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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SPIN MASTER LTD. and SPIN MASTER, INC., *Plaintiffs* v. 13385184960@163.COM, 18888236883@163.COM, ALTAY, ANGELCITYER, BAMBOO001, CAOPING, CONGCONG2, DANDANXIAOWU, DAYINGJIA1256, DIAMOND BOUTIQUE, DIY GEM SHOP, DREAMSHIPS, DUMBLEDOR SHOP, EFASHIONER, EVERY DAY THERE WILL BE A NEW SUN, FASHIONABLE AND SPORT STORE, FASHIONDOFU, FELLA, FHIJHCF, FULLUSSET, GIFTSHOP2017, GIVE YOUR DREAM, GLOBAL_DAWN, GLOBAL-SPIRIT, GODCUP, GREEN FASHION, GUANGDONGHUATAI, GUIGIUDEDIAN, HAPPYSTORE99, HUASHAOSHOT, HUAXIAWAIMAOSHANG, ISHOP, ISYISY, IVANICABABYSHOP, JAHURTO, JASONSTORE1, JL&PREFECT, JUZIEJIA, KAIXUANXIAORENJIA, KEEP GOING, KRISTINECOTTRELL, LANXIHUANGLONGDONG, LIANJIAXIAODIAN, LOSTIU8, MAGIC CURRY, MAISYSTORE001, MAOMAO1608@163.COM, MIKEQYQ, MOMTUTUS, MR. P, MR.ZXX, MRY_STORE, NEWMERCHANTFASHION, NVC, PANDORA LOVE,	**18-cv-10524 (LGS) (KNF)**

QIQIYANYAN, QOMXZHK, RENDERINGYOU, SHENZHENYIWEIKEJIYOUXIANGONGSI, SHENZHEN YINFA TECHNOLOGY LTD, SHOW YOU NOW, SHU PANPAN WU SHOUSHOU, SIERMAOYIYOUXIANGONGSI, SMALL Y CLOTHES STORE, SMALLSMALLWORLD, THREEQIAOWAY, TIANCONG135, TOMIK18816764436, UTOPIA1973, UTOPIA2017, VALUABLE, YEHUDIEYE, WANGJUHUA11365, WENDY E-COMMERCE, WULI0014, WXXWW, XINYUDIYIYI, XYRSTOREKL, YIWU BLUE SKY, XIONGDISTORE, XUANXUAN636187, XZH, YANGMINGXIONGDI, YANGLIU248, YEKAIQIANG, YEQIRONG, YIHUIANDYIHUI, YOUR FASHION JEWELRY, YOUYOUSHANXI, YOYOBESS, YQUAN, YUXITAO, YY6752SDD, ZHANGDONGYUE, ZHANGXIAXIAZHANG, ZHENPINHUI and ZHENZHEN-FASHION,

Defendants

PLAINTIFFS' INQUEST MEMORANDUM IN SUPPORT OF PLAINTIFFS' REQUEST FOR STATUTORY DAMAGES

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GLOSSARY

Term	Definition	Docket Entry Number
Plaintiffs or "Spin Master"	Spin Master Ltd. and Spin Master, Inc.	N/A
Defendants	13385184960@163.com, 18888236883@163.com, Altay, angelcityer, bamboo001, caoping, congcong2, dandanxiaowu, dayingjia1256, Diamond boutique, DIY Gem shop, Dreamships, Dumbledor shop, Efashioner, Every day there will be a new sun, fashionable and sport store, fashiondofu, Fella, fhijhcf, Fullusset, giftshop2017, give your dream, global_dawn, global-spirit, Godcup, Green Fashion, guangdonghuatai, guigiudedian, happystore99, Huashaoshot, Huaxiawaimaoshang, ISHOP, ISYISY, ivanicababyshop, Jahurto, Jasonstore1, JL&prefect, juziEjia, kaixuanxiaorenjia, Keep going, kristinecottrell, Lanxihuanglongdong, lianjiaxiaodian, Lostiu8, magic Curry, maisystore001, maomao1608@163.com, Mikeqyq, MOMTUTUS, Mr. P, Mr.Zxx, MRY_Store, NewMerchantFashion, NVC, Pandora love, qiqiyanyan, Qomxzhk, Renderingyou, Shenzhenyiweikejiyouxiangongsi, Shenzhen Yinfa Technology LTD, Show You Now, Shu panpan wu shoushou, siermaoyiyouxiangongsi, Small Y Clothes Store, smallsmallworld, Threeqiaoway, tiancong135, Tomik18816764436, Utopia1973, Utopia2017, Valuable, yehudieye, wangjuhua11365, wendy E-commerce, wuli0014, wxxww, Xinyudiyiyi, xyrstorekl, yiwu blue sky, xiongdistore, xuanxuan636187, XZH, Yangmingxiongdi, yangliu248, yekaiqiang, yeqirong, YiHuiandYiHui, YOUR FASHION JEWELRY, youyoushanxi, YOYOBESS, Yquan, Yuxitao, YY6752SDD, Zhangdongyue, zhangxiaxiazhang, Zhenpinhui and zhenzhen-fashion	N/A
Defaulting Defendants	13385184960@163.com, 18888236883@163.com, Altay, angelcityer, bamboo001, caoping, congcong2, dandanxiaowu, dayingjia1256, Diamond boutique, Dreamships, Dumbledor shop, Every day there will be a new sun, fashiondofu, Fella, fhijhcf, Fullusset, giftshop2017, give your dream, global_dawn, global-spirit, Godcup, Green Fashion, guangdonghuatai, guigiudedian, Huashaoshot, Huaxiawaimaoshang, Jahurto, Jasonstore1, juziEjia, kaixuanxiaorenjia, Keep going, Lostiu8, maisystore001, maomao1608@163.com, Mikeqyq, MOMTUTUS, Mr. P, Mr.Zxx, MRY_Store,	N/A

	NewMerchantFashion, qiqiyanyan, Qomxzhk, Renderingyou, Shenzhenyiweikejiyouxiangongsi, Shenzhen Yinfa Technology LTD, Show You Now, Shu panpan wu shoushou, siermaoyiyouxiangongsi, smallsmallworld, Threeqiaoway, tiancong135, Tomik18816764436, Utopia1973, Utopia2017, Valuable, yehudieye, wangjuhua11365, wuli0014, wxxww, Xinyudiyiyi, xyrstorekl, yiwu blue sky, xiongdistore, xuanxuan636187, XZH, Yangmingxiongdi, yangliu248, yekaiqiang, yeqirong, YiHuiandYiHui, YOUR FASHION JEWELRY, youyoushanxi, Yquan, YY6752SDD, Zhangdongyue, zhangxiaxiazhang, Zhenpinhui and zhenzhen-fashion	
Sealing Order	Order to Seal File entered on November 13, 2018	1
Complaint	Plaintiffs' Complaint filed on November 13, 2018	7
Application	Plaintiffs' *Ex Parte* Application for: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts (as defined *infra*); 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery filed on November 13, 2018	13-16
Arnaiz Dec.	Declaration of Jessica Arnaiz in Support of Plaintiffs' Application	14
Harrs Dec.	Declaration of Chris Harrs in Support of Plaintiffs' Application	15
Wolgang Dec.	Declaration of Spencer Wolgang in Support of Plaintiffs' Application	16
TRO	1) Temporary Restraining Order; 2) Order Restraining Assets and Merchant Storefronts, 3) Order to Show Cause Why a Preliminary Injunction Should Not Issue; 4) Order Authorizing Bifurcated and Alternative Service and 5) Order Authorizing Expedited Discovery entered on November 13, 2018	N/A
PI Show Cause Hearing	November 27, 2018 hearing to show cause why a preliminary injunction should not issue.	N/A
PI Order	November 28, 2018 Preliminary Injunction Order	4
Wish	A San Francisco, California-based, online marketplace and e-commerce platform located at Wish.com, which is owned by ContextLogic, Inc. ("ContextLogic"), that allows manufacturers and other third-party merchants, like Defendants, to advertise, distribute, offer for sale, sell and ship their retail products, which, upon information and belief, primarily originate from China, directly to	N/A

	consumers worldwide and specifically to consumers residing in the U.S., including New York	
User Account(s)	Any and all accounts with online marketplace platforms such as Wish, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all other persons in active concert with any of them	N/A
Merchant Storefront(s)	Any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in products, including Counterfeit and/or Infringing Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	N/A
Spin Master Products	Spin Master's innovative children's lifestyle products and toys under their well-known brands, including: Twisty Petz, Flutterbye Fairy, Bunchems and Hatchimals, as well as under their licensed properties such as Paw Patrol and Air Hogs	N/A
Twisty Petz Products	Over 70 types of collectible, bejeweled pets that transform into sparkly bracelets, necklaces or backpack accessories with a few simple twists	N/A
Twisty Petz Mark	U.S. Trademark Registration No. 5,514,561 for "TWISTY PETZ" for a variety of goods in Class 28	N/A
Twisty Petz Work	U.S. Copyright Reg. VA 1-305-408, covering the Twisty Petz Packaging Artwork & Collectors' Guides	N/A
Counterfeit Products	Products bearing or used in connection with the Twisty Petz Mark and/or Twisty Petz Work, and/or products in packaging and/or containing labels and/or hang tags bearing the Twisty Petz Mark and/or Twisty Petz Work, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Twisty Petz Mark and/or Twisty Petz Work and/or products that are identical or confusingly or substantially similar to the Twisty Petz Products	N/A
Financial Institutions	Any and all banks, financial institutions, credit card companies and payment processing agencies, such as ContextLogic, PayPal Inc. ("PayPal"), Payoneer Inc. ("Payoneer"), PingPong Global Solutions, Inc. ("PingPong"), and other companies or agencies that engage	N/A

	in the processing or transfer of money and/or real or personal property of Defendants	
Defendants' Assets	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)	N/A
Defendants' Financial Accounts	Defendants' Assets from any and all accounts associated with or utilized by any Defendant or any Defendant's Merchant Storefront(s) and User Account(s) (whether said account is located in the U.S. or abroad)	N/A
Defendants' Frozen Accounts	Defendants' Financial Accounts that were and/or are attached and frozen or restrained by the Financial Institutions pursuant to the TRO and/or PI Order, or which are attached and frozen or restrained pursuant to any future order entered by the Court in this Action	N/A
Defendants' Frozen Assets	Defendants' Assets from Defendants' Financial Accounts that were and/or are attached and frozen or restrained pursuant to the TRO and/or PI Order, or which are attached and frozen or restrained pursuant to any future order entered by the Court in this Action	N/A
Wish Discovery	The supplemental report identifying Defendants' Infringing Product Id, Merchant Id, Merchant Real Person Name, Email Address, Physical Address, Product Lifetime Units Sold and Product Lifetime GMV, provided by counsel for ContextLogic to Plaintiff's counsel pursuant to the expedited discovery ordered in both the TRO and PI Order	N/A
Motion for Default Judgment	Plaintiffs' Application for an Order to Show Cause Why Default Judgment and a Permanent Injunction Should Not be Entered Against Defaulting Defendants filed on March 13, 2019	40 - 43
Chung DJ Aff.	Affidavit by Andrew S. Chung in Support of Plaintiffs' Motion for Default Judgment	N/A
Show Cause Hearing	April 11, 2019 Show Cause Hearing on why default judgment and a permanent injunction should not be entered against Defaulting Defendants	N/A
Default Judgment Order	April 11, 2019 Order granting default judgment in favor of Plaintiffs and Plaintiffs' request for a permanent injunction	56
Scheduling Order	Scheduling Order for Damages Inquest entered on April 17, 2019	58
May 6, 2019 Order	May 6, 2019 Order extending the time for all parties to make their respective inquest submission by 14 days and directing Plaintiffs to serve Defaulting Defendants with the May 6, 2019 Order	60
May 10, 2019 Order	May 10, 2019 Order directing Plaintiffs to comply with the May 6, 2019 Order by 1) serving the Defendants with the	62

	same; and 2) filing proof of service with the Clerk of the Court	
Yamali Inquest Aff.	Affidavit of Danielle S. Yamali in support of Plaintiffs' Request for Statutory Damages	TBD

TO THE HONORABLE KEVIN NATHANIEL FOX:

Pursuant to the Scheduling Order, Plaintiffs, by and through their undersigned counsel, hereby respectfully submits this Inquest Memorandum in further support of their Motion for Default Judgment against Defaulting Defendants in the above-referenced case.[1]

I. INTRODUCTION

On April 11, 2019, the Hon. Lorna G. Schofield entered an order granting default judgment in favor of Plaintiffs against Defaulting Defendants and Plaintiffs' request for a permanent injunction. (Yamali Inquest Aff., ¶ 13, Ex. B.) Plaintiffs respectfully submit the instant Inquest Memorandum in further support of their request for: 1) individual statutory damages awards pursuant to 15 U.S.C. § 1117(c), plus post-judgment interest calculated pursuant to the statutory rate, for a total of seventeen million six hundred twenty-five thousand dollars ($17,625,000.00), as follows:[2]

a. an award of $50,000.00 in statutory damages against the following fifty-two (52) Defaulting Defendants, totaling $2,600,000.00: 18888236883@136.com, Altay, angelcityer, bamboo001, caoping, dandanxiaowu, Diamond boutique, Fella, giftshop2017, guandonghuatai, huashaoshot, Jahurto, Jasonstore1, juziEjia, maisystore001, Mikeqyq, MRY_Store, NewMerchantFashion, qiqiyanyan, shenzhenyiweikejiyouxiangongsi, siermaoyiyouxiangongsi, smallsmallworld, threeqiaoway, Utopia1973, wangjuhua11365, XZH, yehudieye, YOUR FASHION JEWELRY, Yquan, zhenpinhui, global-spirit, yekaiqiang, youyoushanxi,

[1] Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Complaint, Application or Glossary.

[2] Plaintiffs moved for default judgment against eighty-two (82) Defendants. However, since the date of filing their Motion for Default Judgment, Plaintiffs have filed a Notice of Voluntary Dismissal for the following three (3) Defendants: happystore99, kristinecottrell and magic Curry. (Dkt. 57.) Plaintiffs are not seeking statutory damages against these three (3) Defendants.

zhenzhen-fashion, MOMTUTUS, qomxzhk, Keep going, maomao1608@163.com, zhangdongyue, fhijhcf, kaixuanxiaorenjia, global_dawn, YiHuiandYiHui, Shenzhen Yinfa Technology LTD, 13385184960@163.com, Dumbledor shop, xyrstorekl, Valuable, Tomik18816764436, fashiondofu, wuli0014 and yiwu blue sky;

b. an award of $75,000.00 in statutory damages against the following three (3) Defaulting Defendants, totaling $225,000.00: huaxiawaimaoshang, zhangxiaxiazhang and xuanxuan636187;

c. an award of $100,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $100,000.00: Yangmingxiongdi;

d. an award of $150,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $150,000.00: Shu panpan wu shoushou;

e. an award of $200,000.00 in statutory damages against the following four (4) Defaulting Defendants, totaling $800,000.00: dreamships, Mr.Zxx, Utopia2017 and guigiudedian;

f. an award of $250,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $500,000.00: xiongdistore and congcong2

g. an award of $300,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $600,000.00: Every day there will be a new sun and YY6752SDD

h. an award of $550,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $550,000.00: Fullusset;

i. an award of $600,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $600,000.00: Godcup;

j. an award of $1,000,000.00 in statutory damages against the following three (3) Defaulting Defendants, totaling $3,000,000.00: Renderingyou, give your dream and Mr.P;

k. an award of $1,500,000.00 in statutory damages against the following three (3) Defaulting Defendants, totaling $4,500,000.00: dayingjial1256, yeqirong and wxxww;

l. an award of $2,000,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $4,000,000.00: Lostiu8 and yangliu248;

and individual statutory damages awards pursuant to 17 U.S.C. § 504 plus post-judgment interest calculated pursuant to the statutory rate, for a total of two hundred thousand dollars ($200,000.00), as follows:

a. an award of $50,000.00 in statutory damages against the following four (4) Defaulting Defendants, totaling $200,000.00: tiancong135, Show You Now, Green Fashion and xinyudiyiyi;

2) a post-judgment asset restraining order and 3) an order authorizing the release and transfer of Defaulting Defendants' Frozen Assets to satisfy the damages awarded to Plaintiffs.[3]

II. PROCEDURAL HISTORY

In the interest of brevity, the procedural history is set forth in the Motion for Default Judgment, Chung DJ Aff. and Yamali Inquest Aff.

[3] As aforementioned, through their Motion for Default Judgment, Plaintiffs only seek damages for their First, Second and Fourth Causes of Action (Trademark Counterfeiting, Trademark Infringement and Copyright Infringement). Plaintiffs do not seek monetary relief in connection with the remaining causes of action plead in the Complaint. Moreover, Plaintiffs do not seek attorneys' fees.

III. STATEMENT OF FACTS

Plaintiffs Spin Master are part of a large, multinational toy and entertainment company started in 1994 that designs and sells the Spin Master Products. Plaintiffs promote and sell the Spin Master Products throughout the United States and the world through major retailers, quality toy stores and online marketplaces. (Harrs Dec., ¶¶ 4-5.) One of Spin Master's most recent and successful products is Twisty Petz, which are bejeweled pets that transform into sparkly bracelets, necklaces or backpack accessories with a few simple twists. *Id*. at ¶ 6. Plaintiffs' Twisty Petz Products have achieved tremendous success and were named one of the "hottest toys for 2018" by the *New York Post* and included in *Amazon's 2018 Holiday Toy List*. *Id*. at ¶ 7.

While Plaintiffs have gained significant common law trademark and other rights in their Twisty Petz Products, through use, advertising and promotion, Plaintiffs have also protected their valuable rights by filing for and obtaining a federal trademark registration. *Id.* at ¶¶ 9-11. In addition, Spin Master also owns both registered and unregistered copyrights related to the Twisty Petz Products. *Id*. at ¶¶ 12-13.

Defaulting Defendants are located in China but conduct business in the U.S., including within this judicial district, and other countries through their User Accounts and Merchant Storefronts with and on Wish. (Complaint, Ex. D.) Plaintiffs retained New Alchemy Limited, a company that provides trademark infringement and other intellectual property research services to investigate and research manufacturers, wholesalers, and/or third-party merchants offering for sale and/or selling Counterfeit Products on Wish. (Arnaiz Dec., ¶¶ 3-4; Harrs Dec., ¶ 21; Wolgang Dec., ¶ 16.) Through their Merchant Storefronts, without Plaintiffs' authorization or consent, Defaulting Defendants were and/or are currently manufacturing, importing, exporting, advertising,

marketing, promoting, distributing, displaying, offering for sale and/or selling Counterfeit Products. (Arnaiz Dec., ¶ 6, Ex. A; Harrs Dec., ¶¶ 23-24; Complaint, Ex. D.)

Based on the discovery produced by ContextLogic, Defaulting Defendants collectively sold a minimum of 62,255 Counterfeit Products on Wish alone.[4] (Chung DJ Aff., ¶ 28, Ex. E.) In the experience of Plaintiffs' counsel, however, it is usual and customary for counterfeiters, such as Defaulting Defendants, to sell across multiple e-commerce platforms. (Chung DJ Aff., ¶ 30.) Therefore, Defaulting Defendants probably utilize other e-commerce platforms, such as eBay.com and Alibaba.com, as a matter of illustration, to circumvent the TRO and PI Order in order to continue to engage in counterfeiting and infringing activities, specifically the sale and/or offering for sale of Counterfeit Products. *Id*. at ¶ 31. Consequently, it is extremely likely that the number of sales of Counterfeit Products made by Defaulting Defendants greatly exceeds the numbers identified in the Wish Discovery. *Id.* at ¶ 32.

IV. ARGUMENT

A. DEFAULTING DEFENDANTS ACTED WILLFULLY

As a threshold matter, since Defaulting Defendants failed to appear in this action, no further analysis is required into willfulness. Axiomatically, infringement is deemed willful "[b]y virtue of the default[.]" *Tiffany (NJ) Inc. v. Luban*, 282 F. Supp. 2d 123, 124 (S.D.N.Y. 2003). Nevertheless, Plaintiffs respectfully submit that Defaulting Defendants unequivocally engaged in willful counterfeiting for the following reasons.

The standard for willfulness "is simply whether the defendant had knowledge that its conduct represented infringement or perhaps recklessly disregarded the possibility." *Twin Peaks*

[4] The individual breakdown of sales figures of Counterfeit Products for each and every Defaulting Defendant, as identified in the Wish Discovery, is attached to the Yamali Inquest Aff. as Exhibit E and Chung DJ Aff. as Exhibit E. Plaintiffs respectfully submit that Fed. R. Evid. 1006 authorizes the use of a summary sheet such as Exhibit E to establish damages in civil actions such as the instant action.

Prods., Inc. v. Publ'ns Int'l, Ltd., 996 F.2d 1366, 1382 (2d Cir. 1993). Such knowledge may be actual or constructive and may be inferred from defendant's conduct rather than proven directly. *See N.A.S. Import Corp. v. Alentino, Ltd.*, 968 F.2d 250, 252 (2d Cir. 1992) (holding that for "the purpose of awarding enhanced statutory damages, the knowledge component of willfulness "need not be proven directly but may be inferred from the defendant's conduct."). First, in the instant action, the Counterfeit Products contain marks and/or artwork that are identical to Plaintiffs' Twisty Petz Mark and Twisty Petz Work. (*See* Ex. D to the Complaint and Ex. E to the Chung Inquest Aff.) *see also Coach, Inc. v. Melendez*, No. 10-cv-6178 (BSJ) (HBP), 2011 U.S. Dist. LEXIS 116842, at *5 (S.D.N.Y. Sep. 2, 2011) ("Because the marks used by defendants on their products are virtually identical to the Coach Registered Trademarks, the conclusion is inescapable that defendants' infringement and counterfeiting is intentional."). Second, the undisputed evidence demonstrates that none of the Counterfeit Products sold by Defaulting Defendants were purchased from Plaintiff. (Harrs Dec., ¶ 24.) *see also Bambu Sales, Inc. v. Ozak Trading, Inc.*, 58 F.3d 849, 854 (2d Cir. 1995) (defendants found to have acted willfully due in part to their failure to take any measures to verify the authenticity of the infringing product); *Gucci Am., Inc., v. Duty Free Apparel, Ltd.*, 315 F. Supp. 2d 511, 521 (S.D.N.Y. April 23, 2004) (quoting *Gucci America, Inc. v. Daffy's Inc.*, 354 F.3d 228, 245 (3d Cir. 2003) ("'Selling products acquired outside the customary chain of retail distribution and without the usual authenticating documentation' is a 'high risk business.'"). Thus, the uncontradicted evidence demonstrates that Defaulting Defendants unequivocally engaged in willful counterfeiting activities.

B. PLAINTIFFS ARE ENTITLED TO HEIGHTENED STATUTORY DAMAGES

Both the Lanham Act and the Copyright Act allow a plaintiff to elect either statutory damages or actual damages for willful infringement. *See* 15 U.S.C. § 1117(c) and 17 U.S.C. §

504(c). The Lanham Act provides that, at any time before final judgment is rendered, a trademark owner may elect to recover an award of statutory damages, rather than actual damages, for the use of a counterfeit mark in connection with goods or services in the amount of: (1) "not less than $1,000 or more than $200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just" or (2) if the use of the counterfeit mark is found to be willful, up to "$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just." 15 U.S.C. § 1117(c). Furthermore, Section 504(c) of the Copyright Act allows a copyright owner to elect statutory damages in the amount of "not less than $750 or more than $30,000 as the court considers just" with respect to any one work. Alternatively, where a court finds willful infringement, "the court in its discretion may increase the award of statutory damages to a sum of not more than $150,000.00." 17 U.S.C. § 504(c)(l)-(2).

In determining statutory damages awards under Section 1117(c) of the Lanham Act, courts have adopted the following factors used for determining statutory damages under Section 504(c) of the Copyright Act: "(1) the expenses saved and the profits reaped; (2) the revenues lost by the plaintiff; (3) the value of the copyright [or trademark]; (4) the deterrent effect on others besides the defendant; (5) whether the defendant's conduct was innocent or willful; (6) whether a defendant has cooperated in providing particular records from which to assess the value of the infringing material produced; and (7) the potential for discouraging the defendant." *Gucci Am., Inc.*, 315 F. Supp. 2d at 511 (quoting *Fitzgerald Publishing Co., Inc. v. Baylor Publishing Co.*, 807 F.2d 1110, 1117 (2d Cir. 1986)); *see also Louis Vuitton Malletier v. Carducci Leather Fashions, Inc.*, 648 F. Supp. 2d 501, 504 (S.D.N.Y. 2009) ("In the absence of any guidelines for determining the appropriate award in a case involving willful trademark violations, courts often

have looked for guidance to the better developed case law under the Copyright Act, 17 U.S.C. § 504(c), which permits an award of statutory damages for willful copyright infringement."). Congress enacted the statutory damages remedy in trademark counterfeiting cases because evidence of a counterfeiter's profits is almost impossible to ascertain since "records are frequently nonexistent, inadequate, or deceptively kept." *See Gucci Am., Inc.*, 315 F Supp 2d at 520; *see also Coach, Inc.*, 2014 U.S. Dist. LEXIS 79005, at *41-42 ("Section 1117(c) of the Lanham Act was created to give victims of trademark infringement and unfair competition an avenue for recovering damages when a defendant hides, alters, or destroys business records."). Given Defaulting Defendants' propensities to conceal their identities, disappear and destroy or hide any evidence or records of their counterfeiting and infringing actions, and that to date, no Defaulting Defendants have appeared, answered or otherwise responded to the Complaint, Plaintiffs cannot ascertain Defaulting Defendants' actual profits. (Chung DJ Aff., ¶ 26.) Simply put, this case presents the exact circumstances that Congress envisioned in its enactment of Section 1117(c).

With respect to the first, second and sixth factors, Defaulting Defendants' propensities to secrete evidence pertaining to sales and profits – along with their failure to appear, answer or otherwise respond to the Complaint or comply with the expedited discovery ordered in the TRO and PI Order – have made it impossible to determine Defaulting Defendants' profits, quantify any expenses that Defaulting Defendants may have saved by infringing Plaintiffs' Twisty Petz Mark and Twisty Petz Work or assess any revenues lost by Plaintiffs as a result of Defaulting Defendants' infringing and counterfeiting activities. (Chung DJ Aff., ¶¶ 26-29.) Thus, these three factors support generally higher statutory damages award for Plaintiffs. *See generally AW Licensing, LLC v. Bao*, No. 15-cv-1373 (KBF), 2016 U.S. Dist. LEXIS 101150, at *7 (S.D.N.Y. Aug. 2, 2016) ("[C]ourts have supported an inference of a broad scope of operations in cases

dealing specifically with websites that ship and sell to a wide geographic range," like Defaulting Defendants' User Accounts and Merchant Storefronts in this Action).

The third factor – the value of Plaintiffs' Twisty Petz Mark and Twisty Petz Work – also weighs in favor of increased statutory damages awards for Plaintiffs against Defaulting Defendants. Here, Plaintiffs established that their Twisty Petz Products have achieved worldwide recognition and success as a result of Plaintiffs' efforts in building up and developing consumer recognition, awareness and goodwill in their Twisty Petz Products. (Harrs Dec., ¶¶ 14-18.) Consequently, Plaintiffs amassed enormous value in their Twisty Petz Mark and Twisty Petz Work, and the Twisty Petz Mark and Twisty Petz Work identify Plaintiffs as the exclusive source of the Twisty Petz Products to which they are applied. *Id.* at ¶ 17. Therefore, the remaining factors also support significant statutory damages awards against Defaulting Defendants. Particularly where, like here, Defaulting Defendants acted willfully, "a statutory award should incorporate not only a compensatory, but also a punitive component to discourage further wrongdoing by the defendants and others." *Louis Vuitton Malletier v. Carducci Leather Fashions, Inc.*, 648 F. Supp. 2d 501, 504 (S.D.N.Y. 2009).

In light of Defaulting Defendants' knowing and intentional offering for sale and/or sale of Counterfeit Products, Plaintiffs seek statutory damages awards against each and every Defaulting Defendant.[5] Since Defaulting Defendants defaulted and failed to participate in discovery, the amount of Defaulting Defendants' profits is unknown. (Chung DJ Aff., ¶ 24.) Accordingly, Plaintiffs are deprived of the ability to prove a specific amount of actual damages and instead have been left with no choice but to seek an award of statutory damages. Plaintiffs' respectful requests

[5] Plaintiffs respectfully submit that they are entitled to post-judgment interest calculated pursuant to the statutory rate. "Interest shall be allowed on any money judgment in a civil case recovered in a district court." 28 U.S.C. § 1961(a).

for statutory damages are based upon a combined analysis of the following: 1) the Wish Discovery, which shows the number of sales of Counterfeit Products made by each Defaulting Defendant on Wish and 2) each Defaulting Defendants' wrongful use of the Twisty Petz Mark and Twisty Petz Work. (Yamali Inquest Aff., ¶ 19, Ex. E.)

Given that the Lanham Act provides for statutory damages of up to "$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just" (15 U.S.C. § 1117(c)), Plaintiffs respectfully seek individual statutory damages awards pursuant to 15 U.S.C. § 1117(c), plus post-judgment interest calculated pursuant to the statutory rate, for a total of seventeen million six hundred twenty-five thousand dollars ($17,625,000.00), as follows:

a. an award of $50,000.00 in statutory damages against the following fifty-two (52) Defaulting Defendants, totaling $2,600,000.00: 18888236883@136.com, Altay, angelcityer, bamboo001, caoping, dandanxiaowu, Diamond boutique, Fella, giftshop2017, guandonghuatai, huashaoshot, Jahurto, Jasonstore1, juziEjia, maisystore001, Mikeqyq, MRY_Store, NewMerchantFashion, qiqiyanyan, shenzhenyiweikejiyouxiangongsi, siermaoyiyouxiangongsi, smallsmallworld, threeqiaoway, Utopia1973, wangjuhua11365, XZH, yehudieye, YOUR FASHION JEWELRY, Yquan, zhenpinhui, global-spirit, yekaiqiang, youyoushanxi, zhenzhen-fashion, MOMTUTUS, qomxzhk, Keep going, maomao1608@163.com, zhangdongyue, fhijhcf, kaixuanxiaorenjia, global_dawn, YiHuiandYiHui, Shenzhen Yinfa Technology LTD, 13385184960@163.com, Dumbledor shop, xyrstorekl, Valuable, Tomik18816764436, fashiondofu, wuli0014 and yiwu blue sky;

b. an award of $75,000.00 in statutory damages against the following three (3) Defaulting Defendants, totaling $225,000.00: huaxiawaimaoshang, zhangxiaxiazhang and xuanxuan636187;

c. an award of $100,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $100,000.00: Yangmingxiongdi;

d. an award of $150,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $150,000.00: Shu panpan wu shoushou;

e. an award of $200,000.00 in statutory damages against the following four (4) Defaulting Defendants, totaling $800,000.00: dreamships, Mr.Zxx, Utopia2017 and guigiudedian;

f. an award of $250,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $500,000.00: xiongdistore and congcong2;

g. an award of $300,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $600,000.00: Every day there will be a new sun and YY6752SDD

h. an award of $550,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $550,000.00: Fullusset;

i. an award of $600,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $600,000.00: Godcup;

j. an award of $1,000,000.00 in statutory damages against the following three (3) Defaulting Defendants, totaling $3,000,000.00: Renderingyou, give your dream and Mr.P;

k. an award of $1,500,000.00 in statutory damages against the following three (3) Defaulting Defendants, totaling $4,500,000.00: dayingjial1256, yeqirong and wxxww;

l. an award of $2,000,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $4,000,000.00: Lostiu8 and yangliu248;

and individual statutory damages awards pursuant to 17 U.S.C. § 504 plus post-judgment interest calculated pursuant to the statutory rate, for a total of two hundred thousand dollars ($200,000.00), as follows:

a. an award of $50,000.00 in statutory damages against the following four (4) Defaulting Defendants, totaling $200,000.00: tiancong135, Show You Now, Green Fashion and xinyudiyiyi;

(Yamali Inquest Aff., ¶ 19, Ex. E.)

Plaintiffs respectfully submit that Defaulting Defendants' willful violations of the Lanham Act make their aforementioned requests for damages appropriate since "the amount of defendants' likely profits from their infringement, the possibility of deterrence, and the need for redress of wrongful conduct are appropriate factors to consider." *Nike, Inc. v. Top Brand Co*., No. 00 Civ. 8179 (KMW) (RLE), 2006 U.S. Dist. LEXIS 76543, at *6 (S.D.N.Y. Feb. 27, 2006). Moreover, "this Court has 'wide discretion' in 'setting the amount of statutory damages.'" *Ontel Products Corporation v. Airbrushpainting Makeup Store a/k/a Airbrushespainting et al*., No. 17-cv-871-KBF, 2017 U.S. Dist. LEXIS 221489, at *3 (S.D.N.Y. Feb. 6, 2017) (citing *Fitzgerald Publ'g Co. v. Baylor Publ'g Co.*, 807 F.2d 1110, 1116 (2d Cir. 1986)). Generally, "[t]he lack of information about any of the defendants' sales and profits, and the suspect nature of any information that was provided, make statutory damages particularly appropriate for this case." *Nike, Inc.*, 2006 U.S. Dist. LEXIS 76543, at *8. Specifically, Plaintiffs respectfully submit that their tiered requests for statutory damages based upon the currently known numbers of sales of Counterfeit Products by Defaulting Defendants are appropriate. Plaintiffs reiterate that the number of sales of Counterfeit

Products made by Defaulting Defendants as identified in the Wish Discovery are the lowest possible number of sales. In other words, it is likely that Defaulting Defendants' sales of Counterfeit Products are significantly higher than what has been identified through the limited discovery Plaintiffs were able to obtain. (Chung DJ Aff., ¶¶ 28-32.) Furthermore, Plaintiffs confirmed that each and every Defaulting Defendant wrongfully used the Twisty Petz Mark and/or the Twisty Petz Work. (Ex. E to Yamali Inquest Aff.)

In this district, even where there was no concrete information about the defendants' actual sales figures and profits, Courts have not hesitated to award higher statutory damages in favor of plaintiffs. *See, e.g., Pitbull Prods., Inc. v. Universal Netmedia, Inc.*, No. 07 Civ. 1784 (RMR) (GWG), 2007 U.S. Dist. LEXIS 82201, at *10–*11(S.D.N.Y. Nov. 7, 2007) (awarding plaintiff $250,000.00 per mark for two marks where defendant's conduct was willful and defendant's default "left the Court with no information as to any of the factors relating to the defendants' circumstances," and noting that "Courts have awarded similar damages in other cases in which there was little information as to the defendants' infringement"); *Rodgers v. Anderson*, No. 04 Civ. 1149 (RJH) (AJP), 2005 U.S. Dist. LEXIS 7054, at *8 (S.D.N.Y. Apr. 26, 2005) (awarding $250,000.00 and noting that the amount "is consistent with (indeed, lower than) awards in similar cases," and citing cases); *see also All-Star Mktg. Grp., LLC v. Media Brands Co.*, 775 F. Supp. 2d 613, 624-25 (S.D.N.Y. 2011) (collecting cases awarding between $25,000.00 and $250,000.00 per mark). Awards of $1,000,000.00 and higher have been granted to plaintiffs in similar matters before this Court. *See, e.g., Louis Vuitton Malletier & Oakley, Inc. v. Veit*, 211 F. Supp. 2d 567, 584 (S.D.N.Y. 2002) (awarding $1,000,000 in statutory damages for defendant's infringement of six Louis Vuitton marks, where the record contained no evidence of defendants' sales, nor the number of hits the website received); *Rolex Watch U.S.A., Inc. v. Brown*, No. 01 Civ. 9155 (JGK)

(AJP), 2002 U.S. Dist. LEXIS 10054, at *8-9 (S.D.N.Y. June 5, 2002) (where the Defendant sold 10,000 counterfeit watches, the Court found $1,000,000 in statutory damages to be appropriate and sufficient).[6]

Further, Plaintiffs respectfully submit that the statutory damages requested are the minimum recoverable damages in this case. While Plaintiffs could have requested the statutory maximum of $2,000,000.00 per counterfeit mark, they instead respectfully ask that the Court award them the reasonable tiered amount against each Defaulting Defendant. Here, the tiered requests for statutory damages, ranging from $50,000.00 to $2,000,000.00, are within the range of awards granted by courts in this district in similar circumstances.[7]

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[6] *See also, e.g., Mattel, Inc. v. 1994_honeymoon, et al.*, No. 18-cv-10427-KPF, Dkt. 59 (S.D.N.Y. Mar. 27, 2019); *Mattel, Inc. v. 276470, et al.*, No. 18-cv-10440-KPF, Dkt. 62 (S.D.N.Y. Mar. 27, 2019); *Off-White LLC v. A445995685, et al.*, No. 18-cv-2099-LGS-KNF, Dkt. 129 (S.D.N.Y. Nov. 16, 2018).

[7] *See, e.g., Nike, Inc. v. Wu*, 349 F. Supp. 3d 310 (S.D.N.Y. 2018); *Tiffany (NJ) LLC v. Forbse*, No. 11-cv-4976 (NRB), 2015 US Dist. LEXIS 129647, at *10-11 (S.D.N.Y. Sep. 22, 2015); *Gucci Am., Inc. v. Curveal Fashion*, No. 09 Civ. 8458 (RJS), 2010 U.S. Dist. LEXIS 5831, at *15 (S.D.N.Y. Jan. 20, 2010); *see also Spin Master Ltd. v. Alan Yuan's Store*, 325 F. Supp. 3d 413, 427-428 (S.D.N.Y. 2018); *Mattel, Inc. v. 1994_honeymoon, et al.*, No. 18-cv-10427-KPF, Dkt. 59 (S.D.N.Y. Mar. 27, 2019); *Mattel, Inc. v. Aaron's Fashion Store, et al.*, No. 18-cv-10437-KPF, Dkt. 79 (S.D.N.Y. Mar. 27, 2019); *Mattel, Inc. v. 276470, et al.*, No. 18-cv-10440-KPF, Dkt. 62 (S.D.N.Y. Mar. 27, 2019); *Tapestry, Inc., et al. v. baoqingtianff, et al.*, No. 18-cv-7650-PAE, Dkt. 34 (S.D.N.Y. Jan. 8, 2019); *Mattel, Inc. v. 86755, et al.*, No. 18-cv-8825-JSR, Dkt. 47 (S.D.N.Y. Dec. 17, 2018); *Ideavillage Prods. Corp. v. 711 Market, et al.*, No. 18-cv-7832-JMF, Dkt. 61 (S.D.N.Y. Dec. 12, 2018); *Wow Virtual Reality, Inc. v. BIENBEST, et al.*, No. 18-cv-3305-VEC, Dkts. 210-289, 302 (S.D.N.Y. Dec. 5, 2018); *Moose Toys Pty Ltd., et al. v. 963, et al.*, No. 18-cv-2187-VEC, Dkts. 160-251, 257 (S.D.N.Y. Nov. 30, 2018); *Off-White LLC v. A445995685, et al.*, No. 18-cv-2099-LGS-KNF, Dkt. 129 (S.D.N.Y. Nov. 16, 2018); *Ideavillage Prods. Corp. v. 29shyans2012, et al.*, 18-cv-6266 (AT), Dkt. No. 49 (S.D.N.Y. Nov. 6, 2018); *WowWee Group Limited, et al. v. A249345157, et al.*, No. 17-cv-9358 (VEC), Dkts. 46-179 (S.D.N.Y. July 31, 2018); *Ideavillage Prods. Corp. v. Bling Boutique Store, et al.*, No. 16-cv-9039 (KMW), Dkt. 92 (S.D.N.Y. July 24, 2018); *Allstar Marketing Group, LLC v. _GB Housewear Store, et al.*, No. 17-cv-7596 (SHS), Dkt. 92 (S.D.N.Y. July 9, 2018); *Rovio Entertainment Ltd. and Rovio Animation Oy v. Best Baby and Kid Store, et al.*, No. 17-cv-4884 (KPF), Dkt. 38 (S.D.N.Y. June 28, 2018); *JLM Couture, Inc. v. Aimibridal, et al.*, No. 18-cv-1565 (JMF), Dkt. 49 (S.D.N.Y. June 7, 2018); *HICKIES, Inc. v. SHOP1668638 Store a/k/a Professional Shoes Company, et al.*, No. 17-cv-9101 (ER), Dkt. 22 (S.D.N.Y. May 4, 2018); *Ideavillage Prod.s Corp. v. Dongguan Opete Yoga Wear Manufacturer Co., LTD., et al.*, No. 17-cv-9099 (JMF), Dkt. 34 (S.D.N.Y. March 1, 2018); *Ideavillage Prods. Corp. v. Chinafocus, et al.*, No. 17-cv-3894 (RA), Dkt. 50 (S.D.N.Y. Feb. 9, 2018); *Ontel Prods. Corp. v. Auto Mall, et al.*, No. 17-cv-5190 (AT), Dkt. 36 (S.D.N.Y. Nov. 27, 2017); *Rovio Entertainment Ltd. and Rovio Animation Oy v. Angel Baby Factory d/b/a Angelbaby_Factory, et al.*, No. 17-cv-1840 (KPF), Dkt. 65 (S.D.N.Y. Sept. 13, 2017); *Ontel Prods. Corp. v. Airbrushpainting Makeup Store, et al.*, No. 17-cv-871 (KBF), Dkt. 40 (S.D.N.Y. June 29, 2017); *Belstaff Grp. SA v. Doe*, No. 15-cv-2242 (PKC) (MHD), 2015 U.S. Dist. LEXIS 178124, at *10 (S.D.N.Y. June 18, 2015) and *Tory Burch LLC v. Yong Sheng Int'l Trade Co.*, No. 10 Civ. 9336 (DAB), 2011 U.S. Dist. LEXIS 158882, at *8 (S.D.N.Y. May 13, 2011).

C. PLAINTIFFS ARE ENTITLED TO A POST-JUDGMENT ASSET FREEZE, THE TRANSFER OF DEFAULTING DEFENDANTS' FROZEN ASSETS AND POST-JUDGMENT INTEREST ON DEFAULTING DEFENDANTS' FROZEN ASSETS

Plaintiffs respectfully submit that the Court should provide a post-judgment continuance of the pre-judgment asset restraint imposed on Defaulting Defendants by the TRO and extended through the PI Order. The Second Circuit expressly affirmed the Court's authority to freeze counterfeiters' assets pre-judgment as a matter of equity and "in favor of plaintiffs seeking an accounting against allegedly infringing defendants in Lanham Act cases" – whether such assets are located in the United States or abroad, and "impos[ed] on a defendant the obligation to disclose and return profits." *Gucci Am. Inc. v. Bank of China*, 768 F.3d 122, 131-32, 137-38 (2d Cir. 2014). The sole reason that Plaintiffs could not obtain an accounting in this action is due to Defaulting Defendants' complete failure to participate in this action or comply with discovery which made any calculation on Plaintiffs' claim for an accounting impossible. *See Tiffany (NJ) LLC v. Forbse*, No. 11-cv-4976 (NRB), 2015 US Dist. LEXIS 129647, at *8, 10-11 (S.D.N.Y. Sep. 22, 2015). Defaulting Defendants counterfeiters' willful refusal to participate in this action should not allow them to avoid the penalty imposed by pre-judgment asset restraint which was expressly authorized by the Second Circuit in *Gucci*[8] as a result of the Lanham Act's express grant of a right to an equitable accounting, by ignoring the Court's expedited discovery orders and forcing Plaintiffs to elect statutory damages. *See* Gucci *Am. Inc.*, 768 F.3d 122.

There is no question that the post-judgment relief requested by Plaintiffs in the instant action can be granted through N.Y. C.P.L.R. § 5222, as incorporated by Fed. R. Civ. P. 69.[9] Pursuant to N.Y. C.P.L.R. §§ 5201-5253, once a defendant is found liable and a money judgment

[8] *See Gucci Am. Inc. v. Bank of China*, 768 F.3d 122, 130 (2d Cir. 2014).
[9] *See e.g. Blue v. Cablevision Sys., N.Y. City Corp.*, No. 00-3836, 2006 U.S. Dist. LEXIS 96449, at *2 n.1 (E.D.N.Y. July 5, 2007).

is rendered against a defendant a District Court sitting in New York has the power to restrain the defendant's assets. *Cruz v. TD Bank, N.A.*, 711 F.3d 261, 264 (2d Cir. 2013); *see also Interpool Ltd. v. Patterson*, No. 89 Civ. 8501 (LAK), 1995 U.S. Dist. LEXIS 2920, at *1 (S.D.N.Y. Mar. 13, 1995) (ordering restraint pursuant to N.Y. C.P.L.R. § 5222, finding that "[a] New York judgment creditor is entitled to a restraining notice on the debtor as a matter of right"). Further, the Second Circuit has also affirmed the authority of the district courts to order a post-judgment injunction on a claim for money damages where the judgment debtor sought to evade payment to the judgment creditor. *See Pashaian v. Eccelston Props., Ltd.*, 88 F.3d 77, 86-87 (2d Cir. 1996).

Accordingly, N.Y. C.P.L.R. § 5222, which permits issuance of a restraining notice against the judgment debtor that, with certain exceptions not relevant here, prohibits disposition or transfer of property "until the judgment … is satisfied," allows the Court to maintain the Post-Judgment Asset Freeze requested by Plaintiffs. *See* N.Y. C.P.L.R. § 5222(b); *see also Dawson v. Krolikowski*, 530 N.Y.S.2d 931, 935 (Sup. Ct. 1988) ("[O]nce a money judgment is entered, restraining notices may be served pursuant to CPLR 5222 in order to prevent the transfer of property." (quotation marks omitted)).

Moreover, courts in this Circuit have commonly and consistently granted the post-judgment relief requested by Plaintiffs pursuant to the Federal Rules, New York State Civil Procedure and the Court's inherent equitable power to do so.[10] While under the C.P.L.R., a

[10] *See, e.g., Nike, Inc. v. Wu*, 349 F. Supp. 3d 310 (S.D.N.Y. 2018); *Tiffany (NJ) LLC v. Forbse*, No. 11-cv-4976 (NRB), 2015 US Dist. LEXIS 129647, at *10-11 (S.D.N.Y. Sep. 22, 2015); *Gucci Am., Inc. v. Curveal Fashion*, No. 09 Civ. 8458 (RJS), 2010 U.S. Dist. LEXIS 5831, at *15 (S.D.N.Y. Jan. 20, 2010); *see also Spin Master Ltd. v. Alan Yuan's Store*, 325 F. Supp. 3d 413, 427-428 (S.D.N.Y. 2018); *Mattel, Inc. v. 1994_honeymoon, et al.*, No. 18-cv-10427-KPF, Dkt. 59 (S.D.N.Y. Mar. 27, 2019); *Mattel, Inc. v. Aaron's Fashion Store, et al.*, No. 18-cv-10437-KPF, Dkt. 79 (S.D.N.Y. Mar. 27, 2019); *Mattel, Inc. v. 276470, et al.*, No. 18-cv-10440-KPF, Dkt. 62 (S.D.N.Y. Mar. 27, 2019); *Tapestry, Inc., et al. v. baoqingtianff, et al.*, No. 18-cv-7650-PAE, Dkt. 34 (S.D.N.Y. Jan. 8, 2019); *Mattel, Inc. v. 86755, et al.*, No. 18-cv-8825-JSR, Dkt. 47 (S.D.N.Y. Dec. 17, 2018); *Ideavillage Prods. Corp. v. 711 Market, et al.*, No. 18-cv-7832-JMF, Dkt. 61 (S.D.N.Y. Dec. 12, 2018); *Wow Virtual Reality, Inc. v. BIENBEST, et al.*, No. 18-cv-3305-VEC, Dkts. 210-289, 302 (S.D.N.Y. Dec. 5, 2018); *Moose Toys Pty Ltd., et al. v. 963, et al.*, No. 18-cv-2187-

successful plaintiff can serve a C.P.L.R. § 5222 restraining notice on the judgment debtor immediately after entry of judgment, effectively continuing any prejudgment restraint, pursuant to Fed. R. Civ. P. 62(a), "no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry." *See* Fed. R. Civ. P. 62(a). Accordingly, the issuance of a final judgment without continuing the asset restraint would give Defaulting Defendants, whose assets are properly restrained prejudgment, a 14-day window in which to conceal and dissipate their assets merely by virtue of their willful default and refusal to appear in this action and/or comply with this Court's discovery orders. Post-judgment asset restraints entered to aid in the enforcement of a judgment, ensure the availability of relief under the Lanham Act and prevent defendants who have defaulted in similar cases from disposing of their assets upon entry of final judgment. *See Forbse*, 2015 US Dist. LEXIS 129647, at *10-11. Here, there remains a significant risk that Defaulting Defendants will dispose of, transfer and/or hide their ill-gotten assets to which Plaintiffs are entitled if Defaulting Defendants' Frozen Assets do not remain frozen post-judgment. (Wolgang Dec., ¶¶ 13.) As the uncontroverted evidence demonstrates, Defaulting Defendants are foreign individuals or entities that have engaged in counterfeiting and infringing

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VEC, Dkts. 160-251, 257 (S.D.N.Y. Nov. 30, 2018); *Off-White LLC v. A445995685, et al.*, No. 18-cv-2099-LGS-KNF, Dkt. 129 (S.D.N.Y. Nov. 16, 2018); *Ideavillage Prods. Corp. v. 29shyans2012, et al.*, 18-cv-6266 (AT), Dkt. No. 49 (S.D.N.Y. Nov. 6, 2018); *WowWee Group Limited, et al. v. A249345157, et al.*, No. 17-cv-9358 (VEC), Dkts. 46-179 (S.D.N.Y. July 31, 2018); *Ideavillage Prods. Corp. v. Bling Boutique Store, et al.*, No. 16-cv-9039 (KMW), Dkt. 92 (S.D.N.Y. July 24, 2018); *Allstar Marketing Group, LLC v. _GB Housewear Store, et al.*, No. 17-cv-7596 (SHS), Dkt. 92 (S.D.N.Y. July 9, 2018); *Rovio Entertainment Ltd. and Rovio Animation Oy v. Best Baby and Kid Store, et al.*, No. 17-cv-4884 (KPF), Dkt. 38 (S.D.N.Y. June 28, 2018); *JLM Couture, Inc. v. Aimibridal, et al.*, No. 18-cv-1565 (JMF), Dkt. 49 (S.D.N.Y. June 7, 2018); *HICKIES, Inc. v. SHOP1668638 Store a/k/a Professional Shoes Company, et al.*, No. 17-cv-9101 (ER), Dkt. 22 (S.D.N.Y. May 4, 2018); *Ideavillage Prod.s Corp. v. Dongguan Opete Yoga Wear Manufacturer Co., LTD., et al.*, No. 17-cv-9099 (JMF), Dkt. 34 (S.D.N.Y. March 1, 2018); *Ideavillage Prods. Corp. v. Chinafocus, et al.*, No. 17-cv-3894 (RA), Dkt. 50 (S.D.N.Y. Feb. 9, 2018); *Ontel Prods. Corp. v. Auto Mall, et al.*, No. 17-cv-5190 (AT), Dkt. 36 (S.D.N.Y. Nov. 27, 2017); *Rovio Entertainment Ltd. and Rovio Animation Oy v. Angel Baby Factory d/b/a Angelbaby_Factory, et al.*, No. 17-cv-1840 (KPF), Dkt. 65 (S.D.N.Y. Sept. 13, 2017); *Ontel Prods. Corp. v. Airbrushpainting Makeup Store, et al.*, No. 17-cv-871 (KBF), Dkt. 40 (S.D.N.Y. June 29, 2017); *Belstaff Grp. SA v. Doe*, No. 15-cv-2242 (PKC) (MHD), 2015 U.S. Dist. LEXIS 178124, at *10 (S.D.N.Y. June 18, 2015) and *Tory Burch LLC v. Yong Sheng Int'l Trade Co.*, No. 10 Civ. 9336 (DAB), 2011 U.S. Dist. LEXIS 158882, at *8 (S.D.N.Y. May 13, 2011).

activities. (*See* Complaint, Ex. B.) They have failed to answer or otherwise formally appear in this Action or comply with the expedited discovery ordered in the TRO and PI Order. (Chung DJ Aff., ¶ 24.) This risk is not lessened by entry of judgment, but likely elevated. *Forbse*, 2015 US Dist. LEXIS 129647, at *10 ("[T]he need for the injunction is clear: without this relief, defendants would have available a fourteen-day window in which to hide their assets" and "[t]he risk that they might do so, which in part justified the preliminary injunction, is not lessened by entry of judgment.").[11] Plaintiffs respectfully request the Court continue the Asset Restraint ordered in the TRO and PI Order and grant the Post-Judgment Asset Freeze Order.

Additionally, Plaintiffs respectfully request the Court grant an order authorizing the transfer of Defaulting Defendants' Frozen Assets in satisfaction of the Judgment. In *AW Licensing*, the plaintiff sought relief against online counterfeiters, after entering both temporary and preliminary injunctive orders, the Court ultimately granted the plaintiff's motion for default judgment, holding, *inter alia*, that each defendant was liable for federal trademark counterfeiting and infringement. *Wang Bao*, No. 15-cv-1373 (KBF), 2016 U.S. Dist. LEXIS 101150, at *3 (S.D.N.Y. Aug. 2, 2016). In addition to awarding statutory damages for willful counterfeiting and entering a permanent injunction, the Hon. Katherine B. Forrest issued the following orders:

> ORDERED that monies currently restrained by Defendants' accounts held by PayPal, Inc. ("PayPal") be released to Alexander Wang as partial payment of the above-mentioned damages;
>
> . . .

[11] A post decision, prejudgment asset restraint is proper and "expressly provided for in CPLR 5229, which is applicable to this case under Fed. R. Civ. P. 64 and 69." *Loew v. Kolb*, No. 03 Civ. 5064 (RCC), 2003 U.S. Dist. LEXIS 15628, at *5 (S.D.N.Y. Sept. 8, 2003); *see also Sequa Capital Corp. v. Nave*, 921 F. Supp. 1072, 1076 (S.D.N.Y. 1996) ("CPLR 5229 is a remedy within the meaning of FRCP 64"). Rule 64 makes "every remedy … available that, under the law of [New York], provides for seizing a person or property to secure satisfaction of the potential judgment." Fed. R. Civ. P. 64(a). Rule 69 provides that the procedure "in proceedings … in aid of judgment or execution … must accord with the procedure of [New York]," Fed. R. Civ. P. 69(a)(1).

> ORDERED that after twenty-one (21) days following the service of this Judgment and Permanent Injunction on such Defendant and Account Holder, Account Holder shall *transfer all monies in the restrained accounts to Alexander Wang*, unless the Defendant has filed with the Court and served upon Plaintiffs' counsel a request that such monies be exemption from this Order.

See id., at *19-20 (emphasis added). In another recent lawsuit involving China-based online counterfeiters, the Court granted the plaintiff's motion for summary judgment, awarding the plaintiff statutory damages and entering a permanent injunction against the defaulting defendants. *Spin Master Ltd. v. Alan Yuan's Store*, No. 17-cv-7422 (DLC), 2018 U.S. Dist. LEXIS 109333 (S.D.N.Y. June 29, 2018). In that case, the Hon. Denise L. Cote also held that:

> Spin has demonstrated that the defendants are likely to hide their assets. The restraint shall continue until plaintiffs can enforce and satisfy the judgment entered by this Court. Similarly, *Spin is entitled to the transfer of the frozen assets to the plaintiffs as full or, when relevant, partial satisfaction of the damages award*. *Id*., at *25-26 (emphasis added).

While Judge Forrest never explained the basis for entering an asset transfer order, nor did Judge Cote, their rulings follow a long tradition of decisions and orders in this Court which provide, in tandem with an award of statutory damages, an asset transfer order.[12]

In a 2010 case also involving online sales of counterfeit luxury goods, the Hon. Richard J. Sullivan entered a default judgment against the defendants, issued a permanent injunction and awarded the plaintiff statutory damages. *Gucci Am., Inc. v. Curveal Fashion*, No. 09 Civ. 8458 (RJS), 2010 U.S. Dist. LEXIS 5831, at *15 (S.D.N.Y. Jan. 20, 2010). Judge Sullivan

[12] Subsequently, in *Ontel Products Corporation*, a 2017 matter analogous to the instant action, Judge Forrest requested that the plaintiff provide supplemental briefing regarding the issuance of an order authorizing the transfer of assets in satisfaction of a monetary judgment. *Airbrushpainting Makeup, et al.*, No. 17-cv-871 (KBF), Dkt. 36 (S.D.N.Y. May 31, 2017). In that case, the plaintiff relied upon the authority and reasoning in *Gucci Am., Inc. v. Curveal Fashion*, No. 09 Civ. 8458 (RJS), 2010 U.S. Dist. LEXIS 5831 (S.D.N.Y. Jan. 20, 2010), discussed *supra*. *See id.* Ultimately, Judge Forrest entered an order transferring the defendants' restrained assets in satisfaction of the statutory damages awarded by the Court. *See id*., at Dkt. 40 ("Given the difficulties plaintiff would have executing this judgment, the Court also hereby GRANTS plaintiff's motion at ECF No. 36 for a post-judgment restraining order pursuant to Federal Rule of Civil Procedure 64 and *directs that all monies associated with the remaining defendants' currently restrained accounts be released to plaintiff up to the amount of the judgment per defendant*, i.e., $50,000.") (emphasis added).

simultaneously issued an order, "in accordance with Rule 64 of the Federal Rules of Civil Procedure, 15 U.S.C. § 1116(a), and this Court's inherent equitable power to issue remedies ancillary to its authority to provide final relief,"[13] transferring the defendants' frozen assets to the plaintiff in satisfaction of the Court's damages awards:

> IT IS FURTHER ORDERED AND ADJUDGED THAT, *in accordance with Rule 64 of the Federal Rules of Civil Procedure, 15 U.S.C. § 1116(a), and this Court's inherent equitable power to issue remedies ancillary to its authority to provide final relief*, all of Defendants' asset holders -- defined as any banks, savings and loan associations, credit card companies, credit card processing agencies, or other financial institutions or agencies that engage in the transfer of real or personal property, and all persons acting in concert or in participation with any of Defendants, who are in possession of Defendants' assets -- who receive notice of this order by personal service or otherwise are ordered to liquidate those of Defendants' assets -- defined as any money, stocks, bonds, real or personal property, or other assets of Defendants -- that have been previously identified as frozen or otherwise restrained in compliance with the Court's October 23, 2009 Order, and pay the value of such Defendants' assets to Plaintiffs in partial satisfaction of the damages award. . . .
>
> IT IS FURTHER ORDERED AND ADJUDGED THAT *in accordance with Rule 64 of the Federal Rules of Civil Procedure, 15 U.S.C. § 1116(a), and this Court's inherent equitable power to issue remedies ancillary to its authority to provide final relief*, in addition to liquidating the Defendants' assets identified in the preceding paragraph and paying them to Plaintiffs as set forth above, any person currently holding any other assets of Defendants and any persons who come into the possession of Defendants' assets who receive actual notice of this Order by personal service, registered or certified mail, or other means reasonably calculated to give actual notice are permanently restrained and enjoined from transferring, disposing of, secreting, or otherwise paying or transferring into or out of any accounts associated with or utilized by any of Defendants any of Defendants' assets that may be identified in the future and/or that have not yet been frozen, without prior approval of the Court, and shall respond to an information subpoena consisting of written questions within seven days of its receipt. To the extent that such additional of Defendants' assets may be necessary to satisfy any remaining unpaid portions of the damages award, Defendants' asset holders are directed to liquidate Defendants' assets and take such other steps as may be reasonable and appropriate to pay the value of Defendants' assets to Plaintiffs up to the amount of the damages award. Plaintiffs shall not collect any assets in excess of the amount of the damages award and shall promptly return any funds received in excess of the damages award to Defendants. *Id*. (emphasis added).

[13] This Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief derives from the All Writs Act. 28 U.S.C.S. § 1651 ("(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.").

In line with Judge Forrest, Judge Cote and Judge Sullivan's holdings, this Court regularly orders that all monies or assets in any accounts associated with or utilized by the defendants in counterfeiting cases, both previously restrained and newly discovered, be released and transferred to the plaintiff in satisfaction of the damages awarded in the case until the plaintiff has recovered the full amount owed.[14]

Alternatively, should the Court not find authority under Rule 64 of the Federal Rules of Civil Procedure, 15 U.S.C. § 1116(a), and this Court's inherent equitable power to issue remedies ancillary to its authority to provide final relief to order the asset transfer, Plaintiffs respectfully direct the Court to Fed. R. Civ. P. 69(a) and N.Y. C.P.L.R. § 5225. Pursuant to Rule 69(a), "post-judgment efforts to execute on a money judgment [must] comply with the procedural law of the forum state — unless a federal statute dictates to the contrary. The Lanham Act contains no such instruction. Accordingly, the applicable statute is N.Y. C.P.L.R. § 5225. *Tiffany (NJ) LLC v. Dong*, 2013 U.S. Dist. LEXIS 114986, at *28 (S.D.N.Y. Aug. 9, 2013).

> Where property is in possession of a judgment debtor, Section 5225 permits a court,[u]pon motion of the judgment creditor, upon notice to the judgment debtor, [and] where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest, ... [to] order that the judgment debtor pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff.

Arrowhead Capital Fin., Ltd. v. Seven Arts Entm't, Inc., No. 14 Civ. 6512 (KPF), 2017 U.S. Dist. LEXIS 125068, at *7-8 (S.D.N.Y. Aug. 8, 2017); N.Y. C.P.L.R. § 5225(a).

And where property is not in the possession of a judgment debtor, Section 5225 authorizes a court to compel a nonparty to surrender a judgment debtor's property:

[14] *See supra* fn. 12.

> [u]pon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee . . . .

N.Y. C.P.L.R. § 5225.

Although the state rule suggests that a special proceeding must be commenced, the Federal Rules of Civil Procedure make no mention of special proceedings. Federal courts in New York have deemed the C.P.L.R. special proceeding requirement satisfied when a plaintiff proceeds by complaint or motion against the third party holding a judgment debtor's assets. *See id.*; *see also, e.g., Northern Mariana Islands v. Millard*, 845 F. Supp. 2d 579, 581 (S.D.N.Y. 2012) (citing *Mitchell v. Lyons Prof'l Servs., Inc.*, 727 F. Supp. 2d 120, 122-23 (E.D.N.Y. 2010) ("Nearly every court in this Circuit to consider the issue has held that parties can bring a motion under [Rule] 69(a), rather than instituting a special proceeding under the New York State law.")) (additional citation omitted); *CSX Transp., Inc. v. Emjay Envtl. Recycling, LTD.*, No. 12-CV-1865, 2016 U.S. Dist. LEXIS 23014, at *3 (E.D.N.Y. Feb. 25, 2016) (noting that the argument that a turnover order must be brought by plenary action "is easily disregarded"); *S.E.C. v. Colonial Inv. Mgmt. LLC*, No. 07 Civ. 8849 (PKC), 2010 U.S. Dist. LEXIS 108063, at *2 (S.D.N.Y. Oct. 6, 2010).

Section 5201, which describes the assets that are subject to enforcement under New York law has made subject to enforcement, and are therefore available to judgment creditors' seeking to collect under § 5225. *Arrowhead Capital Fin., Ltd.*, 2017 U.S. Dist. LEXIS 125068, at *8-9; *see also* N.Y. C.P.L.R. § 5201. According to this provision, "[a] money judgment may be enforced against any property which could be assigned or transferred, whether it consists of a present or future right or interest and whether or not it is vested, unless it is exempt from application to the

satisfaction of the judgment." *Id.* at 8*; see also* N.Y. C.P.L.R. § 5201(b). Such property need not be located in New York; "a New York court with personal jurisdiction over a defendant may order him to turn over out-of-state property" if the defendant "is a judgment debtor or a garnishee." *Id.*at 8 (citing *Koehler v. Bank of Bermuda Ltd.*, 12 N.Y.3d 533, 541 (2009)). Finally, no third parties have raised any issue regarding Plaintiffs' requests either in this case or when previously ordered by judges in this district in similar cases.[15]

Statutory damages are necessary and appropriate here, in part, to discourage defendants from continuing to engage in their illicit conduct. Without the issuance of a post-judgment asset transfer order, the statutory damages awards become meaningless – to use a common colloquialism, all bark but no bite. Simply put, if the Court denies Plaintiffs' respectful requests for an order transferring Defendants' Frozen Assets in partial or complete satisfaction of the statutory damages awarded to it, not only was the extensive motion practice futile, the deterrent purpose of statutory damages contemplated by Congress will be undermined. *See* 142 Cong Rec H 5776, at 1-2, 10 (1995). Plaintiffs respectfully submit that denying a post-judgment asset transfer order would result in a Pyrrhic victory, effectively denying Plaintiffs of the money judgments to

[15] *See, e.g., Off-White v. ^_^Warm House^_^ STORE, et al.,* No. 17-cv-8872-GBD-GWG, Dkt. 85 (S.D.N.Y. Jan. 17, 2019); *Tapestry, Inc., et al. v. baoqingtianff, et al.,* No. 18-cv-7650-PAE, Dkt. 34 (S.D.N.Y. Jan. 8, 2019); *Mattel, Inc. v. 86755, et al.,* No. 18-cv-8825-JSR, Dkt. 47 (S.D.N.Y. Dec. 17, 2018); *Ideavillage Prods. Corp. v. 711 Market, et al.,* No. 18-cv-7832-JMF, Dkt. 61 (S.D.N.Y. Dec. 12, 2018); *Wow Virtual Reality, Inc. v. BIENBEST, et al.,* No. 18-cv-3305-VEC, Dkts. 210-289, 302 (S.D.N.Y. Dec. 5, 2018); *Moose Toys Pty Ltd., et al. v. 963, et al.,* No. 18-cv-2187-VEC, Dkts. 160-251, 257 (S.D.N.Y. Nov. 30, 2018); *Off-White LLC v. A445995685, et al.,* No. 18-cv-2099-LGS-KNF, Dkt. 129 (S.D.N.Y. Nov. 16, 2018); *Ideavillage Prods. Corp. v. 29shyans2012, et al.,* 18-cv-6266 (AT), Dkt. No. 49 (S.D.N.Y. Nov. 6, 2018); *WowWee Group Limited, et al. v. Haoqin, et al.,* No. 17-cv-9893-WHP-KNF, Dkt. 162 (S.D.N.Y. Sept. 28, 2018); *WowWee Group Limited, et al. v. A249345157, et al.,* No. 17-cv-9358 (VEC), Dkts. 46-179 (S.D.N.Y. July 31, 2018); *Ideavillage Prods. Corp. v. Bling Boutique Store, et al.,* No. 16-cv-9039 (KMW), Dkt. 92 (S.D.N.Y. July 24, 2018); *Allstar Marketing Group, LLC v. _GB Housewear Store, et al.,* No. 17-cv-7596 (SHS), Dkt. 92 (S.D.N.Y. July 9, 2018); *Rovio Entertainment Ltd. and Rovio Animation Oy v. Best Baby and Kid Store, et al.,* No. 17-cv-4884 (KPF), Dkt. 38 (S.D.N.Y. June 28, 2018); *JLM Couture, Inc. v. Aimibridal, et al.,* No. 18-cv-1565 (JMF), Dkt. 49 (S.D.N.Y. June 7, 2018); *HICKIES, Inc. v. SHOP1668638 Store a/k/a Professional Shoes Company, et al.,* No. 17-cv-9101 (ER), Dkt. 22 (S.D.N.Y. May 4, 2018); *Ideavillage Prod.s Corp. v. Dongguan Opete Yoga Wear Manufacturer Co., LTD., et al.,* No. 17-cv-9099 (JMF).

which they are entitled. Therefore, Plaintiffs respectfully submit that the Court should enter an order authorizing the transfer of Defaulting Defendants' Frozen Assets in satisfaction of the Judgment.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their request for statutory damages, post-judgment interest, a post-judgment asset restraining order and an order authorizing the release and transfer of Defaulting Defendants' Frozen Assets to satisfy the damages awarded to Plaintiffs in its entirety.

Dated: May 22, 2019

Respectfully submitted,

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