Steele, Paul A. Duffy, Paul R. Hansmeier and Mark Lutz be jointly and severally liable for Defendant's damages, including attorney's fees and costs;
6. Defendant is allowed limited discovery for purposes of determining the location and control Plaintiff's assets; and

7. Defendant is otherwise entitled to the relief demanded in his Counterclaims.

Dated: October 25, 2013

Respectfully,

s/ Jason Sweet
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Counsel for Elliot Olivas

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2013, the foregoing document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing, and paper copies will be served via first-class mail to those indicated as non-registered participants.

s/ Jason Sweet
Jason E. Sweet