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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VIRAL DRM LLC,
Plaintiff,
v.
MAXIM ONYSHCHUK, a.k.a. CLIMATE
CHANGE, et al.,
Defendants.

Case No. 3:23-cv-04300-JSC

**ORDER DENYING MOTION FOR
DEFAULT JUDGMENT; AND ORDER
TO SHOW CAUSE RE: PERSONAL
JURISDICTION AND JOINDER**

Re: Dkt. No. 60

Plaintiff Viral DRM LLC syndicates and licenses video content of extreme weather events from around the world. Plaintiff brings copyright infringement claims against eight Defendants. Defendants, who are foreign citizens, allegedly downloaded and copied Plaintiff’s copyrighted materials from YouTube, and then re-uploaded infringing versions of Plaintiff’s copyrighted media content to their YouTube channels. The Court previously granted Plaintiff’s motion for a temporary restraining order (TRO) and motion for alternative service. (Dkt. Nos. 20, 21.¹) Plaintiff served Defendants via email on October 18, 2023 and the Court converted the TRO into a preliminary injunction on November 2, 2023. (Dkt. Nos. 44, 49.) After no Defendant appeared, the Clerk entered their default and Plaintiff’s motion for default judgment is now pending before the Court. (Dkt. Nos. 56, 60.) After carefully considering the arguments and briefing submitted, the Court concludes that oral argument is unnecessary, *see* Civ. L.R. 7-1(b), and DENIES the motion for preliminary injunction. Plaintiff has failed to meet its burden of demonstrating the Court has personal jurisdiction over Defendants.

¹ Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

United States District Court
Northern District of California

DISCUSSION

Under Federal Rule of Civil Procedure 55(b)(2), a plaintiff may apply to the district court for—and the court may grant—a default judgment against a defendant who has failed to plead or otherwise defend an action. *See Draper v. Coombs*, 792 F.2d 915, 925 (9th Cir. 1986). Courts have a duty to examine both subject matter and personal jurisdiction when default judgment is sought against a non-appearing party. *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999).

A. Jurisdiction

The Court has federal question subject matter jurisdiction over Plaintiff’s copyright infringement claims under 17 U.S.C. § 501. *See* 28 U.S.C. § 1331. Plaintiff, however, has not met its burden of establishing personal jurisdiction over the nonresident defendants here. *See Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). “For a court to have specific personal jurisdiction in an intentional tort or copyright case, “the defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011). Further, where there are multiple defendants, “[t]he jurisdictional inquiry must decouple defendants, considering whether each individual defendant has had sufficient ‘minimum contacts’ with the forum state to justify an exercise of jurisdiction.” *See Burri Law PA v. Skurla*, 35 F.4th 1207, 1213 (9th Cir. 2022).

Plaintiff’s motion for default judgment makes no such showing. First, the motion itself is self-contradictory and incomplete. Plaintiff contends on the one hand “[a]ll of The YouTube Uploaders are foreign citizens,” while also arguing the Court “has personal jurisdiction over The YouTube Uploaders because they are domiciled in California. The YouTube Uploaders’s principal place of business is at . Therefore, this Court has personal jurisdiction over The YouTube Uploaders.” (*Compare* Dkt. No. 60-1 at 12 *with* Dkt. No. 60-1 at 13.) Second, to the extent Plaintiff intends to argue express aiming based on “allegedly displaying copyright protected photos via videos uploaded to YouTube from [foreign locations]” this conduct is not sufficient to “create a substantial connection with [California].” *Werner v. Dowlatsingh*, 818 F. App’x 671, 672 (9th Cir. 2020). “Uploading a video to YouTube—which has its headquarters in San Bruno,

1 California—is not an act expressly aimed at California simply because the company is based in the
 2 state.” *Id.* at 672 n.1. Finally, while the Complaint alleges “defendant [sic] are subject to personal
 3 jurisdiction in this district, and because defendants consented to this venue when defendants
 4 provided the counternotification(s) referred to herein because the service provider provided with
 5 the counternotification(s) can be found in this judicial district,” Plaintiff’s submission represents
 6 only three of the eight Defendants served counternotices, and, in any event, the motion for default
 7 judgment makes no personal jurisdiction argument regarding the counternotices. (Dkt. No. 1 at ¶
 8 11; Dkt. No. 1-4; Dkt. No. 60-6.)

9 Accordingly, Plaintiff has not met its burden of demonstrating personal jurisdiction over
 10 Defendants. The Court thus need not consider whether default judgment is proper under Rule
 11 55(b) and the *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986), factors. *See Vachani v.*
 12 *Yakovlev*, 2016 WL 1598668, at *3 (N.D. Cal. Apr. 21, 2016) (“The court cannot enter a default
 13 judgment unless it has jurisdiction over both the subject matter and the parties.”). Plaintiff’s
 14 motion for default judgment is DENIED.

15 **B. Preliminary Injunction**

16 In light of the Court’s concerns regarding personal jurisdiction, the Court DISSOLVES the
 17 preliminary injunction as to the Defendants who did not serve counternotices. (Dkt. No. 49.) The
 18 preliminary injunction order remains in place only as to the three Defendants who served
 19 counternotices: Extreme Weather&Natural Disasters, NA Weather, and WAHR. (Dkt. No. 1-4;
 20 Dkt. No. 60-6.)

21 **C. Misjoinder**

22 The Court also has concerns as to whether all Defendants are properly joined in this action.
 23 Under Federal Rule of Civil Procedure 20, a plaintiff may join defendants in one action if:

24 (A) any right to relief is asserted against them jointly,
 25 severally, or in the alternative with respect to or arising out of the
 26 same transaction, occurrence, or series of transactions or occurrences;
 27 and

(B) any question of law or fact common to all defendants will
 28 arise in the action.

Fed. R. Civ. P. 20(a)(2). Both prongs must be satisfied. *See Visendi v. Bank of Am., N.A.*, 733

1 F.3d 863, 870 (9th Cir. 2013). The misjoinder issue may be raised by the court sua sponte. Fed.
2 R. Civ. P. 21 (“On motion or on its own, the court may at any time, on just terms, add or drop a
3 party”).

4 The Court’s review of the complaint demonstrates the first requirement is not satisfied:
5 Plaintiff does not allege each defendant is jointly, severally, or in the alternative liable for the
6 infringement of another defendant arising out of the same transaction, occurrence, or series of
7 transactions or occurrences. And it does not appear that it could do so as Schedule A to Complaint
8 alleges the Defendants have different websites, different names, and are from different countries.
9 (Dkt. No. 1-1.) There are no allegations suggesting the claims against each separate Defendant
10 arise out of the same transaction or occurrence; rather, they allege separate acts of copyright
11 infringement. *See, e.g., Fashion Ave. Sweater Knits, LLC v. A’Gaci, LLC*, No. 20-7165 CJC
12 (JEMx), 2020 WL 13248958, at *1 (C.D. Cal. Oct. 26, 2020) (“allegations that multiple unrelated
13 defendants infringed the same copyright do not support joinder under Rule 20”); *Golden Scorpio*
14 *Corp. v. Steel Horse Bar & Grill*, 596 F. Supp. 2d 1282, 1285 (D. Ariz. 2009) (“allegations against
15 multiple and unrelated defendants for acts of patent, trademark, and copyright infringement do not
16 support joinder under Rule 20(a)”).

17 **D. Order to Show Cause**

18 In light of the above, Plaintiff is ORDERED TO SHOW CAUSE as to (1) how the Court
19 has personal jurisdiction over each separate Defendant, and (2) how joinder in this lawsuit of these
20 eight Defendants operating different YouTube channels from different countries is proper under
21 Federal Rule of Civil Procedure 20(a)(2). Plaintiff shall file a written response to this Order by
22 February 1, 2024. Plaintiff may, in connection with this submission, file an amended complaint
23 by that same date. For any Defendant for whom Plaintiff does not have a good faith basis for
24 asserting personal jurisdiction in light of the authority cited in this Order, Plaintiff may remove
25 such Defendant from the amended complaint. Same for any Defendant Plaintiff determines cannot
26 be properly joined under Rule 20(a)(2). *See DirecTV, Inc. v. Leto*, 467 F.3d 842, 845 (3d Cir.
27 2006) (noting a court may “drop” a defendant under Rule 21, dismissing the defendant from the
28 case without prejudice).

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If Plaintiff does not satisfy the Court of its personal jurisdiction of a particular defendant, that defendant will be dismissed without prejudice. The Court will also dismiss any misjoined defendant; however, the case will be allowed to proceed against the first named defendant for which Plaintiff has established a prima face case of personal jurisdiction.

The Court sets a further Case Management Conference for February 8, 2024 at 1:30 p.m. via Zoom video. Plaintiff shall serve by email a copy of this Order on all Defendants and file a proof of service.

This Order disposes of Docket No. 60.

IT IS SO ORDERED.

Dated: January 17, 2024


JACQUELINE SCOTT CORLEY
United States District Judge