

1 KELLY KLAUS (SBN 161091)
Kelly.Klaus@mto.com
2 ROSE LEDA EHLER (SBN 296523)
Rose.Ehler@mto.com
3 MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, Fiftieth Floor
4 Los Angeles, California 90071
Telephone: (213) 683-9100
5 Facsimile: (213) 687-3702

6 Attorneys for Plaintiffs

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
11

12 WARNER BROS. ENTERTAINMENT
13 INC.; UNIVERSAL CITY STUDIOS
14 LLC; UNIVERSAL CITY STUDIOS
15 PRODUCTIONS LLLP; UNIVERSAL
16 CONTENT PRODUCTIONS LLC;
17 UNIVERSAL TELEVISION LLC;
18 AMAZON CONTENT SERVICES
19 LLC; COLUMBIA PICTURES
20 INDUSTRIES, INC.; DISNEY
21 ENTERPRISES, INC.; NETFLIX
22 STUDIOS, LLC; OPEN 4 BUSINESS
23 PRODUCTIONS LLC; PARAMOUNT
24 PICTURES CORPORATION;
25 SCREEN GEMS, INC.; and SONY
26 PICTURES ANIMATION INC.,

27 Plaintiffs,

28 vs.

JASON TUSA; and DOES 1-10 d/b/a
ALTERED.CARBON TV, DIGITAL
UNICORN MEDIA, SINGULARITY
MEDIA, and AREA 51,

Defendants.

Case No. 2:21-cv-05456-VAP-AS

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
DEFAULT JUDGMENT AGAINST
DEFENDANT JASON TUSA**

Judge: Hon. Virginia A. Phillips
Magistrate Judge: Hon. Alka Sagar

Date: October 18, 2021
Time: 2:00 p.m.
Ctrm: 8A

Filed concurrently herewith:
(1) Declaration of Rose Leda Ehler in
Support of Plaintiffs' Motion for
Default Judgment Against Defendant
Jason Tusa; and
(2) Proposed Default Judgment and
Permanent Injunction

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NOTICE OF MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on Monday, October 18, 2021, at 2:00 p.m., or as soon thereafter as counsel may be heard in Courtroom 8A of the above-captioned Court, located at 350 West First Street, Los Angeles, California, 90012, Plaintiffs Warner Bros. Entertainment Inc.; Universal City Studios LLC; Universal City Studios Productions LLLP; Universal Content Productions LLC; Universal Television LLC; Amazon Content Services LLC; Columbia Pictures Industries, Inc.; Disney Enterprises, Inc.; Netflix Studios, LLC; Open 4 Business Productions LLC; Paramount Pictures Corporation; Screen Gems, Inc.; and Sony Pictures Animation Inc., (“Plaintiffs”) will and hereby do move pursuant to Federal Rule of Civil Procedure 55(b)(2) for Default Judgment against Defendant Jason Tusa, seeking maximum statutory damages for willful infringement of \$150,000 per Copyrighted Work for a total of \$16,350,000, execution on the confidential Settlement Sum (ECF No. 20 ¶¶ 1-2, sealed)¹, a permanent injunction, post-judgment interest, and attorneys’ fees of \$332,600 pursuant to L.R. 55-3.

This motion is based on this Notice of Motion and Motion; the attached Memorandum of Points and Authorities; the accompanying Declaration of Rose Leda Ehler in Support of this Motion (“Ehler Decl.”); the pleadings and papers on file in this action; and any further evidence or argument that may be presented to the Court at or prior to the submission of this motion.

¹ Plaintiffs’ application to seal the parties’ confidential settlement agreement was granted, ECF No. 18.

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DATED: September 13, 2021 MUNGER, TOLLES & OLSON LLP

By: /s/ Rose Leda Ehler
ROSE LEDA EHLER
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs ask the Court to enter a default judgment against Defendant Jason Tusa (hereinafter “Defendant” or “Tusa”) pursuant to Federal Rule of Civil Procedure 55(b)(2). Tusa is the individual responsible for, and he directly operated, managed, and ultimately profited from, the willful infringement of Plaintiffs’ copyrights in their movies and television shows (the “Copyrighted Works” or “Works”) through a string of unauthorized movie and television streaming services. Settled law permits entry of default against willful infringers like Tusa who make a strategic decision to not defend their conduct in court. Plaintiffs have met the procedural and substantive requirements for the Court to enter default judgment and award the requested relief.

Plaintiffs effected service of the summons on July 10, 2021. *See* ECF No. 21 (Proof of Service). On August 3, 2021, the parties entered a stipulation to extend the time for Defendant to respond to the initial complaint until August 12, 2021. ECF No. 25 (Stipulation). Tusa did not respond to Plaintiffs’ complaint. Ehler Decl. ¶ 6; *see* ECF No. 28 (App. for Entry of Default). On August 17, 2021, following Plaintiffs’ application, the Clerk of the Court entered default against Defendant for failure answer or otherwise to respond. ECF No. 29 (Clerk’s Entry of Default). On August 18, 2021, the Court ordered Plaintiffs to file a noticed motion for entry of default judgment on or before September 17, 2021. ECF No. 30 (Order to Show Cause). Plaintiffs hereby move for default judgment and respectfully request the Court grant this motion and the following relief: maximum statutory damages for willful infringement, totaling \$16,350,000; an order requiring payment of the confidential settlement amount; a permanent injunction; post-judgment interest; and attorneys’ fees of \$332,600.

1 **II. FACTUAL BACKGROUND**

2 Plaintiffs brought this copyright infringement lawsuit to protect their
3 substantial investment in and ability to continue to produce and distribute much of
4 the world’s most popular movies and television programs. ECF No. 1 (“Compl.”)
5 ¶¶ 1-4; ECF No. 14, Declaration of Patrick Perkins (“Perkins Decl.”) ¶¶ 4-5. Tusa
6 has since shut down his Altered Carbon service, but he has not renounced his
7 infringing ways. Tusa’s conduct is blatant copyright infringement and willful. He
8 knows that offering an unauthorized streaming service is illegal, and his past
9 conduct demonstrates that he will not stop unless permanently enjoined and
10 maximum damages are awarded.

11 **A. The History of Tusa’s Multiple Infringing Streaming Services**

12 Tusa has operated at least four unauthorized streaming services: Area 51,
13 Singularity Media, Digital UniCorn Media, and the latest, Altered Carbon. Each
14 time Plaintiffs uncovered one of these services, Tusa took it offline and launched a
15 new, rebranded infringing service. ECF No. 15, Declaration of Jan Van Voorn
16 (“Van Voorn Decl.”) ¶¶ 30-48.

17 In June 2020, Plaintiffs confronted Tusa about his first infringing service,
18 which he named Area 51. Area 51 streamed live television channels over the
19 internet (an “IPTV,” or “Internet Protocol Television” service), as well as movies
20 and TV shows at the time customers demanded them (“VOD” for “video-on-
21 demand”). Van Voorn Decl. ¶ 30. Tusa shut down Area 51 soon after Plaintiffs
22 contacted him. He then hired a lawyer to negotiate a settlement with Plaintiffs. *Id.*
23 ¶ 32.

24 Tusa was feigning his intent to abandon his infringing business. Tusa secretly
25 rebranded his service and relaunched it as Singularity Media (“Singularity”), and he
26 told his subscribers to use the new service. *Id.* ¶¶ 33–34, Ex. 16. Plaintiffs again
27 demanded that Tusa stop his infringing activity. In July 2020, Tusa shut down
28 Singularity. *Id.* ¶ 35, Ex. 17.

1 On October 12, 2020, Tusa entered into a settlement agreement with
2 Plaintiffs. *Id.* ¶ 36; ECF No. 20, Exhibit B to Compl. (sealed) (“Conf. Settlement”).
3 Tusa agreed, among other things, to cease his infringing conduct. Plaintiffs retained
4 their right to sue Tusa in the event that he breached this agreement (as he has since
5 done). *See* Conf. Settlement ¶ 4.

6 Still, Tusa did not stop infringing. After the settlement agreement was
7 executed, Plaintiffs discovered that Tusa had launched yet another infringing
8 service, his third in less than six months. Tusa called this service Digital UniCorn
9 Media (“DUM”). Van Voorn Decl. ¶ 37. DUM offered IPTV applications similar
10 to Tusa’s two preceding services. *Id.* ¶ 37, Ex. 18. Plaintiffs confirmed Tusa’s
11 ownership of DUM through his social media posts and registration of the DUM web
12 domains, as well as through internet protocol tracking. *Id.* ¶ 38, Ex. 19. Plaintiffs
13 demanded that Tusa shut down DUM, and he did. *Id.* ¶¶ 39, 40, Ex. 20.

14 But Tusa was not done infringing. He then launched yet another infringing
15 service, this one called Altered Carbon, which is the subject of this lawsuit. *Id.* ¶ 41.

16 **B. Tusa Engages in Textbook Copyright Infringement**

17 Altered Carbon is blatantly illegal. As he did with his prior services, Tusa
18 used Altered Carbon to provide paying subscribers with IPTV transmissions of
19 thousands of channels that run television shows and motion pictures 24/7, including
20 thousands of Plaintiffs’ Copyrighted Works. Van Voorn Decl. ¶¶ 12–17. Tusa’s
21 subscription packages ranged from \$7 to \$10 per month, and included over 2,600
22 channels and pay-per-view events. *Id.* ¶ 14. The streams were transmitted in high
23 definition and with little to no delay. *Id.* ¶ 18, Ex. 5.

24 In addition to his own direct-to-consumer offering, Tusa enlisted a network of
25 “affiliates” and “resellers,” who marketed and promoted Altered Carbon to attract
26 new subscribers to the illegal service. *Id.* ¶ 25. These individuals either
27 (i) advertised Altered Carbon to members of their social networks and earned a
28 commission whenever customers subscribed, *id.* ¶ 26; or (2) purchased bundles of

1 monthly subscription “credits” at a bulk price from Tusa, and then resold them at a
2 markup to the end user, *id.* ¶ 27.

3 Tusa did not have a license from Plaintiffs to do any of this. A representative
4 for Altered Carbon bragged in online forums: “[w]e source everything ourselves”
5 and claimed to be “one of two main suppliers of all US channels.” *Id.* ¶ 21, Ex. 8.
6 Tusa even posted videos on social media that show him sourcing Altered Carbon’s
7 infringing content by wiring together cable boxes. *Id.* ¶ 22, Ex. 9.

8 **III. LEGAL STANDARD**

9 Granting default judgment is within the Court’s discretion. *Warner Bros.*
10 *Entm’t Inc. v. Caridi* (“*Caridi*”), 346 F. Supp. 2d 1068, 1071 (C.D. Cal. 2004);
11 *PepsiCo, Inc. v. California Sec. Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002).
12 The Court may enter default judgment following the entry of default by the Clerk of
13 the Court. Fed. R. Civ. P 55(b); *Caridi*, 346 F. Supp. 2d at 1071; *PepsiCo*, 238 F.
14 Supp. 2d at 1174. “Upon entry of default, the well-pleaded allegations of the
15 complaint relating to a defendant’s liability are taken as true, with the exception of
16 the allegations as to the amount of damages.” *PepsiCo*, 238 F. Supp. 2d at 1175.
17 The Court may hold hearings to conduct an accounting, determine the amount of
18 damages, establish the truth of any allegation, or investigate any other matter. Fed.
19 R. Civ. P. 55(b).

20 In the Ninth Circuit, a court may consider the following factors in deciding
21 whether to enter default judgment:

22 (1) the possibility of prejudice to the plaintiff, (2) the merits of
23 plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4)
24 the sum of money at stake in the action; (5) the possibility of a dispute
25 concerning material facts; (6) whether the default was due to
26 excusable neglect, and (7) the strong policy underlying the Federal
27 Rules of Civil Procedure favoring decisions on the merits.

28 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). The weight of these
factors compel the entry of default judgment against Tusa.

1 **IV. ARGUMENT**

2 **A. Plaintiffs Have Satisfied the Procedural Requirements for Default**
3 **Judgment**

4 In compliance with Local Rule 55-1, Plaintiffs’ motion for default judgment
5 is supported by the concurrently filed Ehler Declaration, which establishes that:

- 6 • Plaintiffs effected service of summons on July 10, 2021. *See* ECF No.
7 21; Ehler Decl. ¶ 3.
- 8 • On August 3, 2021, the parties entered a stipulation to extend the time
9 for Defendant to respond to the initial complaint until August 12, 2021.
10 ECF No. 25; Ehler Decl.¶ 4.
- 11 • On August 17, 2021, the Clerk of the Court entered default against
12 Defendant for failure answer or otherwise to plead. ECF No. 29; Ehler
13 Decl. ¶ 6.
- 14 • Defendant is not an infant, incompetent person, or subject to the
15 Servicemembers Civil Relief Act. Ehler Decl. ¶ 9.
- 16 • Plaintiffs have served the Notice of Motion and Motion for Default
17 Judgment on Defendant. Ehler Decl. ¶ 12.

18 This Court has jurisdiction to enter judgment in this matter. Taking the
19 Complaint’s well-pleaded allegations as true, the Court has personal jurisdiction
20 because Tusa consented to exclusive jurisdiction in California and agreed to waive
21 any objections to jurisdiction or venue; and because Tusa has purposefully
22 consummated transactions with residents of California and purposefully availed
23 himself of the benefits of the forum District by conducting activities here. Compl.
24 ¶¶ 6-8. Exercise of jurisdiction is therefore reasonable. *See Mavrix Photo, Inc. v.*
25 *Brand Techs., Inc.*, 647 F.3d 1218, 1230-31 (9th Cir. 2011); *see also O’Reilly v.*
26 *Valley Ent’mt, Inc.*, 2011 WL 13258234, at *2-4 (specific jurisdiction over
27 infringing defendant reasonable in default judgment) (N.D. Cal. Jan. 4, 2011),
28 *adopted by*, 2011 WL 13260734 (N.D. Cal. Feb. 16, 2011).

1 The Court also has subject-matter jurisdiction over this action because
2 Plaintiffs’ claims arise under the Copyright Act. *See* 28 U.S.C. §§ 1331, 1338(a),
3 and 17 U.S.C. § 501(b).

4 **B. The Eitel Factors Favor Entry of Default Judgment**

5 The *Eitel* factors weigh decisively in favor of entering a default judgment
6 here. Tusa owned, operated, and managed *multiple* unauthorized streaming
7 services, and he willfully and flagrantly infringed Plaintiffs’ Copyrighted Works.
8 Without a judgment and injunction, Tusa will do it again.

9 **1. Plaintiffs Will Suffer Prejudice Absent Entry of Default**
10 **Judgment**

11 Tusa has chosen not to participate in this litigation or defend his conduct.²
12 Without a default judgment, Plaintiffs will be deprived of any remedy for the
13 injuries Tusa’s massive infringement has caused them. *See Star Fabrics, Inc. v.*
14 *3Free NYC, Inc.*, 2013 WL 12124095, at *2 (C.D. Cal. Dec. 9, 2013) (first factor
15 favors plaintiff where it would otherwise be unable to recover damages from
16 infringer); *see also China Cent. Tele. v. Create New. Tech. (HK) Ltd.*, No. CV 15-
17 01869 MMM (AJWx), 2015 WL 12732432, at *8 (C.D. Cal. Dec. 7, 2015) (same).
18 Tusa did shut down Altered Carbon after Plaintiffs filed this action—just as he has
19 done when confronted previously—but his actions confirm he will not refrain from
20 further infringement absent an injunction. Based on Tusa’s repeated actions, it is
21 clear that if he is not enjoined, Tusa will simply rebrand his service and start his
22 infringing conduct all over again. *Caridi*, 346 F. Supp. 2d at 1072 (first factor
23 favors default judgment if risk of continued infringement). The first *Eitel* factor
24 weighs in favor of default judgment.

25
26
27 ² Tusa has Florida counsel who has been in contact with counsel for Plaintiffs.
28 Ehler Decl. ¶¶ 4-5, 8, 12.

1 **2. The Merits of Plaintiffs’ Claims and Sufficiency of the**
 2 **Complaint Weigh in Favor of Default Judgment**

3 The second and third *Eitel* factors require that Plaintiffs “state a claim on
 4 which [they] may recover.”³ *PepsiCo*, 238 F. Supp. 2d at 1175; *see Caridi*, 346 F.
 5 Supp. 2d at 1072 (default where merit to the plaintiff’s claim and copyright
 6 infringement sufficiently pled). Plaintiffs sufficiently state a claim for copyright
 7 infringement and breach of contract.

8 **(a) Direct and Secondary Copyright Infringement**

9 To state copyright infringement claims, Plaintiffs need only (1) “show
 10 ownership” and (2) a violation of “at least one exclusive right” under 17 U.S.C.
 11 § 106. *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001).
 12 Plaintiffs satisfy both requirements.

13 **Ownership:** Plaintiffs’ ownership of their Copyrighted Works is
 14 uncontroverted. Plaintiffs have submitted a representative list of Copyrighted
 15 Works that were infringed through the Altered Carbon service, ECF No. 1-1 (Ex. A
 16 to Compl.), and certificates of registration issued by the Copyright Office for each
 17 Work, ECF No. 16, Exs. 1–109. These certificates create a presumption of
 18 copyright validity and ownership. 17 U.S.C. § 410(c); *United Fabrics Int’l, Inc. v.*
 19 *C&J Wear, Inc.*, 630 F.3d 1255, 1257 (9th Cir. 2011).

20 **Violation of Plaintiffs’ Exclusive Rights Under Copyright:** Plaintiffs
 21 sufficiently allege that Tusa directly and secondarily infringes their copyrights.

22 Tusa is liable for direct infringement of the public performance exclusive
 23 right, 17 U.S.C. § 106(4), because he has transmitted, at a minimum, the
 24 Copyrighted Works listed on Exhibit A to the Complaint (ECF No. 1-1) over the
 25 internet to his subscribers, Compl. ¶¶ 29, 36-37, 39-43, 69-77; Van Voorn Decl.
 26 ¶¶ 7-22 (evidence demonstrating Tusa’s actions to make unauthorized transmissions
 27

28 ³ Unless otherwise noted, internal quotation marks have been omitted.

1 to the public). Tusa has no license and therefore violates Plaintiffs' exclusive
2 rights.

3 Tusa also is liable for secondary infringement of the reproduction right, 17
4 U.S.C. § 106(1), to support his 24/7 channel offerings.⁴ Under the Supreme Court's
5 decision in *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913,
6 (2005), a party that distributes a product "with the object of promoting its use to
7 infringe copyright, as shown by clear expression or other affirmative steps taken to
8 foster infringement, is liable for the resulting acts of infringement by third parties."
9 *Id.* at 936-37. A plaintiff establishes inducement liability in the Ninth Circuit by
10 showing: "(1) distribution of a device or product [by defendant], (2) acts of
11 infringement [by third parties], (3) an object [of the defendant] of promoting [the
12 device's or product's] use to infringe copyright, and (4) causation." *Columbia*
13 *Pictures Indus., Inc. v. Fung*, 710 F.3d 1020, 1032 (9th Cir. 2013). The Complaint
14 indisputably pleads all four elements.

15 *First*, Tusa distributed and sold subscriptions to the Altered Carbon service—
16 distribution of a device or product by the defendant. Compl. ¶¶ 29-37; *see Fung*,
17 710 F.3d at 1033 ("services available on the Internet" provides a basis for
18 inducement liability).

19 *Second*, Tusa's unlawful streaming service creates demand for unauthorized
20 reproductions of Plaintiffs' Copyrighted Works to make the 24/7 channels. Compl.
21 ¶¶ 38, 78-95. Tusa thereby induced the direct infringement of Plaintiffs'
22 reproduction right. *Columbia Pictures Indus., Inc. v. Galindo*, No. 2:20-cv-03129-
23

24 ⁴ Tusa is directly liable for his infringing streams. If Tusa were to claim that another
25 party streamed the content, he would be secondarily liable for violation of Plaintiffs'
26 public performance right. *Universal City Studios Productions LLLP, et al. v.*
27 *TickBox TV LLC* ("TickBox"), No. cv-17-7496-MWF (ASx), 2018 WL 1568698, at
28 *9-10 (C.D. Cal. Jan. 30, 2018) (citing *Am. Broad. Cos., Inc. v. Aereo, Inc.*, 573
U.S. 431, 446-47 (2014) (service that facilitated streams liable for secondary
infringement of the public performance right)).

1 SVW-GJS, 2020 WL 3124347, at *2 (C.D. Cal. 2020) (digital reproductions for
2 24/7 channels likely directly infringed plaintiffs’ copyrights).

3 *Third*, Tusa knowingly distributed the Altered Carbon service “with the object
4 of promoting its use to infringe copyright.” *Fung*, 710 F.3d at 1034 (quoting
5 *Grokster*, 545 U.S. at 936-37). This includes using associates to offer free trials to
6 Altered Carbon. In January 2020, Tusa ran a promotional raffle “sponsored by
7 Altered Carbon” in which the top prize was a subscription to Altered Carbon and
8 compatible hardware device. Van Voorn Decl. ¶ 24. Tusa’s associates also directed
9 customers to Altered Carbon boasting its reliability based on its status as “one of
10 two main suppliers of all US channels.” *Id.* ¶¶ 23-24, Exs. 8, 10. As the Supreme
11 Court said in *Grokster*, “entic[ing] or persuad[ing] another’ to infringe ... by
12 advertising” is the “classic case” of inducing infringement. 545 U.S. at 935-36; *id.*
13 at 936 (“[A]t common law a copyright ... defendant who ‘not only expected but
14 invoked [infringing use] by advertisement’ was liable for infringement ‘on
15 principles recognized in every part of the law.’” (quoting *Kalem Co. v. Harper*
16 *Bros.*, 222 U.S. 55, 62-63 (1911))); *see* Van Voorn Decl. ¶¶ 23-28 (Tusa and his
17 affiliates’ conduct to promote Altered Carbon for the purpose of infringement).
18 Further, Tusa’s repeated rebranding and relaunching on infringing services has
19 shown that he is “aiming to satisfy a known source of demand for copyright
20 infringement.” *Grokster*, 545 U.S. at 939.

21 *Fourth*, the causation requirement is satisfied. “[I]f one provides a service
22 that could be used to infringe copyrights, with the manifested intent that the service
23 actually be used in that manner, that person is liable for the infringement that occurs
24 through the use of the service.” *Fung*, 710 F.3d at 1037. Tusa distributed and
25 promoted the Altered Carbon service for infringing uses, and the infringing conduct
26 predictably followed.

1 **(b) Breach of Contract**

2 Tusa is also liable for breach of contract. *See First American Commercial*
 3 *Bancorp, Inc. v. Vantari Genetics, LLC*, No. 2:19-cv-04483-VAP-FFM, 2020 WL
 4 5027990, at *3 (C.D. Cal. March 12, 2020) (“[t]o be entitled to damages for breach
 5 of contract, a plaintiff must plead and prove (1) a contract, (2) plaintiff’s
 6 performance or excuse for nonperformance, (3) defendant’s breach, and (4) damage
 7 to plaintiff.”) He signed a settlement agreement with Plaintiffs on October 12, 2020.
 8 ECF No. 20, Conf. Settlement. A term of that settlement agreement required Tusa
 9 to cease infringing Plaintiffs’ Copyrighted Works and to refrain from doing so in the
 10 future. *Id.* ¶ 6(g); Compl. ¶¶ 96-102. Plaintiffs complied with their obligations
 11 under the settlement. *Id.* ¶ 100. Tusa materially breached that agreement when he
 12 subsequently launched his follow-on infringing IPTV streaming services, including
 13 Altered Carbon. *Id.* ¶¶ 98, 101. Plaintiffs suffered both irreparable harm and
 14 concrete damage in additional costs to bring Tusa into compliance. *Id.* ¶¶ 63-68.
 15 Tusa is therefore liable for the confidential Settlement Sum. Conf. Settlement ¶¶ 1-
 16 2 (sealed).

17 **3. The Sum of Money at Stake Is Proportional to the Harm**

18 This factor considers the “the amount of money at stake in relation to the
 19 seriousness of Defendants conduct.” *PepsiCo, Inc.*, 238 F. Supp. 2d at 1176.
 20 Where the harm has the potential to continue and its full magnitude cannot be
 21 quantified, this *Eitel* factor also weighs in favor of default judgment. *Caridi*, 346 F.
 22 Supp. 2d at 1072 (factor favored copyright owner plaintiff when conduct may be
 23 continuing and plaintiff sought enhanced damages for willful infringement).

24 Plaintiffs seek an award of \$16,350,000. This figure represents the statutory
 25 maximum of \$150,000 for willful infringement for Tusa’s direct infringement of
 26 each of the 109 Copyrighted Works listed in Exhibit A to the Complaint. *See* 17
 27 U.S.C. § 504(c)(1)-(2) (range of damages for willful copyright infringement is \$750-
 28 \$150,000 per work infringed). Plaintiffs’ investigators used the Altered Carbon

1 service to obtain unauthorized streams of each of these 109 Copyrighted Works.
2 Van Voorn Decl. ¶ 10. Tusa’s liability for the infringement of these Works is
3 indisputable.

4 But even that sample of representative works constitutes a tiny fraction of the
5 thousands of Plaintiffs’ Copyrighted Works that Tusa infringed and for which he
6 would be liable if he were to appear and litigate this case. The massive scale of
7 Tusa’s infringement is apparent from Tusa’s history of operating infringing services
8 including video-on-demand services, the inducement of others to infringe the
9 reproduction right by sourcing 24/7 channels from copies of Plaintiffs’ Works, and
10 the fact that Tusa offered thousands of channels for around-the-clock streaming. *Id.*
11 ¶¶ 29-48. A complete accounting of the scope of Tusa’s infringement would
12 undoubtedly run to thousands of Copyrighted Works.

13 Plaintiffs’ requested damages award is also proportional with Tusa’s illicit
14 gains. Tusa flaunted his wealth from the infringing services on social media,
15 including posting about the purchase of a luxury car with an AREA 51 vanity plate
16 that he said he would decorate with “Rick And Morty” theme. *Id.* ¶ 31, Ex. 15.
17 Presumably, Tusa paid for his new car with the ill-gotten proceeds of his
18 infringement.

19 4. There Is No Possibility of Dispute Regarding Material Facts

20 A defendant’s failure to respond to a complaint indicates that “the likelihood
21 that any genuine issue may exist is, at best, remote.” *Philip Morris USA, Inc. v.*
22 *Castworld Prods., Inc.*, 219 F.R.D. 494, 500 (C.D. Cal. 2003). As default has been
23 entered against Tusa, there is no possible dispute concerning the material facts
24 because the factual allegations of Plaintiffs’ complaint are taken as true. *PepsiCo*,
25 238 F. Supp. 2d at 1177; ECF No. 29. This *Eitel* factor also weighs in favor of
26 default judgment.

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5. There Is No Possibility of Excusable Neglect

No facts suggest Tusa’s failure to file a responsive pleading (after seeking an extension) or to respond to the entry of default resulted from excusable neglect. Tusa has counsel in Florida who has been in contact with Plaintiffs and agreed to accept service on Tusa’s behalf. Tusa knows his rights but has declined to participate in this litigation. Ehler Decl. ¶¶ 5-6, 10.

6. The Policy for Decisions on the Merits Does Not Preclude Default Judgment

The final *Eitel* factor considers the preference for deciding cases on the merits, *see Eitel*, 782 F.2d at 1471-72, but “this factor, standing alone, cannot suffice to prevent entry of default judgment for otherwise default judgment could never be entered,” *Caridi*, 346 F. Supp. 2d at 1073. Tusa’s default is the reason there can be no decision on the merits. This factor should not reward Tusa’s refusal to satisfy their obligations to this Court and to Plaintiffs.

C. Plaintiffs Are Entitled to All of Their Requested Relief

Plaintiffs request that the Court enter a default judgment awarding (1) maximum statutory damages for willful infringement in the amount of \$150,000 per work, for a total of \$16,350,000; (2) the confidential liquidated damages “Settlement Sum” for breach of the parties’ settlement agreement; (3) a permanent injunction prohibiting Tusa from engaging in the same or similar conduct going forward and ordering the infringing domains to be turned over to Plaintiffs; (4) post-judgment interest; and (5) an award for attorneys’ fees pursuant to Local Rule 55-3 in the amount of \$332,600.

1. Plaintiffs’ Request for Statutory Damages for Willful Copyright Infringement Is Reasonable

The Copyright Act authorizes statutory damages of \$750 to \$30,000 per infringed work, with the upper end of the range increased to \$150,000 per work infringed in the case of willful infringement. 17 U.S.C. § 504(c)(1)-(2). “Statutory

1 damages are particularly appropriate in a case . . . in which defendant has failed to
2 mount any defense or to participate in discovery, thereby increasing the difficulty of
3 ascertaining plaintiffs actual damages.” *Jackson v. Sturkie*, 255 F. Supp. 2d 1096,
4 1101 (N.D. Cal. 2003).

5 “Because awards of statutory damages serve both compensatory and punitive
6 purposes, a plaintiff may recover statutory damages whether or not there is adequate
7 evidence of the actual damages suffered by plaintiff or of the profits reaped by
8 defendant” for reasons, among others, of deterring future infringement. *L.A. News*
9 *Serv. v. Reuters Tele. Int’l, Ltd.*, 149 F.3d 987, 996 (9th Cir. 1998). Here, an award
10 of \$16,350,000 reflects the statutory maximum of \$150,000 for each of the 109
11 representative works that Tusa infringed. That award would serve the most
12 fundamental purposes of statutory damages: compensation, punishment, and
13 deterrence. Though this amount cannot compare to the harm caused by the
14 widespread infringement of Plaintiffs’ Copyrighted Works, the magnitude of this
15 award will serve as a deterrent to other wrongdoers.

16 **(a) Willfulness**

17 As pled in the Complaint, Tusa willfully infringed Plaintiffs’ Copyrighted
18 Works. *See Caridi*, 346 F. Supp. 2d at 1074 (“Because of the entry of default . . . the
19 Court must take [plaintiffs’] allegation of willful infringement as true.”). Tusa
20 relaunched and *continued* to operate his infringing business under a different name
21 after signing a settlement agreement promising to stop. Compl. ¶ 61. He tried to
22 conceal his involvement in his subsequent operations, again evidencing his
23 willfulness. *Id.* ¶ 62; Van Voorn Decl. ¶¶ 42-48.

24 **(b) Number of Registered Works**

25 Plaintiffs have submitted a representative sample of 109 registered
26 Copyrighted Works that investigators confirmed were illegally streamed on Altered
27 Carbon. Compl. Ex. A; ECF No. 16, Exs. 1–109 (list of infringed Copyrighted
28 Works and corresponding Certificates of Registration); Van Voorn Decl. ¶ 10. This

1 representative set is a small fraction of the actual number of Plaintiffs' Copyrighted
2 Works that Tusa infringed. Tusa's infringement stretches back to his prior illegal
3 streaming services (Area 51, Singularity Media, and Digital Unicorn media); one of
4 those services (Area 51) was while operating the largest stand-alone pirate IPTV
5 service by traffic in the United States, receiving over 300,000 monthly visits to its
6 website (and almost 3 million visits from June 2019 to June 2020). *Id.* ¶ 32.

7 **(c) *The Statutory Maximum Is Proportional to the Harm***
8 ***Inflicted by Tusa***

9 Courts in this Circuit and other Circuits have awarded the statutory maximum
10 in default judgment actions involving similar widespread and flagrant infringement.
11 *See, e.g., Amazon Content Servs., LLC et al v. Set Broad., LLC, et al.*, No. 2:18-cv-
12 03324, 2019 WL 7856766, at *4 (C.D. Cal. 2019) (awarding maximum statutory
13 damages per infringed work for willful infringement on default judgment); *Perfect*
14 *10, Inc., v. Talisman Commc'ns Inc.*, No. CV99-10450 RAP MCx, 2000 WL
15 364813, *3-4 (C.D. Cal. Mar. 27, 2000) (same); *Caridi*, 346 F. Supp. 2d at 1074
16 (same); *Graduate Mgmt. Admission Council v. Raju*, 267 F. Supp. 2d 505, 511-12
17 (E.D. Va. 2003) (same). Considering the sheer volume of unauthorized content
18 available on the Altered Carbon service, its availability round-the-clock, and Tusa's
19 widespread customer base amassed over the course of operating several streaming
20 services, Tusa infringed Plaintiffs' Copyrighted Works willfully, flagrantly, and on
21 a massive scale.

22 Although the true scope of harm that Tusa inflicted cannot be known, the
23 \$16,350,000 award that Plaintiffs seek is proportional to the immense harm he has
24 caused. Here, relying on maximum damages for a representative set of works that is
25 only a "small sliver of the actual number of works infringed upon" is reasonable
26 because "the actual damages in this case would likely be astronomically higher than
27 the measure provided by the maximum statutory damages for the furnished
28 representative works." *Amazon Content Servs., LLC*, 2019 WL 7856766 at *4.

1 Further, Tusa has deprived Plaintiffs of their exclusive rights to control how, when,
2 and to whom they will disseminate their Copyrighted Works. *See Harper & Row*
3 *Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 546 (1985) (“The rights conferred
4 by copyright are designed to assure contributors to the store of knowledge a fair
5 return for their labors.”); *see also Warner Bros. Entm’t Inc. v. WTV Sys., Inc.*, 824 F.
6 Supp. 2d 1003, 1012-13 (C.D. Cal. 2011) (“*Zediva*”) (defendants’ unauthorized
7 streaming “interfere[s] with Plaintiffs’ ability to control the use and transmission of
8 their Copyrighted Works, thereby causing irreparable injury.”).

9 Tusa’s illegal conduct also undermined the legitimate market for authorized
10 streaming services. In the legitimate market, consumers purchase access to the same
11 Works that Tusa appropriated to enrich himself. This conduct irreparably harms
12 Plaintiffs, who have invested significantly not only in the underlying content but in
13 the development of a lawful market. *See e.g., Grokster*, 545 U.S. at 928-29
14 (discussing harms from unauthorized distribution of copyrighted works); *China*
15 *Cent. Tele.*, 2015 WL 3649187, at *13 (infringing video streaming service caused
16 irreparable harm because it “interfered with plaintiffs’ ability to develop a lawful
17 market for internet distribution”); *TickBox*, 2018 WL 1568698, at *12-13.

18 Tusa’s willful infringement has caused significant damage to Plaintiffs’
19 businesses. *See Disney Enters. v. VidAngel*, 869 F.3d 848, 866 (9th Cir. 2017)
20 (unauthorized streaming “service undermines the value of the Studios’ copyrighted
21 works, their ‘windowing’ business model, and their goodwill and negotiating
22 leverage with licensees” causing irreparable harm). The \$16,350,000 statutory
23 damages Plaintiffs request thus represents only a fraction of the actual damages
24 inflicted by Tusa on Plaintiffs.

25 **2. Plaintiffs Are Entitled to an Order Requiring Tusa to Fulfil**
26 **Payment on the Confidential Settlement Sum**

27 Pursuant to Paragraphs 1 and 2 of the parties’ confidential settlement
28 agreement (ECF No. 20), Tusa is responsible for payment of the full Settlement

1 Sum. Plaintiffs respectfully request the judgment award that amount by
2 incorporating by reference the financial terms of the confidential settlement
3 agreement into the default judgment.

4 **3. Plaintiffs Are Entitled to a Permanent Injunction**

5 The Copyright Act authorizes courts to grant injunctive relief “to prevent or
6 restrain infringement of a copyright.” 17 U.S.C. § 502(a). A plaintiff seeking a
7 permanent injunction must demonstrate: (1) that it has suffered irreparable injury;
8 (2) that there is no adequate remedy at law; (3) that the balance of hardship between
9 the plaintiff and defendant warrants equitable relief; and (4) that it is in the public’s
10 interest to issue the injunction. *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388,
11 392–93 (2006).

12 *First*, Plaintiffs have demonstrated that Tusa’s conduct risks irreparable harm
13 to their control over their Copyrighted Works, interferes with Plaintiffs’
14 relationships and goodwill with licensees, and threatens customer confusion
15 regarding the value of legitimate streaming services by expanding the availability
16 and prominence of illegitimate services. ECF No. 28 at pp. 4-5 (Preliminary
17 Injunction Order); Perkins Decl. ¶¶ 11-36 (describing threatened irreparable harm).

18 Also, where the defendant has “failed to provide any assurances that [he] will
19 stop the [infringement],” a permanent injunction is warranted. *Daimler AG v. A-Z*
20 *Wheels LLC*, 498 F. Supp. 3d 1282, 1294 (S.D. Cal. 2020) (citing *MAI Sys. Corp. v.*
21 *Peak Computer, Inc.*, 991 F.2d 511, 520 (9th Cir. 1993) (“As a general rule, a
22 permanent injunction will be granted when liability has been established and there is
23 a threat of continuing violations.”)].⁵ Based on Tusa’s past recidivism, there is a
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25 ⁵ This is so even where, as here, the infringer appears to have voluntarily ceased his
26 infringing activities. As Tusa has shown time and time again, his voluntary
27 cessation, without the requirements of an injunction, last only so long as he needs to
28 rebrand and relaunch his service. *See, e.g., Metro-Goldwyn-Mayer Studios, Inc. v.*
Grokster, Ltd., 518 F. Supp. 2d 1197, 1221-22 (C.D. Cal. 2007) (rejecting purported

1 significant threat of future infringement. *See* Van Voorn Decl. ¶¶ 29-48 (Tusa’s
2 history is suspending services only to open a new service a short time later). While
3 Altered Carbon appears to be offline, only an injunction provides the required
4 assurance, backed up by the Court’s contempt power, that Tusa will not launch
5 another infringing service to replace Altered Carbon. “[T]he entire purpose of an
6 injunction is to take away defendant’s discretion not to obey the law.” *Canadian*
7 *Lumber Trade Alliance v. United States*, 441 F. Supp. 2d 1259, 1266 (CIT 2006). In
8 light of his willful and egregious conduct, Tusa should not be afforded that
9 discretion.

10 *Second*, an award of monetary damages would neither protect Plaintiffs from
11 future infringement, nor adequately compensate them for the substantial harms Tusa
12 has caused. Those harms include Plaintiffs losing control over the Copyrighted
13 Works, damage to their business goodwill, and harm to the continued advancement
14 of the legitimate online market for distribution of creative works. *See TickBox*,
15 2018 WL 1568698, at *13 (“[I]t is unlikely that money damages could adequately
16 compensate for difficult-to-quantify harms to Plaintiffs’ business models and
17 relationships” from unauthorized streaming); *Zediva*, 824 F. Supp. 2d at 1013
18 (same).

19 Moreover, the fact that Tusa will not defend himself is consistent with the fact
20 he almost certainly would not (and could not) satisfy the damages award that
21 Plaintiffs would recover if they had to pursue this case to final judgment. Under
22 these circumstances, a monetary remedy is insufficient. *See, e.g., Grokster*, 518 F.
23 Supp. 2d at 1219 (“Damages are no remedy at all if they cannot be collected....”);
24 *Lava Records, LLC v. Ates*, Civ. A-05-1314, 2006 WL 1914166, at *3 (W.D. La.
25 July 11, 2006) (awarding permanent injunction because of “the need to prevent

26
27 voluntary “reformation” by infringer and imposing permanent injunction); *see also*
28 *Walt Disney Co. v. Powell*, 897 F.2d 565, 568 (D.C. Cir. 1990) (affirming
permanent injunction where defendant voluntarily ceased infringing conduct).

1 irreparable harm to Plaintiffs, which will not be remedied by a damage award that
2 may or may not be collectible”).

3 *Third*, the balance of hardships favors Plaintiffs. Any “harm” to Tusa “does
4 not merit significant equitable protection” as it is the result of its own illegal
5 conduct. *VidAngel*, 869 F.3d at 867. In contrast, absent a permanent injunction,
6 Plaintiff will face the ongoing threat of continuing, irreparable harm from Tusa
7 resuming his infringing conduct.

8 *Fourth*, “the public has a compelling interest in protecting copyright owners’
9 marketable rights to their work and the economic incentive to continue creating
10 television programming and motion pictures.” *VidAngel*, 869 F.3d at 867.

11 Plaintiffs respectfully request that the Court enter the proposed permanent
12 injunction against Tusa, which prevents his continuing or engaging in further
13 infringement and requires the transfer of the infringing domains to Plaintiffs.

14 **4. Plaintiffs Are Entitled to Post-Judgment Interest**

15 Plaintiffs respectfully request post-judgment interest calculated “at a rate
16 equal to the weekly average 1-year constant maturity Treasury yield, as published
17 by the Board of Governors of the Federal Reserve System, for the calendar week
18 preceding the date of the judgment.” 28 U.S.C. § 1961(a).

19 **5. Plaintiffs Are Entitled to Attorneys’ Fees**

20 Plaintiffs respectfully request an award of attorneys’ fees in the amount of
21 \$330,600 pursuant to Local Rule 55-3 and 17 U.S.C. § 505, which permits a court to
22 award a reasonable attorney’s fee to the prevailing party in an action under the
23 Copyright Act.

24 **(a) Attorneys’ Fees Are Proper Here**

25 The Ninth Circuit has identified five non-exclusive factors that a court may
26 consider in deciding whether to award attorneys’ fees pursuant to § 505: “[1] the
27 degree of success obtained; [2] frivolousness; [3] motivation; [4] objective
28 unreasonableness ... and [5] the need in particular circumstances to advance

1 considerations of compensation and deterrence.” *Caridi*, 346 F. Supp. 2d at 1074–
2 75 (awarding fees in a default judgment, quoting *Magnuson v. Video Yesteryear*, 85
3 F.3d 1424, 1432 (9th Cir.1996) (citations omitted)).

4 Each of the five factors weighs in favor of a fee award here: [1] Plaintiffs
5 succeeded on the merits; [2 & 3] their claim is not frivolous or brought for an
6 improper purpose (indeed, Plaintiffs gave Tusa opportunities to resolve the matter
7 short of court intervention, Van Voorn Decl. ¶¶ 39-40); [4] Tusa’s failure to cease
8 his infringement (even after settling) is unreasonable; and [5] both Tusa and other
9 would-be infringers must be deterred.

10 ***(b) Local Rule 55-3 Provides the Calculation for Fees***

11 Local Rule 55-3 provides that where the amount of judgment is over
12 \$100,000, an award of attorneys’ fees should be made in the amount of \$5,600 plus
13 two percent of the amount over \$100,000. L.R. 55-3. As the amount of the (public)
14 judgment is \$16,350,000, the rule dictates an award of \$5,600 plus \$327,000, for a
15 total of \$332,600. This amount is reasonable in light of the substantial fees incurred
16 by Plaintiffs already (including for their investigation and pre-suit enforcement
17 efforts), as well as the amounts that may be necessary to collect on the judgment.

18 **V. CONCLUSION**

19 Plaintiffs respectfully request that the Court enter default judgment against
20 Defendant Jason Tusa as set forth in the concurrently filed proposed judgment and
21 injunction.

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23

24 DATED: September 13, 2021 MUNGER, TOLLES & OLSON LLP

25
26 By: /s/ Rose Leda Ehler
27 ROSE LEDA EHLER
28 Attorneys for Plaintiffs