

1 DICKINSON WRIGHT PLLC  
Bennett Evan Cooper (010819)  
2 [bcooper@dickinsonwright.com](mailto:bcooper@dickinsonwright.com)  
Scott A. Holcomb (009723)  
3 [sholcomb@dickinsonwright.com](mailto:sholcomb@dickinsonwright.com)  
Cameron C. Stanley (036605)  
4 [cstanley@dickinsonwright.com](mailto:cstanley@dickinsonwright.com)  
1850 North Central Avenue, Suite 1400  
5 Phoenix, Arizona 85004  
(602) 285-5000  
6 Fax (844) 670-6009

7 Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF ARIZONA

10 Pima Community College District, a public  
community college,

11 Plaintiff,

12 v.

13 Edip Yuksel, an individual,

14 Defendant.  
15

Case No. 4:23-cv-00361-RCC

**PLAINTIFF’S MOTION FOR  
DEFAULT JUDGMENT AND  
PERMANENT INJUNCTION**

**Oral Argument Requested**

16  
17 Plaintiff Pima Community College District (“PCC”) seeks to enjoin Defendant Edip  
18 Yuksel from publishing, reproducing, or publicly performing the Recordings in violation of  
19 PCC’s copyright. Because Defendant has failed to appropriately answer or otherwise  
20 respond to the Complaint and is thereby in default, PCC now moves for default judgment  
21 and permanent injunction against him. Default was entered on January 30, 2024. The  
22 allegations in the Complaint, as supported by the evidence submitted in this case, establish  
23 that a permanent injunction under 17 U.S.C. §§ 106 and 1322 is necessary and appropriate.

24 This Motion is supported by the following memorandum of points and authorities,  
25 the affidavit in support of this Motion, the papers and pleadings on file in this action, and  
26 any oral argument the Court may require.

27 PCC intends to separately file for costs and fees pursuant to Fed. R. Civ. P. 54.  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. CASE BACKGROUND**

PCC filed suit against Defendant on July 31, 2023 to recover damages arising from Defendant’s unauthorized creation and reproduction of recordings of several class sessions at PCC (the “Recordings”). (Doc. No. 1.) The Recordings contained both material assigned to PCC and personally identifying information of PCC students. (*Id.*) On August 7, 2023, PCC personally served Defendant with a copy of the Summons and Amended Complaint. (Doc. No. 7.)

After Defendant was personally served, the deadline for him to appear or otherwise respond under Rule 12, Fed. R. Civ. P., was August 28, 2023. (Doc. No. 14, ¶ 3.) On August 25, 2023, Defendant filed a Motion to Dismiss. (Doc. No. 8.) PCC filed the Response to and Motion to Strike Portions of Defendant’s Motion to Dismiss on September 8, 2023. (Doc. No. 9.) On September 29, 2023, this Court denied the Motion to Dismiss and struck the same, in full. (Doc. No. 10.) This Court also ordered Defendant to “file a responsive pleading addressing [PCC’s] Complaint” within 30 days. (*Id.*)

After the denial of the Motion to Dismiss, Defendant’s deadline to answer or respond under Rule 12, Fed. R. Civ. P., was October 30, 2023. (Doc. No. 14, ¶ 7.) On October 26, 2023, Defendant mailed a Motion for Judgment to PCC’s counsel of record and to this Court’s chambers. (*Id.* ¶ 8; Doc. No. 13 at 1.) However, he did not file the Motion for Judgment, nor any other responsive pleading. (Doc. No. 14, ¶ 8; Doc. No. 13 at 1; Ex. A to Doc. No. 12.) PCC filed the Response to and Motion to Strike Defendant’s Motion for Judgment or, Alternatively, Motion for Entry of Default on November 13, 2023. (Doc. No. 12.) On November 15, 2023, this Court held that it would not consider the Motion for Judgment because it had not been properly filed, and the Court allowed Defendant “fourteen days from the date of this order to file a responsive pleading to [PCC’s] Complaint.” (Doc. No. 13 at 2.)

Defendant’s deadline to answer or otherwise respond to the Complaint was November 29, 2023. (Doc. No. 14, ¶ 11.) Defendant did not respond within the permitted

1 time period. On January 29, 2024, this Court granted PCC's Application for Entry of  
2 Default. (Doc. No. 14; Doc. No. 15.) On January 30, 2024, the Clerk of the Court issued an  
3 Entry of Default against Defendant. (Doc. No. 16.) Defendant still has not answered or  
4 otherwise moved with respect to the Complaint or the Entry of Default, and the time for  
5 Defendant to answer or otherwise move has not been extended.

6 Pursuant to Rule 55(b)(2), Fed. R. Civ. P., PCC now respectfully moves for default  
7 judgment finding that Defendant willfully infringed PCC's rights in its intellectual property  
8 in violation of the Copyright Act; permanently enjoining Defendant from publishing,  
9 reproducing, or publicly performing the Recordings; ordering destruction of the  
10 Recordings; and for statutory damages pursuant to 17 U.S.C. § 504 in the amount of at least  
11 \$4,000 to give the statute full force and effect and indicate to the general public that PCC's  
12 claims and these proceedings should not be disregarded or ignored. PCC also requests a  
13 hearing on these remaining issues.

## 14 **II. LEGAL STANDARD**

15 Federal Rule of Civil Procedure 55(b) permits a default judgment following the entry  
16 of default by the clerk under Rule 55(a). Upon entry of default, the well-pleaded allegations  
17 of the complaint relating to a defendant's liability are taken as true, with the exception of  
18 the allegations as to the amount of damages. *See TeleVideo Sys., Inc. v. Heidenthal*, 826  
19 F.2d 915, 917–18 (9th Cir.1987). When the requested relief is anything other than a sum  
20 certain or a sum that can be made certain by computation, the party must apply to the court  
21 for a default judgment after entry of default. Fed. R. Civ. P. 55(b)(1)-(2). The choice as to  
22 whether a default judgment should be entered lies within the discretion of the trial court.  
23 *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).

1 **III. LEGAL ARGUMENT**

2 **A. The Court Has Jurisdiction to Enter Default Judgment and Defendant**  
3 **Was Properly Served.**

4 The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question),  
5 1338(a) (any act of Congress related to patents, copyrights, and trademarks), and 1367  
6 (supplemental jurisdiction).

7 Defendant was properly served with notice of this action. Pursuant to Fed. R. Civ. P.  
8 5(b)(2)(A), PCC served Defendant by personal service. (Doc. No. 7.) Defendant had actual  
9 notice of this action, and indicated knowledge of this action when he filed his deficient  
10 Motion to Dismiss that was subsequently stricken in full. (Doc. No. 8; Doc. No. 10.) Based  
11 on Defendant's failure to properly appear or otherwise defend in a timely manner, the Clerk  
12 of Court properly entered default pursuant to Fed. R. Civ. P. 55(a). (Doc. No. 16.)

13 **B. PCC Is Entitled to Default Judgment Against Defendant.**

14 PCC is entitled to a default judgment against Defendant. The Ninth Circuit has  
15 determined that a district court should look at seven discretionary factors before rendering  
16 a decision on a motion seeking a default judgment. *See Eitel v. McCool*, 782 F.2d 1470,  
17 1471-72 (9th Cir. 1986). These factors are: (1) the possibility of prejudice to the plaintiff;  
18 (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the  
19 sum of money at stake in the action; (5) the possibility of a dispute concerning material  
20 facts; (6) whether the default was due to excusable neglect; and (7) the strong policy  
21 underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Id.* Once  
22 the clerk enters a default, the well-pleaded factual allegations of the complaint are taken as  
23 true, except for those allegations relating to damages. *U.S. Commodity Futures Trading*  
24 *Comm'n v. Williams*, 2018 WL 3853992, at \*3 (D. Ariz. Mar. 16, 2018) (citing *Televideo*  
25 *Sys., Inc.*, 826 F.2d at 917-18). Each of the *Eitel* factors favor entry of default judgment in  
26 PCC's favor.

1                   1.       Possibility of Prejudice to PCC.

2                   PCC will suffer prejudice if the Court does not enter a default judgment. As long as  
3 Defendant continues to publish and reproduce the Recordings, PCC’s intellectual property  
4 is violated. In addition, as long as the Recordings remain in Defendant’s possession and  
5 there is still a possibility that he could post them online, PCC is at risk of being found liable  
6 for violating FERPA and failing to protect its students’ rights to confidentiality.  
7 Furthermore, given Defendant’s failure to properly appear or plead, PCC is unable to  
8 “obtain relief or litigate this case on the merits.” *deltaventure GmbH v. Pay.io*, 2020 WL  
9 5912337, at \*2 (D. Ariz. Oct. 6, 2020). Therefore, a default judgment is necessary for PCC  
10 to obtain relief. This factor weighs in PCC’s favor.

11                   2.       Merits and Sufficiency of the Complaint.

12                   The second and third *Eitel* factors, the merits and sufficiency of the Complaint, favor  
13 default judgment where a complaint sufficiently states a claim for relief under the “liberal  
14 pleading standards embodied in Rule 8” of the Federal Rules of Civil Procedure, which is  
15 the case in the present action. *See* Fed. R. Civ. P. 8; *Danning v. Lavine*, 572 F.2d 1386,  
16 1389 (9th Cir. 1978). In the Ninth Circuit, entry of default functions “an admission of the  
17 Complaint’s well-pleaded allegations of fact.” *See Broad. Music Inc. v. Cowboys Up Inc.*,  
18 CV 19-00499 PHX CDB, 2019 WL 13472382, at \*2 (D. Ariz. Oct. 21, 2019) (gathering  
19 cases).

20                   PCC’s Complaint alleges 2 causes of action based on Defendant’s actions with  
21 regard to the Recordings – federal copyright infringement and breach of contract. A person  
22 is liable for federal copyright infringement if they infringe a copyright owned by another.  
23 *See Unicolors, Inc. v. Urban Outfitters, Inc.*, 853 F.3d 980, 984 (9th Cir. 2017). The  
24 Complaint establishes that PCC is the copyright owner and assignee of the Recordings, and  
25 that Defendant has published, reproduced, and publicly performed the Recordings in  
26 violation of PCC’s copyright. (Doc. No. 1.)

27                   To establish liability for breach of contract, breach of contract, a plaintiff must  
28 establish three elements: (1) an agreement; (2) a right thereunder; and (3) a breach by the

1 defendant. *Jeffers v. Farm Bureau Prop. & Cas. Ins. Co.*, 2:12-CV-02444 JWS, 2014 WL  
2 4259485, at \*2 (D. Ariz. Aug. 28, 2014) (citing *City of Tucson v. Superior Court of Pima*  
3 *Cnty.*, 116 Ariz. 322, 324 (App. 1977)). The Complaint establishes the existence of the  
4 Employment Agreements between Defendant and PCC, which include both the Intellectual  
5 Property Ownership Procedures and the Family Educational Rights and Privacy Act,  
6 Educational Records Compliance and Procedures. Together, the Agreements establish that  
7 the Recordings are owned by PCC and that PCC's faculty and staff are prohibited from  
8 releasing students' educational records without their consent. The Complaint also  
9 establishes that Defendant violated those Agreements by creating and publishing the  
10 Recordings, which contain the identities of personally identifying information of PCC  
11 students. Thus, the second and third *Eitel* factors also weigh in PCC's favor.

12 3. *Amount in Controversy.*

13 While default judgment is generally "disfavored where the sum of money requested  
14 is too large or unreasonable when compared to a defendant's conduct," *deltaventure*, 2020  
15 WL 5912337, at \*2, PCC does not presently seek a large monetary amount. Rather, PCC  
16 only seeks statutory damages. More importantly, PCC seeks to permanently enjoin  
17 Defendant from publishing, reproducing, or publicly performing the Recordings and to  
18 order destruction of the Recordings. PCC separately requests a hearing on the issue of  
19 damages. Given Defendant's bad faith and unlawful conduct, the relief sought is  
20 reasonable. This factor favors entry of a default judgment

21 4. *The Possibility of Disputed Facts.*

22 The material facts of PCC's claims are undisputed. "The possibility of a dispute  
23 regarding material facts is relevant only so far as there are two parties present to dispute  
24 those facts. When one party fails to appear to defend an action, there is no dispute of  
25 material facts." *deltaventure*, 2020 WL 5912337, at \*2. Indeed, upon default, the plaintiff's  
26 well-pleaded allegations are taken as true. *U.S. Commodity*, 2018 WL 3853992, at \*3.  
27 Defendant failed to defend this action, therefore there are no disputed material facts.  
28 *deltaventure*, 2020 WL 5912337, at \*2. This factor favors entry of a default judgment.

1                   5.       Whether Default Is Due to Excusable Neglect.

2                   There is no evidence in the case that suggests Defendant’s default is due to excusable  
3 neglect. Rather, once a defendant is properly served and fails to respond, “[t]he risk of  
4 excusable neglect is substantially lessened.” *deltaventure*, 2020 WL 5912337, at \*3. In  
5 accordance with the Federal Rules of Civil Procedure, PCC effected personal service upon  
6 Defendant. (Doc. No. 7.) Despite being properly served, Defendant failed to properly  
7 answer or respond to the Complaint. Rather, he filed multiple inappropriate pleadings that  
8 were ultimately stricken by the Court; his participation indicates that he had notice of the  
9 case, was admonished by the Court about what would be an appropriate response, and  
10 intentionally elected not to comply. This is not excusable neglect. Furthermore, by  
11 Defendant’s own representations, he holds a juris doctor degree. Due to his educational  
12 background, he has a greater understanding of the implications of failing to properly  
13 respond to a complaint. Therefore, this factor also favors entry of a default judgment.

14                   6.       Policy Favoring Decision on the Merits.

15                   A decision on the merits is “impractical, if not impossible, where defendant fails to  
16 respond” to the complaint. *deltaventure*, 2020 WL 5912337, at \*3 (citation omitted). As  
17 discussed above, Defendant was properly served, yet failed to respond. For this reason, the  
18 policy favoring decision on the merits does not preclude entry of default judgment here.

19                   **C. The Court can grant PCC’s requested injunctive relief, and the proposed**  
20 **permanent injunction is proper and necessary.**

21                   1.       Entry of a Permanent Injunction.

22                   Defendant’s actions warrant permanent injunctive relief. 17 U.S.C. §§ 502 and 1322  
23 authorize district courts to grant permanent injunctions “in accordance with the principles  
24 of equity to prevent infringement of a design.” See *Flexible Lifeline Sys., Inc. v. Precision*  
25 *Lift, Inc.*, 654 F.3d 989, 994 (9th Cir. 2011); *Reger v. Werner*, 225 Fed. Appx. 544, 545 (9th  
26 Cir. 2007); *Apple Inc. v. Psystar Corp.*, 673 F. Supp. 2d 943 (N.D. Cal. 2009), aff’d, 658  
27 F.3d 1150 (9th Cir. 2011). Injunctive relief is an appropriate form of default judgment when  
28

1 the circumstances permit. *See, e.g., Automata Productions, Inc. v. Spicher*, 3:16-0797-AC,  
2 2016 WL 4621198, at \*3 (D. Or. Sept. 6, 2016).

3 To obtain a permanent injunction, PCC must demonstrate that “there exists some  
4 cognizable danger of recurrent violation, something more than the mere possibility which  
5 serves to keep the case alive.” *Cummings v. Connell*, 316 F.3d 886, 897 (9th Cir. 2003)  
6 (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953)). As alleged in the  
7 Complaint, PCC is subject to the Family Educational Rights and Privacy Act (“FERPA”),  
8 20 U.S.C. § 1232. Under FERPA, PCC is prohibited from releasing educational records  
9 without a student’s prior written consent. If Defendant is not enjoined from publishing,  
10 reproducing, or publicly performing the Recordings, PCC faces FERPA violations that are  
11 beyond its control and beyond its reach because Defendant is no longer employed by PCC  
12 and no longer even resides within the State of Arizona. (Indeed, this is why PCC also seeks  
13 the destruction of the Recordings.)

14 PCC seeks a default judgment that will permanently restrain and enjoin Defendant  
15 from violating PCC’s copyright by publishing, reproducing, or publicly performing the  
16 Recordings. Defendant, by default, has admitted to the willful conduct in this case. Based  
17 on Defendant’s willful conduct and significant infringing activity, an injunction is proper  
18 and should be entered.

19 2. Award of Statutory Damages.

20 U.S. Copyright law provides for the award of statutory damages rather than actual  
21 damages. 17 U.S.C. § 504. “[S]tatutory damages are recoverable without regard to the  
22 existence or provability of actual damages.” *New Form, Inc. v. Tekila Films, Inc.*, 357 Fed.  
23 Appx. 10, 11 (9th Cir. 2009). The United States Supreme Court has held that an award of  
24 statutory damages within the limits prescribed by Congress is appropriate “even for  
25 uninjurious and unprofitable invasions of copyright.” *F. W. Woolworth Co. v.*  
26 *Contemporary Arts, Inc.*, 344 U.S. 228, 233 (1952).

27 In addition, statutory damages may be increased if the defendant willfully infringed  
28 the plaintiff’s copyright. 17 U.S.C. § 504(c)(2). Allegations that a defendant acted willfully

1 are properly deemed to be true once the court enters a default. *Derek Andrew, Inc. v. Proof*  
2 *Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008). The facts of this case dictate that  
3 Defendant willfully infringed PCC's registered copyright, warranting enhanced statutory  
4 damages. Dkt. 1, ¶ 24, 26. This is further supported by the continued conduct of Defendant  
5 in the course of this case, evidenced by his filings (which contained admissions as well as  
6 statements that were so irrelevant and inflammatory that this Court decided to strike them).  
7 Dkts. 8, 10, 12, 13.

8 The damages available in copyright claims are specifically designed to overcome  
9 their speculative nature or the needs of a Plaintiff to prove actual economic damages. More  
10 importantly, 17 U.S.C. § 504's statutory damages have a specific focus on public harm and  
11 deterrence due to the prevalence and disregard of the greater harm caused. In the present  
12 case, the actual economic damages suffered by PCC are speculative due to the difficulty of  
13 knowing how long and how often Defendant published the Recordings and due to his  
14 voluntary cessation of the infringing conduct, which leaves open the possibility that he will  
15 resume his actions at some point in the future. But the evidence available indicates  
16 Defendant was knowingly and actively infringing PCC's copyright, and continued to do so  
17 despite PCC's repeated requests that Defendant stop his behavior and remove the  
18 Recordings from the internet. Dkt. 1, ¶ 22.

19 PCC asks the Court for a statutory damages award pursuant to 17 U.S.C. § 504(c) to  
20 effect the intent of Congress and for Defendant's willful infringement and blatant disregard  
21 of these proceedings. In setting an amount, PCC asks the Court to consider that Defendant  
22 willfully disregarded multiple requests and agreements to cease infringing activity, *see* Dkt.  
23 1, ¶ 22, as well as his behavior in the course of this case, indicating a general indifference  
24 to the harm caused by infringers and contempt for the procedure of law. As such, PCC  
25 requests an award of damages which will make clear to Defendant and other potential  
26 infringers that copyright infringement penalties are not to be disregarded and award PCC a  
27 multiplier for Defendant's willful infringing conduct, in a sum of at least \$2,000 for each  
28 copyright infringed, for a sum of at least \$4,000.

1 **IV. CONCLUSION**

2 Based on the foregoing points and authorities, PCC respectfully requests that the  
3 Court grant its Motion for Default Judgment, permanently enjoin Defendant from  
4 publishing, reproducing, or publicly performing the Recordings, require Defendant to  
5 destroy and deliver up for destruction all Recordings, and for statutory damages pursuant  
6 to 17 U.S.C. § 504 in an amount of at least \$4,000, to give the statute full force and effect  
7 and to indicate to the general public that PCC's claims and these proceedings should not be  
8 disregarded or ignored.

9 RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of May, 2024.

10 DICKINSON WRIGHT PLLC

11 s/ Cameron C. Stanley

Bennett Evan Cooper

12 Scott A. Holcomb

13 Cameron C. Stanley

*Attorneys for Plaintiff*

14 *Pima Community College District*

15  
16 **Certificate of Service**

17 I hereby certify that on May 3, 2024, I served the foregoing document by email and  
18 U.S. mail on the following party who is not a registered participant of the CM/ECF system:

19 Edip Yuksel  
20 1071 Celestial Street  
21 Apartment 1801  
22 Cincinnati, OH 45202  
[edipyuksel@gmail.com](mailto:edipyuksel@gmail.com)  
23 Defendant *Pro Se*

24 s/ Trish Hoffmann

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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Pima Community College District, a public  
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Plaintiff,

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Edip Yuksel, an individual,

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Case No. 4:23-cv-00361-RCC

**JUDGMENT**

Based on Plaintiff's Motion for Default Judgment and Permanent Injunction and good cause appearing, the Court enters Judgment in favor of Plaintiff and against Defendant.

IT IS ORDERED:

(1) Permanently enjoining Defendant, his officers, agents, servants, employees, owners and representatives, and all other persons, firms, or corporations in active concert or participation with them, from publishing, reproducing, or publicly performing the Recordings;

(2) Defendant, his officers, agents, servants, employees, owners and representatives, and all other persons, firms, or corporations in active concert or participation with them must destroy and deliver up for destruction all Recordings; and

(3) Defendant must pay Plaintiff statutory damages of \$\_\_\_\_\_.