

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DISH NETWORK L.L.C.,

Plaintiff,

-against-

786 WIRELESS WORLD, INC., 786  
ENTERPRISES, INC., RANA M. AFZAL,  
and DOES 1-10,

Defendants.

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LEVY, United States Magistrate Judge:

ORDER AND  
REPORT AND  
RECOMMENDATION  
21 CV 5730 (AMD)(RML)

Plaintiff Dish Network L.L.C. (“plaintiff”) commenced this copyright infringement action on October 14, 2021 against defendants 786 Wireless World, Inc., 786 Enterprises, Inc., and Rana M. Afzal (“defendants”). After plaintiff moved for a default judgment and permanent injunction, defendants answered the complaint. (See Answer, filed Feb. 8, 2022, Dkt. No. 21.) Because defendants had not requested leave to file a late answer or filed an opposition to the default motion, I directed them to submit a status report on or before June 22, 2022 informing the court whether they intended to seek leave to file a late answer or to oppose the pending motion for default judgment. (See Order, dated June 14, 2022.) My order advised defendants that in order to file an answer after the time to do so had expired, they should explain why, under the standards set forth in Enron Oil Corp. v. Diakuhara, 10 F.3d 90, 96 (2d Cir. 1993) and Liang v. Home Reno Concepts, LLC, 803 F. App’x 444, 446 n.2 (2d Cir. 2020), a belated answer was permissible. (Id.) My order also cautioned defendants that if they did not properly request leave to file a late answer, I would recommend that the Answer be stricken. (Id.)

Defendants submitted a status report on June 21, 2022, stating that they did intend to seek leave to file a late answer. (See Status Report, filed June 21, 2022, Dkt. No. 23.) After

requesting and receiving two extensions of time, defendants filed their unopposed motion to file a late answer, which was granted. (See Order, dated Aug. 24, 2022.) I then conducted an initial conference with the parties and set a discovery deadline of February 17, 2023. (See Minute Entry, dated September 29, 2022.) On consent, plaintiff filed an amended complaint naming additional defendants on November 7, 2022, and defendants 786 Wireless World, Inc., 786 Enterprises, Inc., Adeel Hussain and Rana M. Afzal (collectively, the “786 Defendants”) filed an answer on November 29, 2022. (See First Amended Complaint, dated Nov. 7, 2022, Dkt. No. 30; Answer, dated Nov. 28, 2022, Dkt. No. 35.) On January 12, 2023, after defendants Sushma Sharma (a.k.a. Sudhma Sharma), Rajesh Vaidya (a.k.a. Omer Massod), Satbir Girn, Rajbir Girn, Rajkiran Singh (a.k.a. Sajan Singh), and Khizer Farooq failed to answer or move with respect to the amended complaint, plaintiff obtained a Clerk’s Certificate of Default with respect to those defendants. (See Clerk’s Entry of Default, dated Jan. 12, 2023, Dkt. No. 46.)

On January 25, 2023, plaintiff filed a letter motion to compel, outlining the 786 Defendants’ failure to comply with discovery demands and requesting a conference with the court. (See Letter of Adam I. Rich, Esq., dated Jan. 25, 2023, Dkt. No. 47.) On January 26, 2023, I issued an Order to Show Cause directing the 786 Defendants to explain why this court should not grant the relief requested in plaintiff’s motion and ordering defendants’ counsel to meet and confer with plaintiff’s counsel “to set expedited dates for defendants’ depositions and defendants’ responses to outstanding discovery requests.” (See Order to Show Cause, dated Jan. 26, 2023.) My order noted that the discovery deadline would be reviewed at a status conference on February 14, 2023. (Id.)

Counsel for the 786 Defendants appeared for the conference on February 14, 2023 and reported that he had left unreturned phone messages with his clients and at one point had a direct conversation with defendants about the need to comply with outstanding discovery

requests, but defendants had failed to respond. As a result, I issued an order that defendants had waived any objections to the outstanding discovery requests, and I ordered the 786 Defendants to pay the costs for a deposition for which they did not appear. (Minute Entry, dated Feb. 14, 2023.) My order further directed defendants to serve responses to all outstanding requests for production of documents, interrogatories and requests for admission by March 3, 2023, and ordered defendants' counsel to meet with the 786 Defendants no later than February 17, 2023 and file a status report by that date confirming their meeting and defendants' intention to comply with the March 3, 2023 deadline. (Id.) I also ordered defendants to appear for depositions on March 13 and 14, 2023, and advised that “[t]hese court-ordered dates may not be changed without the consent of both plaintiff and defendants.” (Id.) Finally, I warned the 786 Defendants that their “failure to comply with this order will most likely result in a recommendation that a default be entered against them.” (Id.)

On February 20, 2023, plaintiff's counsel wrote to the court “concerning the continued, willful, and deliberate refusal of [the 786 Defendants] to participate in the discovery process, or otherwise defend this case.” (Letter of Adam I. Rich, Esq., dated Feb. 20, 2023, Dkt. No. 49.) Counsel for the 786 Defendants responded with a letter reporting that he had scheduled a meeting with his clients for February 17, 2023, but that they did not appear or contact him. (Letter of David H. Perlman, Esq., filed Feb. 21, 2023, Dkt. No. 50.) He asked to be relieved as counsel. (Id.) Given the 786 Defendants' ongoing refusal to communicate with counsel or participate in their defense, that motion is granted.

On March 15, 2023, plaintiff filed a status report advising that nothing had changed; the 786 Defendants had not responded to any discovery requests, had not appeared for depositions, and had failed to comply with my order that they pay the costs of a missed

deposition. Plaintiff therefore moved for a default judgment under Rule 37 of the Federal Rules of Civil Procedure. (Letter of Adam I. Rich, Esq., dated March 15, 2023, Dkt. No. 51.)

“‘If a party . . . fails to obey an order to provide or permit discovery,’ the district court may impose sanctions, including ‘rendering a default judgment against the disobedient party.’” Guggenheim Cap., LLC v. Birnbaum, 722 F. 3d 444, 450 (2d Cir. 2013) (affirming entry of default judgment pursuant to Rule 37 where the defendant’s “intransigence spanned months and . . . less serious sanctions would have been futile.”) (quoting FED. R. CIV. P. 37(b)(2)(A)(vi)). In deciding whether to enter a default judgment as a sanction under Rule 37, courts consider: “‘(1) the willfulness of the non-compliant party; (2) the efficacy of lesser sanctions; (3) the duration of the noncompliance; and (4) whether the non-compliant party had been warned’ that noncompliance would be sanctioned.” Id. at 451 (quoting Agiwal v. Mid Island Mortg. Corp., 555 F.3d 298, 302 (2d Cir. 2009)).

Here, the 786 Defendants have “a demonstrated history of willful non-compliance with court orders,” id., including failure to appear for depositions or respond to discovery requests. Lesser sanctions have proved insufficient, as the court has already ordered the 786 Defendants to pay the costs of the deposition for which they did not appear (to date, they have not paid those costs), and held that the 786 Defendants have waived any objections to the outstanding discovery requests. See Agiwal, 555 F. 3d at 303 (affirming entry of default judgment against party that failed to comply with discovery requests even after Magistrate Judge imposed lesser sanctions). As for the duration of the noncompliance, this case has been pending against defendants 786 Wireless World, 786 Enterprises, and Rana M. Afzal since October 2021, and against defendant Adeel Hussain since November 2022. These defendants have not responded to discovery requests and have made clear that they are not defending the case or cooperating with their attorney. Finally, the 786 Defendants have been sufficiently warned that

their continued noncompliance “will most likely result in a recommendation that a default be entered against them.” (Minute Entry, dated Feb. 14, 2023.) The 786 Defendants “cannot credibly argue that [they were not] sufficiently warned that serious sanctions were imminent.” Guggenheim Cap., 722 F. 3d at 453. For these reasons, I respectfully recommend that plaintiff’s motion for entry of default judgment against the 786 Defendants be granted.

### CONCLUSION

For the reasons stated above, attorney David H. Perlman’s motion to be relieved as counsel is granted, and I respectfully recommend that default judgments be entered against defendants 786 Wireless World, Inc., 786 Enterprises, Inc., Adeel Hussain and Rana M. Afzal. I further recommend that plaintiff be directed to file a submission detailing the relief it requests from the defaulting defendants.

Any objections to this report and recommendation must be filed within fourteen (14) days. Failure to file objections within the specified time waives the right to appeal the district court’s order. See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72, 6(a), 6(d). Plaintiff is directed to serve copies of this Order and Report and Recommendation on all defendants by first-class mail within three days of the date of this Order and Report and Recommendation and to file proof of service by ECF.

Respectfully submitted,

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/s/  
ROBERT M. LEVY  
United States Magistrate Judge

Dated: Brooklyn, New York  
April 25, 2023