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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 AKRURA PTE. LTD, a Singapore  
12 company,

13 Plaintiff,

14 vs.

15 APERO TECHNOLOGIES GROUP, a  
16 Vietnam company, BEGAMOB  
17 GLOBAL, and TRUSTED TOOLS &  
18 UTILITIES APPS,

19 Defendants.  
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Case No.: 2:23-cv-000102

**[PROPOSED] ORDER ENTERING  
FINAL DEFAULT JUDGMENT  
AGAINST DEFENDANTS  
BEGAMOB GLOBAL AND  
TRUSTED TOOLS & UTILITIES  
APPS**

DATE: January 5, 2024

TIME: 10:30 a.m.

COURTROOM: 8A, 8th Floor

JUDGE: Hon. Josephine L. Staton

Magistrate Judge: Hon Karen L.  
Stevenson

Before the Court is Plaintiff Akrura PTE LTD (“Plaintiff”)’s Rule 55(b) renewed motion for the entry of final default judgment against Defendants Begamob Global (“Begamob”) and Trusted Tools & Utilities Apps (“Tools”) (together, “Defendants”).<sup>1</sup>

## **I. FACTUAL BACKGROUND**

Plaintiff is the creator and copyright owner of the Blood Pressure mobile application (“Plaintiff’s BP App”) and offers it on Google Play through the QR Code Scanner developer account. Compl. ¶ 2.

Defendant Begamob is a mobile application developer that offers mobile applications on Google Play. Begamob has a website at <http://www.begamob.com> and uses the email address [info@begamob.com](mailto:info@begamob.com). Compl. ¶ 8.

Defendant Tools is a mobile application developer that offers mobile applications on Google Play. Defendant Tools & Utilities Apps does not appear to have a website but uses the email address [liveroyalstudio.inc@gmail.com](mailto:liveroyalstudio.inc@gmail.com). Compl. ¶ 9.

On September 20, 2022, Tools launched on Google Play its infringing application, Blood Pressure App: BP Monitor (Tools’ BP Monitor App”). Compl. ¶ 33.

A side-by-side comparison of Plaintiff’s BP App and Tools’ BP Monitor App confirmed that defendant Tools had literally copied Plaintiff’s content as certain significant language used in the two products appeared identical. Compl. ¶ 34.

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<sup>1</sup> Plaintiff’s initial motion for default judgment was filed against Defendants Begamob, Tools, and Apero Technologies Group (“Apero”). However, Apero recently made an appearance in this case, and the Court issued an Order Granting Stipulation to Set Aside Entry of Default and for Extension of Time to Respond to the Complaint on October 11, 2023. Dkt. 34.

1 On October 25, 2022, Plaintiff filed with Google Play a DMCA Takedown  
2 Request. *Id.* Plaintiff attached a side-by-side comparison of the two apps and  
3 explained: “I’m writing to report that an infringing app ... 100% Copied our  
4 original In-app Texts and UI Design WITHOUT any change. This high degree of  
5 coincidence is by no means an accident. We created all In-app Text by ourselves,  
6 we can provide all source evidence if needed.” Ex. A.<sup>2</sup>

7 On September 26, 2022, Begamob launched on Google Play its infringing  
8 application, Blood Pressure Tracker App (“Begamob’s BP Tracker App”).  
9 Compl. ¶ 33.

10 A side-by-side comparison of Plaintiff’s Blood Pressure App and  
11 Begamob’s BP Tracker App confirmed that defendant Begamob Global had  
12 literally copied Plaintiff’s content as significant language used in the two products  
13 was identical. Compl. ¶ 35.

14 On December 1, 2022, Plaintiff filed with Google Play a DMCA Takedown  
15 Request against Begamob. *Id.* Plaintiff attached to the DMCA Takedown  
16 Request a side-by-side comparison of the two apps and explained: “Begamob []  
17 maliciously copied our string text on source code and in-app articles & UI design  
18 WITHOUT any changes. We created all source code and articles by ourselves, we  
19 can provide all of the source evidence if needed.” Ex. B.

20 Begamob’s and Tools’ offers of the infringing applications have thus  
21 caused mistake, confusion, and deception among consumers and is irreparably  
22 harming Plaintiff. Compl. ¶ 36.

23 On January 6, 2023, Plaintiff filed the instant lawsuit. Dkt. 1.

24 On April 7, 2023, the Court issued an Order Granting Plaintiff’s Ex Parte  
25 Motion for Alternative Service (“Alternative Service Order”). Dkt. 24.

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27 <sup>2</sup> “Ex. \_\_” refers to the Exhibits to the Declaration of Shelley Ivan, submitted in  
28 support of this Motion.

1 Pursuant to the Alternative Service Order, Plaintiff served all Defendants  
2 and filed a Proof of Service on May 18, 2023. Dkt. 25.

3 Despite being properly served pursuant to the Court's Alternative Service  
4 Order, Begamob and Tools never filed a response to the Complaint with the  
5 Court.

6 However, on March 22, 2023, Begamob responded to the email of  
7 Plaintiff's counsel regarding the Complaint, admitting that Begamob copied  
8 Plaintiff's mobile application. Ex. C ("[W]e inadvertently included components  
9 derived from your content with regard to certain features in-app. We have  
10 identified and removed the plagiarized content from our app immediately after  
11 receiving the report from your team."). *Id.*

12 On August 14, 2023, Plaintiff filed a Motion for Entry of Default by the  
13 Clerk Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure ("Default  
14 Motion"). Dkt. 26.

15 Also, on August 14, 2023, Plaintiff served its Default Motion on Begamob  
16 and Tools in accordance with the Alternative Service Order. Ex. D.

17 Faced with the Motion for Entry of Default, Tools wrote to Google to  
18 dispute the removal of its infringing application from Google Play. Ex. E.

19 On August 22, 2023, Google notified Plaintiff that Defendant Tools had  
20 submitted a counter notification, disputing the removal of its application. *Id.*  
21 Google also advised Plaintiff that Google would reinstate Tools' application  
22 unless Plaintiff filed a lawsuit against Tools regarding its infringement. *Id.*

23 Plaintiff immediately responded to Google's notification, attaching the  
24 Complaint in this action and explaining that Plaintiff had already filed a lawsuit  
25 against Tools. *Id.*

26 On August 24, 2023, the Clerk entered default against all Defendants (Dkt.  
27 29), pursuant to the Court's order regarding the same (Dkt. 28).  
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1 On September 1, 2023, Plaintiff filed a motion for default judgement  
2 against all Defendants. Dkt. 31.

3 On October 11, 2023, after Defendant Apero appear in the case, the Court  
4 issued an Order Granting Stipulation to Set Aside Entry of Default and for  
5 Extension of Time to Respond to the Complaint on October 11, 2023. Dkt. 34.

6 On October 25, 2023, the Court entered an order striking Plaintiff's motion  
7 for default judgment and instructing Plaintiff to file a Rule 55-1 declaration and a  
8 supplemented proposed order, incorporating Plaintiff's analysis of the Eitel factors  
9 and citing to evidence. Dkt. 37.

10 Plaintiff is hereby refiling its motion for default judgment and respectfully  
11 requesting that the Court issue final default judgment against Begamob and Tools.

## 12 **II. LEGAL STANDARD**

13 Pursuant to Fed.R.Civ.P. 55(b), "a court may order default judgment  
14 following the entry of default by the Clerk of the Court." *PepsiCo, Inc. v. Cal.*  
15 *Sec. Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002). Entry of default  
16 judgment is thus a two-step process. *See* Fed. R. Civ. P. 55(a)-(b). First, the  
17 plaintiff must request and obtain an entry of default from the court's clerk. *See*  
18 Fed. R. Civ. P. 55(a) ("When a party against whom a judgment for affirmative  
19 relief is sought has failed to plead or otherwise defend, and that failure is shown by  
20 affidavit or otherwise, the clerk must enter the party's default."). Second, Plaintiff  
21 must apply to the Court for entry of default judgment. Fed. R. Civ. P. 55(b)(2).  
22 Here, Defendants' default was entered by the Clerk pursuant to FRCP 55(a) on  
23 August 24, 2023. Dkt. 29. Plaintiff can thus move the Court for default judgment  
24 pursuant to FRCP 55(b)(2).

25 In the Ninth Circuit, Courts may consider the following factors in  
26 determining whether to enter default judgment: "(1) the possibility of prejudice to  
27 the plaintiff, (2) the merits of the case, (3) the sufficiency of the complaint, (4) the  
28 sum of money at stake in the action, (5) the possibility of a dispute concerning the

1 material facts, (6) whether defendant’s default was the product of excusable  
2 neglect, and (7) the strong public policy favoring decision on the merits.” *Eitel v.*  
3 *McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

### 4 **III. ANALYSIS OF THE EITEL FACTORS**

5 The balancing of the *Eitel* factors here favors entry of a default judgment under  
6 the Ninth Circuit’s *Eitel* analysis.

7 The first *Eitel* factor favors default judgment because, absent such judgment,  
8 Plaintiff will be prejudiced by Defendants’ failure to appear in this action (Dkt. 29)  
9 since it will be left without a remedy.

10 The second and third *Eitel* factors similarly favor default judgment. The  
11 Ninth Circuit has held that these “merits” and “sufficiency of the complaint”  
12 factors require that Plaintiff “state a claim on which the [plaintiff] may recover.”  
13 *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978). Here, Plaintiff has  
14 asserted, *inter alia*, a claim for copyright infringement in violation of 17 U.S.C §  
15 501, *et seq.* that is demonstrated by the side-by-side comparison between  
16 Plaintiff’s original application and Defendants’ counterfeits, showing that those  
17 counterfeits are substantially similar. Exs. A-B. The admitted allegations in the  
18 Complaint explain that: (i) Plaintiff is the creator and copyright owner of a blood  
19 pressure mobile application (Compl. ¶ 38); (ii) Defendants’ infringing applications  
20 use identical language excerpts and interface layout as Plaintiff’s application (*id.*  
21 ¶¶ 41, 43-44); (iii) Plaintiff did not authorize Defendants to copy its original work  
22 (*id.* ¶ 45); (iv) Defendants’ infringing conduct violates 17 U.S.C. §§ 106(1)-(3), (5)  
23 and 17 U.S.C. § 501(a); (v) Defendants damaged Plaintiff by intentionally copying  
24 Plaintiff’s valuable content and using counterfeits to target the same consumers  
25 and tap into Plaintiff’s previously generated user traffic and related advertising  
26 income (*id.* ¶ 47); (vi) Defendants damaged Plaintiff by offering their inferior  
27 counterfeit apps to Plaintiff’s consumer base and causing a current and long-term  
28 reputational damage to Plaintiff (*id.* ¶ 48); and (vii) unless enjoined and restrained

1 by the Court, Defendants’ conduct is causing and will continue to cause Plaintiff  
2 irreparable injury that cannot be compensated by monetary damages (*id.* ¶ 51).

3         Given Defendants’ default entered by the Clerk, the above factual  
4 allegations should be taken as true and are thus sufficient to support Plaintiff’s  
5 copyright infringement claim. *See Gucci Am. Inc. v. Wang Huoqing*, No. C-09-  
6 05969 JCS, 2011 WL 31191, at \*8 (N.D. Cal. Jan. 3, 2011) (“Once a party’s  
7 default has been entered, the factual allegations of the complaint, except those  
8 concerning damages, are deemed to have been admitted by the non-responding  
9 party.”).

10         The fourth *Eitel* factor, addressing the amount of money at stake, favors  
11 default judgment because Plaintiff has decided to forego damages in favor of  
12 permanent injunctive relief. *See PepsiCo*, 238 F. Supp.2d at 1177 (“[Plaintiffs]  
13 seek only injunctive relief from the continued use of their trademarks on  
14 Defendant’s counterfeit products. Accordingly, this factor favors granting default  
15 judgment.”).

16         The fifth *Eitel* factor, addressing the possibility of a dispute concerning  
17 material facts, is neutral at best because, as a result of Defendants’ default and  
18 failure to appear in this litigation, the Court is unable to determine if there are any  
19 disputed material facts. *See Gucci Am. Inc.*, 2011 WL 31191, at \*11.

20         The sixth *Eitel* factor, addressing whether Defendant’s default was the  
21 product of excusable neglect, favors default judgment because Plaintiff served  
22 Defendants pursuant to the Court’s alternative service order, directing Plaintiff to  
23 use valid and active email addresses and Defendants received notice of this lawsuit  
24 but decided not to appear. In fact, Defendants Begamob responded by admitting  
25 infringement, but never appeared in this case. Ex. C (“We have identified and  
26 removed the plagiarized content from our app immediately after receiving the  
27 report from your team.”). Similarly, after being served, Defendant Tools wrote to  
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Google to complain about the removal of its infringing application but never appeared in this case. Ex. E.

The seventh and final *Eitel* factor, involving the strong public policy favoring decision on the merits, is neutral because Defendants’ own failure to respond to the Complaint prevents a decision on the merits. Defendants should not be rewarded for their failure to participate in this action. *See Gucci Am. Inc.*, 2011 WL 31191, at \*12.

As demonstrated above, *Eitel* factors 1, 2, 3, 4, and 6 favor default judgment and *Eitel* factors 5 and 7 are neutral.

Accordingly, when balancing the *Eitel* factors, default judgment is proper.

#### IV. PERMANENT INJUNCTION

It is well established that courts can issue injunctions as part of default judgments. *See China Cent. Television v. Create New Tech. (HK) Ltd.*, No. CV 15–01869, 2015 WL 12732432, at \*19 (C.D. Cal. Dec. 7, 2015); *Priority Records, LLC v. Tabora*, No. C 07–1023 PJH, 2007 WL 2517312, \*2 (N.D. Cal. Aug. 31, 2007) (granting permanent injunctive relief in a copyright case as part of a default judgment).

A permanent junction may be granted where Plaintiff demonstrates: “(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *EBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). The decision whether to grant or deny injunctive relief “rests within the equitable discretion of the district courts.” *Id.* at 394. When “the infringing use is for a similar service, a broad injunction is especially appropriate.” *Perfumebay.com Inc. v. eBay Inc.*, 506 F.3d 1165, 1177 (9th Cir. 2007).

1 Here, with respect to elements 1 and 2, Plaintiff's Complaint specifically  
2 alleges that Defendants' infringing actions have caused and, unless permanently  
3 enjoined, will continue to cause irreparable harm to Plaintiff's reputation and  
4 goodwill and that such injury cannot be compensated by monetary damages.  
5 Compl. ¶¶ 48, 51.

6 Further, with respect to element 3, because the damage here is  
7 unquestionable but Plaintiff has decided to nevertheless forego all damages in  
8 favor of permanent injunction, the relief of permanent injunction enjoining  
9 Defendants from using Plaintiff's application is appropriate and well within the  
10 equitable discretion of the Court. *See Simple Design Ltd. v. Workshopplace 2021*,  
11 No. 2:22-cv-02776-GW-KSx (S.D. Cal. Aug. 1, 2022) (ordering injunctive relief to  
12 enjoin defendant from using infringing images, logos, icons and marks where  
13 plaintiff agreed to forego damages).

14 Finally, with respect to element 4, the public interest would not be disserved  
15 by a permanent injunction because enjoining Defendants from copying Plaintiff's  
16 unique work will undoubtedly protect the copyright owner and advance the  
17 objective of the Copyright Act by incentivizing the creation of original work. *See*  
18 *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 524 (1994) ("The primary objective of the  
19 Copyright Act is to encourage the production of original literary, artistic, and  
20 musical expression for the good of the public.").

21 Accordingly, the Court finds that permanent injunction against Defendants is  
22 warranted.

23 For all of the foregoing reasons, Plaintiff's Rule 55(b) Renewed Motion for  
24 Default Judgment against Defendants Begamob Global and Trusted Tools &  
25 Utilities Apps is granted.

26 The Court hereby orders that:

27 (1) Defendants and all of their agents and representatives, and any other  
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1 persons and entities acting on Defendants' behalf or with them, be permanently  
2 enjoined and restrained from:

- 3 (i) using Plaintiff's Blood Pressure mobile application or any of  
4 the infringing images, language and interface layouts, as  
5 described in Plaintiff's Complaint and attached exhibits;
- 6 (ii) using mobile applications, images, language or interface  
7 layouts, which are substantially similar to Plaintiff's Blood  
8 Pressure mobile application or its images, language and  
9 interface layout, as described in Plaintiff's Complaint and  
10 attached exhibits;
- 11 (iii) committing any acts intended to cause consumers to believe  
12 that Defendants' mobile application(s) are offered for download  
13 or sold under Plaintiff's control, authorization, or approval; and
- 14 (iv) creating, providing or offering for download or sale any mobile  
15 applications substantially similar to Plaintiff's Blood Pressure  
16 mobile application.

17 (2) Defendants shall, within ten (10) business days after receipt of this  
18 Order, remove all of its infringing mobile applications and other infringing content  
19 from any online platform;

20 (3) Should Defendants' infringing mobile applications remain active on any  
21 online platforms of third-party providers after ten (10) business days following  
22 Defendants' receipt of this Order, and upon Plaintiff's request to such third-party  
23 providers, those third-party providers shall, within ten (10) business days after  
24 receipt of this Order, remove Defendants' infringing mobile applications.

25 Entered this \_\_\_\_ day of \_\_\_\_\_, 2023

26  
27 \_\_\_\_\_  
28 Hon. Josephine L. Staton  
U.S. District Judge

1 **CERTIFICATE OF SERVICE**

2 I, Shelley Ivan, hereby certify that on November 7, 2023, a true and correct  
3 copy of the foregoing **[PROPOSED] ORDER ENTERING FINAL DEFAULT**  
4 **JUDGMENT AGAINST DEFENDANTS BEGAMOB GLOBAL AND**  
5 **TRUSTED TOOLS & UTILITIES APPS** was served upon Defendants, in  
6 accordance with the Court's April 7, 2023 Order Granting Plaintiff's Ex Parte  
7 Motion for Alternative Service (Dkt. No. 24) as follows:

8 (1) Defendant Apero Technologies Group – by emailing the Service Papers  
9 to trustedapp.help@gmail.com, haudt@apero.vn and admin@apero.vn, and  
10 mailing the Service Papers via FedEx to 2 Le Van Thiem, Thanh Xuan, Hanoi,  
11 Vietnam;

12 (2) Defendant Begamob Global – by emailing the Service Papers to  
13 info@begamob.com and mailing the Service Papers to (i) 11 Beach Rd., #03-01,  
14 Crasco Building, Singapore, and (ii) 34 Hoang Cau, Dong Da, Hanoi, Vietnam, via  
15 FedEx; and

16 (3) Defendant Trusted Tools & Utilities Apps – by emailing the Service  
17 Papers to liveroyalstudio.inc@gmail.com and electronically publishing a link to  
18 the Service Papers.

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20 By: /s/ Shelley Ivan  
21 Shelley Ivan  
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