[ECF 84 entered on 06/08/2017]

UNITED STATES DISTRICT COURTDISTRICT OF NEVADARENO, NEVADA

SEIKO EPSON CORPORATION, et al., Plaintiff, vs. INKSYSTEM LLC, et al., Defendant(s).	3:16-CV-0524-RCJ-VPC MINUTES OF PROCEEDINGS DATED: June 8, 2017

PRESENT: THE HONORABLE VALERIE P. COOKE, U.S. MAGISTRATE JUDGE

Deputy Clerk: Lisa Mann

Court Reporter: FTR

Counsel for Plaintiff(s): Annie Wang (By telephone)

Counsel for Defendant(s): Christopher Austin

PROCEEDINGS: CASE MANAGEMENT CONFERENCE/MOTION HEARING

2:02 p.m. Court convenes.

The Court inquires of Mr. Austin why defendant Igor Bielov is not present in court, as he was ordered by the Court to appear at all case management conferences (ECF No. 70). Mr. Austin advises he misunderstood the Court's intention of

having Mr. Bielov present after comments made at the settlement conference.

The Court further requires of Mr. Austin why he did not file a case management report as ordered by the Court (ECF No. 74). In addition, the Court inquires of Mr. Austin why he did not file an opposition to plaintiffs' emergency motion to compel and for sanctions (ECF No. 80).

Mr. Austin advises the Court that he did not concur with the joint case management report as proposed by plaintiffs' counsel and did not have adequate time to file an opposition to the motion. The Court advises Mr. Austin instead of filing nothing at all, the better practice would have been to either obtain a stipulation from opposing counsel for additional time or to file a motion with the Court requesting an extension of time.

The Court directs the deputy court clerk to provide a copy of the plaintiffs' proposed order granting plaintiffs' emergency motion to compel (ECF No. 80-3) to Mr. Austin. The Court finds as follows:

1. Defendants shall provide supplemental responses to plaintiffs' interrogatories nos.1-6, 13-16, without objection, by no later than **5:00 p.m. PT on Friday, June 16,2017.**

2. Defendants shall provide supplemental responses to plaintiffs' requests for production of documents

2-11, 14-18, 20-29, without objection, by no later than **5:00p.m. PT on Friday, June 16, 2017.**

3. Defendants shall provide revised designation of their document production by no later than **Friday, June 16, 2017.**

4. Defendants shall pay to plaintiffs, c/o J. Andrew Coombs, Client Trust Account, the amount of $5,554.79 by no later than **Friday, June 16, 2017.**

In addition to providing this written discovery to plaintiffs' counsel, Mr. Austin shall file a supplemental case management report with the written discovery attached and shall include a declaration attesting to what he did to comply with the Court's order by no later than **5:00 p.m. PT on Friday, June 16, 2017.**

Therefore, the plaintiffs' emergency motion to compel and for sanctions (ECF No. 80) is GRANTED in part and DENIED in part.

The Court advises counsel for plaintiffs if there are any further issues regarding these discovery responses as ordered by the Court, counsel for plaintiffs have leave to file a report advising the Court of such issues, they may renew their motion to compel and for sanctions, and/or they have leave to file a motion for any other relief they deem necessary. If Ms. Wang files any additional motions for case ending sanctions or re-files the motion to compel and for sanctions (ECF No. 80), Ms. Wang is directed to

contact Mr. Austin to determine a briefing schedule as the Court advises counsel it will hear any such motion at the next case management conference set for **July 14, 2017.**

Ms. Wang advises the Court that Mr. Kravchuk was not the person most knowledgeable as provided by the defendants as the 30(b)(6) deponent. The Court inquires of Mr. Austin and his clients as to the Rule 30(b)(6) deposition of co-defendant Andriy Kravchuk on June 1-2, 2017, on behalf of defendants Inksystem LLC and LuckyPrint LLC. The Court is advised that the person most knowledgeable for both companies is an individual named Andriy Ushakov, whose whereabouts is unclear. One of the co-defendants said he believes Mr. Ushakov resides in the Ukraine or possibly Belarus. One of the co-defendants communicates with Mr. Ushakov once or twice a month. Therefore, the Court advises Ms. Wang that plaintiffs have leave to file a motion for costs of that deposition and any other fees associated with the preparation for the deposition by no later than **Friday, June 16, 2017.** With respect to the documents the defendants agreed to produce in connection with the defendants' 30(b)(6) deposition, those documents shall also be produced to plaintiffs by no later than **5:00 p.m. PT on Friday, June 16, 2017.**

Ms. Wang advises the Court the current deadline for the disclosure of initial experts is

tomorrow. The Court advises the parties it will not require the plaintiffs to comply with this deadline. Therefore, if defendants produce everything as ordered by June 16, 2017, the new deadline for the disclosure of initial experts is **July 7, 2017,** and the disclosure of rebuttal experts is **July 21,2017.**

The Court advises counsel for the defendants and the defendants present in court that all four individual defendants shall be personally present for the case management conferences set in this case and that all defendants shall dress appropriately for court appearances.

IT IS SO ORDERED.

2:56 p.m. Court adjourns.

DEBRA K. KEMPI, CLERK

By: /s/
Lisa Mann, Deputy Clerk

[ECF 88, entered on 6/19/2017]

UNITED STATES DISTRICT COURTDISTRICT OF NEVADARENO, NEVADA

* * *

SEIKO EPSON CORPORATION, et al., Plaintiff, vs. INKSYSTEM LLC, et al., Defendant(s).	3:16-CV-0524-RCJ-VPC ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL AND FOR SANCTIONS AGAINST DEFENDANTS INKSYSTEM LLC, LUCKY PRINT LLC, AND ANDRIY KRAVCHUCK

Plaintiffs Seiko Epson Corporation and Epson America, Inc. ("plaintiffs") having filed their motion to compel and for sanctions (ECF No. 85) against defendants InkSystem LLC, Lucky Print LLC, and Andriy Kravchuk ("defendants"), and good cause appearing, the court hereby GRANTS plaintiff's motion (ECF No. 85) as follows:

1. Defendants shall pay to plaintiffs, c/o J. Andrew Coombs, Client Trust Account, the amount of $16,146.50 within seven (7) court days of the date of this order;

2. Defendants shall be precluded from seeking any offset as to damages using documents or information not disclosed or produced within three (3) court days of the date of this order;

3. A factual finding of willfulness is entered against defendants as to plaintiff's trademark claims;

4. Defendants will produce InkSystem LLC's co-owner, Andrey Ushakov, to be deposed in the United States on shortened notice; and

5. Should defendants fail to comply in any way with this order, upon application by plaintiffs and on shortened notice, this court will issue a report and recommendation that all of defendants' answers will be stricken and their defaults entered.

IT IS SO ORDERED.

DATED: June 19, 2017.

/s/
UNITED STATES MAGISTRATE JUDGE

[ECF 112, entered on 08/03/2017]

UNITED STATES DISTRICT COURTDISTRICT OF NEVADARENO, NEVADA

* * *

SEIKO EPSON CORPORATION, et al., Plaintiff, vs. INKSYSTEM LLC, et al., Defendant(s).	3:16-CV-0524-RCJ-VPC **REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE**

This Report and Recommendation is made to the Honorable Robert C. Jones, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is plaintiffs' Seiko Epson Corporation and Epson America, Inc., ("plaintiffs") renewed motion to compel and for terminating sanctions (ECF No. 91), regarding defendants ART LLC, AF LLC, Inkredible LLC LLC, Andriy Kravchuk, Artem Koshkalda, Igor Bielov, and Vitalii Maliuk (collectively, "defendants").[6] Defendants opposed (ECF No. 94) and plaintiffs replied (ECF No. 98). The court has thoroughly

[6] Defendants Inksystem LLC and Lucky Print LLC are not subject of this motion.

reviewed the record and recommends that plaintiffs' motion be granted.

I. PROCEDURAL HISTORY

On May 26, 2017, plaintiffs filed an emergency motion to compel and for sanctions. (ECF No. 80.) Plaintiffs motion was based on "defendants' continued and unexcused discovery failures," such as ignoring court orders, failing to appear in court, missing discovery deadlines, failing to provide even basic discovery, and generally abusing the discovery process. (Id.at 1-5.) On June 8, 2017, this court held a hearing on the emergency motion for sanctions. (ECF No. 84.) The motion was granted in part and denied in part, and defendants were ordered to provide various discovery responses and pay $5,554.79 in attorney's fees and costs to plaintiffs. (ECF No. 84.)

On June 16, 2017plaintiff filed another motion to compel and for sanctions (ECF No. 85). Plaintiffs' motion related to depositions of defendant Kravchuk and defendants continued, willful noncompliance with court orders and discovery obligations. (ECF No. 85.) Plaintiffs argued that defendants are "willfully withholding relevant evidence which clearly prejudices plaintiffs and supports the relief requested," and defendants are "simply abusing the discovery process to delay a final adjudication." (Id.at 6.) This court granted the motion and ordered that: 1) defendants pay $16,146.50 to plaintiffs; 2) defendants be precluded from seeking any offset as to damages

using documents or information not disclosed or produced; 3) a factual finding of willfulness is entered against defendants as to plaintiffs' trademark claims; 4) Andrey Ushakov is to be produced for deposition in the United States on shortened notice; and 5) if defendants fail to comply with the court's order, the court will issue a report and recommendation that all of defendants' answers be stricken and their defaults entered. (ECF No. 88.) On June 28, 2017, plaintiffs filed a renewed motion to compel and for terminating sanctions due to defendants' continued failure to comply with this court's prior orders. (ECF No. 91.)

Plaintiffs have accurately recounted the history of defendants' litigation tactics (See ECF Nos. 80, 85, 91). Defendants have repeatedly disobeyed court orders, applicable rules, and plaintiffs' properly propounded discovery requests. Defendants continue to withhold evidence directly related to the issues of this case and have repeatedly shown their intention to continue to violate court orders and ignore discovery obligations. Plaintiffs now seek case-terminating sanctions against defendants for their continued bad faith in the face of court orders, admonitions, and sanctions.

II. DISCUSSION AND ANALYSIS

Plaintiffs seek case terminating sanctions based upon two alternative grounds: (1)Fed. R. Civ. P. 37(b)(2)(A)(iii)-(vi) and Local Rule IA 11-8; and (2) the court's inherent power to enter a default judgment to

ensure the orderly administration of justice and the integrity of its orders. Having heard oral argument and having reviewed all documents in the record, the court finds such terminating sanctions appropriate.

A. Fed. R. Civ. P. 37(b) and Local Rule IA 11-8.

Fed. R. Civ. P. 37(b) and Local Rule IA 11-8 provides for sanctions where a party fails to comply with a court order. FRCP 37(b)(2)(A)(iii)-(vi) states that if a party disobeys a discovery order the court may issue an order striking pleadings, staying proceedings, dismissing the action, or rendering a default judgment against the disobedient party. LR IA 11-8(d) states that the court may impose any and all appropriate sanctions on a party who fails to comply with any order of this court.

Plaintiffs argue that due to defendants' willful violation of numerous court orders, such as their failure to appear in person for hearings and failure to produce complete discovery responses and requests, the Federal and Local Rules allow the Court to enter terminating sanctions. (ECF No. 91 at 7.) The court agrees that terminating sanctions are appropriate at this time. Defendants were specifically admonished in this court's June 19, 2017 order, that if they again failed to comply, this court would issue a report and recommendation that all of defendants' answers be stricken and their defaults entered. (See ECF No. 88.) Due to defendants' repeated disobedience and failure to comply with this court's orders, it is appropriate to

strike defendants' answers and enter default judgments against them.

B. The Court's Inherent Power to Sanction.

Further, pursuant to the court's inherent power to sanction, dismissal is an available sanction when "a party has engaged deliberately in deceptive practices that undermine the integrity of judicial proceedings" or "has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice." Leon v. IDX Systems Corp.,464 F.3d 951, 968 (9th Cir.2006), citing Anheuser-Busch, Inc. v. Natural Beverage Distribs.,69 F.3d 337, 348 (9th Cir.1995).The district court is required to consider the following factors before imposing the "harsh sanction" of dismissal: "(1) the public's interest in the expeditious resolution of litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the other party; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." Hester v. Vision Airlines, Inc., 687 F.3d 1162, 1169 (9thCir. 2012) (quotation omitted).

1. The public's interest in the expeditious resolution of litigation.

"Orderly and expeditious resolution of disputes is of great importance to the rule of law... [and b]y the same token, delay in reaching the merits ... is costly in money, memory, manageability, and confidence in

the process." Allen v. Bayer Corp.(In re: Phenylpropanolamine (PPA) Prods. Liab. Litig.), 460 F.3d 1217, 1227 (9th Cir. 2006).Here, defendants' behavior and continued failure to comply with several court orders have greatly delayed this matter and their behavior is inconsistent with the purpose of the Federal Rules of Civil Procedure to provide a "just, speedy, and inexpensive determination" of this action. Fed. R. Civ. P. 1. This factor favors dismissal.

2. The court's need to manage its docket

"Where a court order is violated, the first and second factors will favor sanctions and the fourth will cut against them." Computer Task Group, Inc. v. Brotby, 364 F.3d 1112, 1115 (9th Cir. 2004) citing Payne v. Exxon Corp., 121 F.3d 503, 507 (9th Cir. 1997). The court agrees with plaintiffs' recitation of the myriad case management problems the court has experienced in this proceeding, most importantly here are defendants' numerous failures to obey court orders, including failure to appear for court hearings. This factor favors dismissal.

3. The risk of prejudice to the opposing party

Here, plaintiffs argue that defendants are not prejudiced as they have been given numerous opportunities to comply with this court's orders and continually fail to do so. Defendants actions have substantially and unreasonably delayed this case,

such that if this case continues on the way it has, plaintiffs will be prejudiced and continue to incur substantial costs. Any prejudice to defendants is far outweighed by prejudice to plaintiffs. This factor favors dismissal.

4. The public policy favoring disposition of cases on their merits

"Public policy favoring disposition of cases on their merits strongly counsels against dismissal." Allen, 460 F.3d at 1128. While plaintiffs acknowledge this, they also argue that the impact of this factor should be lessened because "this case began with an *ex parte* seizure order where the District Court already found that plaintiffs were likely to succeed on the merits." (ECF No. 91 at 10.) Further, a preliminary injunction, and thus a finding of likelihood of success on the merits, has already issued in this case. (ECF No. 33.) This factor favors dismissal.

5. The availability of less drastic sanctions

When considering this factor, the court must compare the impact of dismissing the case to the adequacy of a less drastic sanction. Malonev. U.S. Postal Service, 833 F.2d 128, 131-32(9th Cir. 1987).The Ninth Circuit has outlined three factors to help facilitate this analysis, which are whether the court: "(1) explicitly discussed the alternative of lesser

sanctions and explained why it would be inappropriate; (2) implemented lesser sanctions before ordering the case dismissed; and (3)warned the offending party of the possibility of dismissal." Computer Task Group,364 F.3d at 1116 citing Anheuser-Busch,69 F.3d at 352.

The court has imposed increasingly more serious sanctions against defendants over the course of this proceeding, and defendants have continued to engage in improper conduct. Given defendants failure to comply with past orders, the court has no reason to believe it will comply with future orders. Defendants were warned that their failure to comply with this court's orders would result in a recommendation to the District Court that sanctions be entered against them. This factor favors dismissal. Given that all of the factors weigh in favor of terminating sanctions, the court finds that defendants' answers should be stricken as a sanction for their failure to comply with this court's orders.

III.CONCLUSION

The court concludes that the severe sanction of dismissal is warranted in this case, as outlined herein.

The parties are advised:

1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice, the parties may file specific written objections to this Report and Recommendation within fourteen days of receipt.

These objections should be entitled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the District Court.

2. This Report and Recommendation is not an appealable order and any notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's judgment.

IV. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that plaintiffs' motion for case terminating sanctions (ECF No. 91) be **GRANTED**.

IT IS FURTHER RECOMMENDED that defendants ART LLC, AF LLC, INKREDIBLE LLC LLC, Andriy Kravchuk, Artem Koshkalda, Igor Bielov, and Vitalii Maliuk's answers (ECF Nos. 41, 49) be **STRICKEN** and their defaults entered.

DATED: August 3, 2017.

/s/
UNITED STATES MAGISTRATE JUDGE

[ECF 160 w/o exhibits, entered on 08/22/2017]

UNITED STATES DISTRICT COURTDISTRICT OF NEVADARENO, NEVADA

SEIKO EPSON CORPORATION, et al., Plaintiff, vs. INKSYSTEM LLC, et al., Defendant(s).	Case No.: 3:16-CV-0524-RCJ-VPC **ORDER**

Before the Court is the Reports and Recommendations of U.S. Magistrate Judge (ECF #1121) entered on August 3, 2017, recommending that the Court grant Plaintiffs' Motion for Case Terminating Sanctions (ECF No. 91) and Defendants ART LLC, AF LLC, INKREDIBLE LLC, Andriy Kravchuk, Artem Koshkalda, Igor Bielov, and Vitalii Maliuk's Answers (ECF Nos. 41, 49) be stricken and their defaults entered. On August 16, 2017, Defendants filed their Objections to Report and Recommendation Regarding Motion for Summary Judgment (ECF No. 153).

The Court has conducted it's *de novo* review in this case, has fully considered the objections of the Plaintiff, the pleadings and memoranda of the parties

[ECF 160 w/o exhibits, entered on 08/22/2017]

and other relevant matters of record pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule IB 3-2. The Court determines that the Magistrate Judge's Reports and Recommendation (ECF #112) entered on August 3, 2017, should be ADOPTED AND ACCEPTED.

IT IS HEREBY ORDERED that Plaintiffs' Motion for Case Terminating Sanctions (ECF No.91) is GRANTED.

IT IS FURTHER ORDERED that Defendants ART LLC, AF LLC, INKREDIBLE LLC, Andriy Kravchuk, Artem Koshkalda, Igor ielov, and Vitalii Maliuk's Answers (ECF Nos. 41, 49) are STRICKEN from the Docket and the Clerk of the Court shall enter Defaults accordingly.

IT IS SO ORDERED this 22nd day of August, 2017.

/s/
ROBERT C. JONES

[ECF 304, entered on 01/16/2018]

UNITED STATES DISTRICT COURTDISTRICT OF NEVADARENO, NEVADA

SEIKO EPSON CORPORATION, et al., Plaintiff, vs. INKSYSTEM LLC, et al., Defendant(s).	Case No.: 3:16-CV-0524-RCJ-VPC **JUDGMENT PURSUANT TO ENTRY OF DEFAULT**

This cause having come before this Court on the motion of Plaintiffs Seiko Epson Corporation and Epson America, Inc. (collectively "Plaintiffs") for entry of default judgment and permanent injunction ("Motion") against Defendants Inksystem LLC, Lucky Print, LLC, AF LLC, ART LLC, Inkredible LLC LLC, Andriy Kravchuk, Igor Bielov, Artem Koshkalda, Vitalii Maliuk, Veles LLC, Alado LLC, Karine LLC, KBF, LLC, Karine Vardanian a/k/a Karine Christ a/k/a Karine Crist a/k/a Karine Westbrook, Vladimir Slobodianiuk a/k/a Volodymyr Slobodianiuk a/k/a Vladimir Westbrook, Kristina Antonova a/k/a Krystyna Antonova a/k/a Kristy Antonova a/k/a Krystyna Antanova a/k/a Krystyna Taryanik, and Roman Taryanik (collectively, "Defendants"), and Sancase LLC, Vilacet LLC, Renoca LLC, Best Deal

Cartridge, LLC, Privat Group LLC, Yava LLC and Danalop LLC (collectively, "Koshkalda's Companies");

AND, the Court having read and considered the pleadings, declarations and exhibits on file in this matter and having reviewed such evidence as was presented in support of Plaintiffs' Motion;

AND, GOOD CAUSE APPEARING THEREFOR, the Court finds the following facts:

Plaintiffs are the owners of all rights in and to trademark registrations, including, but not limited to, the trademarks which are the subject of the registrations listed in Exhibit A (collectively the "Plaintiffs' Trademarks"), attached hereto.

Plaintiffs have complied in all respects with the laws governing trademarks and secured the exclusive rights and privileges in and to the Plaintiffs' Trademarks.

The appearance and other qualities of the Plaintiffs' Trademarks are distinctive and original.

Defendants are using Plaintiffs' Trademarks or marks confusingly similar to Plaintiffs' Trademarks, in connection with the importation, manufacture, distribution, sale and offer for sale of counterfeit and/or infringing ink cartridges bearing unauthorized reproductions or substantially similar copies of registered trademarks owned by Plaintiffs ("Unauthorized Product").

Defendants' advertising, displaying, promoting, marketing, distributing, offering for sale and selling of the Unauthorized Product was engaged in willfully and intentionally, without leave or license from Plaintiffs, in violation of Plaintiffs' rights in and to Plaintiffs' Trademarks.

The liability of the Defendants in the above-referenced action for their acts in violation of Plaintiffs' rights is knowing and willful, and as such the Court expressly finds that there is no just reason for delay in entering the default judgment and permanent injunction sought herein.

The Court has previously found that Plaintiffs have shown that proceeds from Defendants' infringement were deposited into a large number of bank accounts and also used to purchase valuable real estate, among other things. Dkt.159.

The Court has also found that Plaintiffs have shown that Defendants have and are likely to further liquidate and dissipate assets, that they have a history of transferring money to family members and using shell companies to hide assets or the source of money. Dkt.159.

The Court, as a result of Defendants' dissipation, secreting, and hiding of assets and other bad faith acts, granted an Order for Asset Seizure and Impoundment against Defendants AF LLC, ART LLC, Inkredible LLC LLC, Andriy Kravchuk, Igor Bielov,

Artem Koshkalda and Vitalii Maliuk on August 22, 2017 ("Asset Freeze Order"), enjoining them and any person, corporation or other entity acting in concert with them, from further transfer or other concealment of assets. Dkt.159. After Defendant Koshkalda, with the assistance of co-Defendant Vladimir Westbrook, continued to act in violation of the Court's Asset Freeze Order, individually, and through various shell companies, including but not limited to Sancase LLC, Vilacet LLC and Renoca LLC, the Court set a hearing requiring the personal appearance of both Koshkalda and Westbrook regarding their alleged contempt, but they failed to appear in violation of the Court's Order and were found in contempt of Court. Dkt. 250 ("Contempt Order"). As a result of Koshkalda's continued and undisputed violation of Court Orders, including of the Asset Freeze Order, an Amended Asset Freeze Order was issued as against Koshkalda and his companies as a direct result of his latest contempt.

Therefore, based upon the foregoing facts, and GOOD CAUSE APPEARING THEREFOR, THE COURT ORDERS that this Judgment shall be and is hereby entered in the within action as follows:

1) This Court has jurisdiction over the parties to this action and over the subject matter hereof pursuant to 15U.S.C. §§1051, et seq., 28 U.S.C. §§ 1331 and 1338. Service of process was properly made on the Defendants.

2) Defendants are using Plaintiffs' Trademarks or marks confusingly similar to Plaintiffs' Trademarks, in connection with the importation, manufacture, distribution, sale and offer for sale of Unauthorized Product which infringes upon the Plaintiffs' Trademarks.

3) The Defendants and their agents, servants, employees and all persons in active concert and participation with them who receive actual notice of the injunction are hereby restrained and enjoined from:

a) Infringing the Plaintiffs' Trademarks, either directly or contributorily, in any manner, including generally, but not limited to, manufacturing, reproducing, importing, advertising, selling and/or offering for sale any unauthorized product which features any of the Plaintiffs' Trademarks, and, specifically:

i) Importing, manufacturing, distributing, advertising, selling and/or offering for sale the Unauthorized Product or any other unauthorized products which picture, reproduce, copy or use the likenesses of or bear a substantial similarity to any of Plaintiffs' Trademarks;

ii) Importing, manufacturing, reproducing, distributing, advertising, selling and/or offering for sale in connection thereto any unauthorized promotional materials, labels,

packaging or containers which picture, reproduce, copy or use the likenesses of or bear a confusing similarity to the Plaintiffs' Trademarks;

iii) Engaging in any conduct that tends falsely to represent that, or is likely to confuse, mislead or deceive purchasers, Defendants' customers and/or members of the public to believe, the actions of Defendants, the counterfeit products and related merchandise manufactured, sold and/or offered for sale by Defendants, or Defendants themselves are connected with Plaintiffs, are sponsored, approved or licensed by Plaintiffs, or are affiliated with Plaintiffs;

iv) Affixing, applying, annexing or using in connection with the importation, manufacture, distribution, advertising, sale and/or offer for sale or other use of any goods or services, a false description or representation, including words or other symbols, tending to falsely describe or represent such goods as being those of Plaintiffs.

4) Defendants, jointly and severally, shall pay damages to Plaintiffs in the sum of Twelve Million Dollars ($12,000,000.00).

5) The following Defendants shall also pay all sanctions issued against them in these proceedings, as follows: Dkts. 88 (Kravchuk: $16,146.50), 137 (Bielov/AF LLC, jointly and severally: $6,173.65, Maliuk/Inkredible LLC LLC, jointly and severally: $8,898.45), and any sanctions entered pursuant to

Dkt. 175.The obligations under this Paragraph 5 are separate and distinct from the obligations under Paragraph 4 above, and satisfaction of one shall not constitute satisfaction of the other.

6) All amounts described in Paragraphs 4 and 5 of this Judgment shall bear interest pursuant to 28 U.S.C. § 1961(a).

7) The items seized and currently stored pursuant to the Temporary Restraining Order and Order for Seizure and Impoundment entered on September 13, 2017[Dkt.9], and the Preliminary Injunction entered on October21, 2017[Dkt. 33], are transferred and released to Plaintiffs immediately for destruction or other disposition. Defendants are entitled to no credit against the amounts due under this Judgment for such items.

8) Title and ownership in the $314,657.47and any other cash assets frozen by the Temporary Restraining Order; Order For Asset Seizure And Impoundment; Order To Show Cause Re Issuance Of Pre-Judgment Asset Freeze entered on July 31, 2017[Dkt.105-106], the Order for Asset Seizure and Impoundment entered on August 22, 2017[Dkt. 109], the Order re Contempt as to Artem Koshkalda and Vladimir Westbrook entered on October 27, 2017 [Dkt. 250], and the Amended Order for Asset Seizure and Impoundment entered on October 27, 2017 [Dkt. 251], including but not limited to those assets identified in the attached Exhibit B to this Judgment,

are Ordered to be immediately assigned or otherwise transferred to Plaintiffs or accounts identified by Plaintiffs, the value of such assets to be deducted against amounts owed pursuant to this Order.

9) Plaintiffs may enforce this Judgment against Defendants' and/or Koshkalda's Companies' real estate assets, including but not limited to those identified in the attached Exhibit C.

10) Effective immediately and until the Judgment is satisfied in full, Defendants, any person acting in concert with them, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, or any third-party service provider who is served with a copy of this Order or has knowledge of this Order by personal service or otherwise, are enjoined and restrained from:

a) Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, or other assets, wherever located, including outside the United States, including but in no way limited to those accounts and assets identified in Exhibits B and C, that include, consist of in any amount, were derived from, or were purchased with any profits, proceeds or monies received from the sale of any unauthorized Epson branded ink cartridge, and are:

i) owned or controlled by, or in the actual or constructive possession of any Defendant; or

ii) owned or controlled by, or held for the benefit of, directly or indirectly, any Defendant, in whole or in part; or

iii) owned or controlled by, or in the actual or constructive possession of or otherwise held for the benefit of, any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any of the Defendants (including but not limited to Koshkalda's Companies), including, but notlimited to, any assets held by, for, or subject to access by, any of the Defendants at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, or other financial institution or depository of any kind.

b) Opening or causing to be opened any new accounts or safe deposit boxes titled in the name of any Defendant, or subject to access by any Defendant, that will receive any profits, proceeds or monies received from the sale of any unauthorized Epson branded ink cartridge;

c) Obtaining a personal or secured loan encumbering the asset of any Defendant, or subject to access by any Defendant, where the asset consists of in any amount, was derived from, or was purchased with any profits, proceeds or monies received from the

sale of any unauthorized Epson branded ink cartridge;

d) Incurring liens or other encumbrances on real property, personal property, or other assets in the name, singly or jointly, of any Defendant or of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, where the asset consists of in any amount, was derived from, or was purchased with any profits, proceeds or monies received from the sale of any unauthorized Epson branded ink cartridge; or

e) Incurring charges or cash advances on any credit card or prepaid debit, credit or other bank card, issued in the name, singly or jointly, of any Defendant or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, where the asset consists of in any amount, was derived from, or was purchased with any profits, proceeds or monies received from the sale of any unauthorized Epson branded ink cartridge.

11) The bond filed on September 15, 2017, as Dkt.11 is hereby exonerated.

12) This Judgment shall be deemed to have been served upon Defendants at the time of its execution by the Court and entry by the Clerk of the Court.13)The Court finds there is no just reason for delay in entering this Judgment and, pursuant to Rule 54(a) of

the Federal Rules of Civil Procedure, the Court directs immediate entry of this Judgment against Defendants.

14) The Asset Freeze Order [Dkt. 159], the Contempt Order [Dkt.250], and the Amended Asset Freeze Order [Dkt.251], shall remain in full force and effect through any period of stay or applicable non-enforcement period of this Judgment. 15)The following terms of the Asset Freeze Order [Dkt. 159], the Contempt Order [Dkt.250], and the Amended Asset Freeze Order [Dkt. 251], shall be incorporated into this Judgment and will survive the entry of this Judgment:

a) Plaintiffs are given leave to immediately attach and execute upon any assets owned or controlled by, or in the actual or constructive possession of or otherwise held for the benefit of, any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by Defendant Koshkalda or one of his companies (including but not limited to Sancase LLC, Vilacet LLC, and Renoca LLC) including but not limited to those assets identified in Exhibit A and B. Plaintiffs have leave to submit proposed writs or other orders as may be necessary to attach and/or execute upon any assets pursuant to this Judgment;

b) Koshkalda and those acting in concert with him who are subject to the jurisdiction of this Court, including but not limited to Andriy Kravchuk

and Vladimir Westbrook, are ordered to appear for examination under oath before Magistrate Judge Cooke, or another special master as the Court sees fit, at a date and time to be set by Magistrate Judge Cooke or special master within 28 days of the entry of this Order, to account for all of Koshkalda's assets and recent transactions, including the identification and whereabouts of all of the proceeds from real estate transactions during the pendency of this action;

c) Koshkalda and those acting in concert with him who are subject to the jurisdiction of this Court, including but not limited to Andriy Kravchuk and Vladimir Westbrook, are further ordered to produce, within ten days following this order, all documents for all of Koshkalda's assets and recent transactions, including all documents the identification and whereabouts of all of the proceeds from real estate transactions during the pendency of this action;

d) Plaintiffs are given leave to undertake discovery, including Debtor's examinations and third-party discovery, regarding the assets and obligations of Defendants and those acting in concert with them;

e) Koshkalda, ART LLC, and Westbrook shall deposit into a frozen account all proceeds from any real estate transaction completed since August 1, 2017; and

f) Defendants' bank accounts are impounded, as provided in Paragraph 14 of the Amended Seizure Order.

16) The Court shall retain jurisdiction of this action, specifically including any Contempt and Sanctions Orders entered, to entertain such further proceedings and to enter such further orders as may be necessary or appropriate to implement and enforce the provisions of this Judgment and any orders of this Court.

IT IS SO ORDERED.

DEBRA K. KEMPI	January 16, 2018
CLERK	DATE

/s/
(by) DEPUTY CLERK

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SEIKO EPSON CORPORATION, et al., Plaintiffs-Appellees, vs. ARTEM KOSHKALDA; ART, LLC, Defendants-Appellants.	No. 18-15124 DC No. 3:16 cv-0524 RCJ MEMORANDUM

SEIKO EPSON CORPORATION, et al., Plaintiffs-Appellees, vs. ANDRIY KRAVCHUK; IGOR BIELOV; KBF, LLC; VLADIMIR SLOBODIANIUK, AKA Volodymyr Slobodianiuk, AKA Vladimir Westbrook; KRISTINA ANTONOVA, AKA Krystyna Antanova,	No. 18-15245 DC No. 3:16 cv-0524 RCJ

AKA Kristy Antonova, AKA Krystyna Antonova, AKA Krystyna Taryanik; VITALII MALIUK; ROMANTARYANIK,

Defendants-Appellants.

Appeals from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding
Argued and Submitted November 13, 2019
San Francisco, California

Before: THOMAS, Chief Judge, and TASHIMA and WARDLAW, Circuit Judges.

Appellants appeal the default judgment entered against them on Seiko Epson Corporation's ("Epson") claims of trademark counterfeiting, trademark infringement, and related claims following the entry of default against each appellant. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The district court did not abuse its discretion by imposing case terminating sanctions against appellants Artem Koshkalda, ART LLC, Vitalii Maliuk, Andriy Kravchuk and Igor Bielov. See *Conn. Gen. LifeIns. Co. v. NewImages of Beverly Hills*,

482 F.3d 1091, 1096 (9th Cir. 2007). Koshkalda and ARTLLC failed to produce discovery, failed to appear in court and violated various court orders. Maliuk failed to provide useful information as a Fed. R. Civ. P.30(b)(6) deponent and failed to appear in court. Kravchuk failed to produce discovery, failed to appear in court, failed to appear for two separate depositions and failed to pay sanctions awarded against him. Bielov failed to produce discovery, failed to appear in court and failed to appear for a deposition. The magistrate judge commented that she had "never encountered th[is] level of obstructionism and failure to respond to the most basic discovery requests" in her18 years as a judge. The appellants were warned repeatedly of the possibility of case terminating sanctions, yet continued to disregard discovery obligations and court orders. Although the appellants other than Maliuk point out that they were not subject to the June19, 2017, sanctions order that preceded the entry of case terminating sanctions, this is irrelevant, because the case terminating sanctions were entered as a result of the appellants' overall conduct over several months.

2. The district court did not abuse its discretion by imposing earlier sanctions on Maliuk and Kravchuk. See *Conn. Gen. Life Ins. Co.*, 482 F.3d at1096. A corporate officer can be sanctioned under Fed. R. Civ. P. 37(b) when he is responsible for a corporate defendant's failure to produce discovery

responses. See *David v. Hooker, Ltd.*, 560 F.2d 412, 415, 420-21 (9th Cir. 1977).

3. The default judgments entered against appellants Vladimir Slobodianiuk, Kristina Antonova and Roman Taryanik are not void for lack of personal jurisdiction due to insufficient service of process. See *SEC v. InternetSols. for Bus. Inc.*, 509 F.3d 1161, 1165 (9th Cir. 2007) (reviewing de novo). Because "a signed return of service constitutes prima facie evidence of valid service," the burden is on the appellants to show "by strong and convincing evidence" that service was not valid. Id. at 1166. Here, the appellants have presented no evidence, let alone strong and convincing evidence, that the places where service occurred were not their "dwelling[s] or usual place[s] of abode. "Fed. R. Civ. P. 4(e)(2)(B). In the cases of Antonova and Taryanik, the mere fact that the complaint alleges a residence in Santa Clara and they were served in San Jose does not constitute strong and convincing evidence of invalid service.

4. Appellant KBF, LLC, does not dispute Epson's contention that it had actual notice of the proceedings, through service of its registered agent, Slobodianiuk. Accordingly, we decline to exercise our discretion to reach this issue raised for the first time on appeal. See *Bolker v. Comm'r*, 760 F.2d 1039,1042 (9th Cir. 1985).

5. The district court did not err by concluding that the appellants' trademark violations

were willful. The operative second amended complaint alleged willful infringement and these allegations were deemed true by virtue of the appellants' defaults. See *Derek Andrew, Inc. v. Poof Apparel Corp.*,528 F.3d 696, 702 (9th Cir. 2008).

6. The appellants are correct in arguing that the averments of the complaint regarding the amount of damages were not deemed true by virtue of the appellants' defaults. See Fed. R. Civ. P. 8(b)(6); Geddes v. United Fin. Grp., 559F.2d 557, 560 (9th Cir. 1977). Contrary to the appellants' assertion, however, the district court did not rely on the averments of the complaint. In the district court, Epson presented undisputed expert evidence showing that the defendants' unauthorized sales of Epson printer cartridges generated revenue of at least $14.4million. In light of this evidence, the district court's award of $12 million in statutory damages was within the court's discretion. See15 U.S.C. § 1117(c)(2); cf. Columbia Pictures Television, Inc. v. Krypton Broad. of Birmingham, Inc., 259F.3d 1186, 1194 (9th Cir. 2001) (Copyright Act) ("If statutory damages are elected, the court has wide discretion in determining the amount of statutory damages to be awarded, constrained only by the specified maxima and minima."(alteration adopted and internal quotation marks omitted)).

7. Finally, the district court did not abuse its discretion by awarding statutory damages for the

use of counterfeit marks for printer ink as a class 2 good. Although gray market goods generally are not considered counterfeit, the appellants here did much more than purchase genuine Epson cartridges abroad and resell them in the domestic U.S. market. They also repackaged, reprogrammed, and relabeled the cartridges, changed "Best Before" dates, and degraded the quality of the cartridges and ink before selling the cartridges to unsuspecting customers. See2 Anne Gilson LaLaonde, Gilson on Trademarks § 5.19[3][c][ii], at 5-229(Matthew Bender 2019) ("If a gray market product is repackaged in a way that will deceive consumers, that product is also counterfeit.").

AFFIRMED.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SEIKO EPSON CORPORATION, et al., Plaintiffs-Appellees, vs. INKSYSTEM LLC, et al., Defendants-Appellants.	No. 18-15124 DC No. 3:16 cv-0524 RCJD Nev., Reno ORDER

Before: THOMAS, Chief Circuit Judge, and TASHIMA and WARDLAW, Circuit Judges.

The panel has voted to deny the petition for panel rehearing. Chief Judge Thomas and Judge Wardlaw vote to deny the petition for rehearing *en banc* and Judge Tashima so recommends. The full court has been advised of the petition for rehearing *en banc* and no judge of the court has requested a vote on *en banc* rehearing. See Fed. R. App. P. 35(f). The petition for panel rehearing and the petition for rehearing *en banc* are denied.