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COPYRIGHT CLAIMS BOARD

Julie Dermansky,

Claimant,

versus

Rule 62, Inc.,

Respondent.

Docket number: 22-CCB-0005

Claimant's Application for Reconsideration of Final Determination

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Claimant Julie Dermansky respectfully submits this Party Statement in support of her application for reconsideration of the final determination of the Copyright Claims Board (the "CCB") dated November 1, 2023 (Dkt. 55) (the "Decision"). Dermansky seeks reconsideration of the damages award of $1,350 because the facts and law support a much larger amount. If left to stand, the Decision will deter copyright owners from utilizing the CCB to resolve infringement disputes while rewarding parties like Respondent for not participating in the process.

I. RELEVANT BACKGROUND

This proceeding involves a rare and difficult to obtain photograph of an important Baton Rouge, Lousiana Exxon oil refinery (the "Photograph"). There is no photograph of the refinery from the same vantage point available from stock photograph agencies. (Dkt. 37, at 2). Creating the Photograph was challenging and required Dermansky's special knowledge and skills:

> I went to the top of the State Capital building where it is possible to get an [aerial] view, a trick unknown to most. Shooting from the street level is difficult, as photographers are often chased away by security workers. From my chosen location, I set up a tripod in order to capture a detailed, sharp image, and to control the angle I shot at, the depth of frame, and the lighting and clarity that I wanted. I used my past experience from photographing the energy sector and my creative vision to determine the most ideal shot of the Exxon facilty. (*See* Dkt. 39, at ¶ 6).

Dermansky never licensed the Photograph to any parties other than Reveal who initially requested the shot be taken. (*Id.*, at ¶¶ 5-10; s*ee also* Dkt. 51, at ¶¶ 4, 8-11). She also has not granted commercial use licenses of environmental photographs in the ordinary course of business because she typically only grants editorial use licenses for environmental photographs. Thus, Dermansky's only agreements relating to commercial uses of her environmental photographs have been made only after she discovered infringements of those photographs.

Since there are no past commercial licenses of the Photograph (or a similar one) at issue, Dermansky submitted the next best evidence: past agreements to resolve similar infringements of her photographs that cover the same types of subject matter as the Photograph at issue here.

II. ARGUMENT

The CCB's determination that Dermansky is only entitled to recover $1,350 in statutory damages is unsuspported by the facts and applicable law, is arbitrary and capricious, and is an abuse of discretion. The CCB committed error by: (1) using unrelated stock photo agreements as a "proxy" to determine Dermansky's lost licensing fee; (2) failing to consider Dermansky's back-licenses contained in settlement agreements; and (3) using only a 3x a multiplier, which fails to consider the scarcity of the Photograph. *See* 17 U.S.C. 1506(w); 37 C.F.R § 230.2. Under the circumstances, if the award is allowed to stand, it is unlikely that professional photgraphers and artists will see the envisioned and hoped-for value in proceeding before the CCB.

1. The CCB Erred by Using Unrelated Stock Photo Agreements, Day Rates and Non-Comparable Editorial Licenses as Proxies For a "Base Rate."

Respondent defaulted (despite receiving an unusual number of notices that went far beyond what was required). Plaintiff thus has been deprived of any information about Respondent's revenue and profits from the use of the Photograph. While it is true that Respondent did not sell copies of the Photograph or products, it used the Photograph to promote its services business. (Dkt. 55, at 4) (Respondent is a "commercial" entity, "offering addiction recovery services.").

The CCB's finding was arbitrary and it should have used a significantly higher "base rate." Because Respondent ignored and flouted the process, making it impossible to calculate actual damages, Dermansky elected statutory damages. The CCB used an arbitrary $450 as what it referred to as a "base rate" as a "proxy for Dermansky's lost license fee." (Dkt. 55, at 11). While statutory damage awards can look to actual licenses as one or many inputs, the CCB erred by relying on fees charged by a stock agency for a dissimilar photograph and use, on Dermansky's "day rate" charged for the photoshoot, and on the low end of the range of her licenses for non-

comparable uses. None of these metrics provide an appropriate proxy for determining a relationship between the unknowable actual damages at issue and statutory damages.

First, the CCB inexplicably used an unrelated Getty license as part of its analysis of the "base rate" as a proxy for a use that is not similar to the Respondent's use. The CCB agreed in two places that Dermansky's licenses through Getty were not relevant (Dkt. 55, at 6) (stating, twice "and the Board agrees.").[1] Nevertheless, in calculating its "base rate," the CCB relied on a license by Getty of an image used in a textbook for $325. (*Id.*, at 10). The Decision thus disregards its own acknowledgment, buttressed by courts, that Getty licenses are unreliable. *See Leonard v. Stemtech Int'l., Inc.*, 834 F.3d 376 (3d Cir. 2016); *Reiffer v. World Views LLC*, No. 6:20-cv-786, 2021 U.S. Dist. LEXIS 388860 (Mar. 1, 2021), *adopted by* 2021 U.S. Dist. LEXIS 66500 (M.D. Fla. Apr. 6, 2021); *Edmondson v. RCI Hosp. Holdings, Inc.*, 16-CV-2242, 2020 U.S. Dist. LEXIS 55421 (S.D.N.Y. Mar. 30, 2020). The Decision also disregards the fact that Dermansky's relationship with Getty was terminated because her "works were being systematically undervalued by Getty's licensing practices." (Dkt. 51, at ¶ 12).

Importantly, the CCB does not explain why an undervalued license for a textbook of an unrelated, dissimilar photograph of a beach house for educational use is in any way comparable to a hypothetical license for use of a pollution-emitting factory on a commercial website to promote Respondent's services. Past licenses are appropriate to use to approximate a lost license fee only where the past license use provides "evidence of . . . what licensors have paid for use of *similar work*," for a similar *use. Lorentz v. Sunshine Health Prod., Inc.*, No. 09-61529-IV, 2010 U.S. Dist. LEXIS 148752, 2010 WL 11492992, at *16 (Sept. 7, 2010) (emphasis added), *adopted by* 2010

[1] Dermansky noted in her papers that the photograph at issue here was not available for licensing through Getty, and that she terminated her agreement with Getty because it was systematically undervaluing her works. (Dkt. 51, at ¶¶ 12-16; *see also* Dkt. 48, at 4 (collecting cases showing Courts have criticized copyright litigants who attempt to use Getty licensing rates to establish the market value of images not available for stock licensing.)).

U.S. Dist. LEXIS 148753 (S.D. Fla. Nov. 15, 2010); *see also Montgomery v. Noga*, 168 F.3d 1282, 1295-96 (11th Cir. 1999) (finding the "the jury certainly was permitted to find that Montgomery would not have offered such a license to the defendants" where the copyirght owner had issued several unlimited use licenses for $2,000); *Myeress v. Beautiful People Magazine, Inc.*, No. 22-cv-20137, 2022 U.S. Dist. LEXIS 80586, at *7 (S.D. Fla. May 3, 2022) (crediting only "license fees paid by other licensees for similar content and use"); *Edmondson*, 2020 U.S. Dist. LEXIS 55421, at *15-16 (stock photo rates may be used as a "starting point" only where "an adjustment to reflect the uniqueness of the images and the impact of defendant's uses" is made). The use of an unrelated photograph in a textbook (an educational use) is unquestionably a different type of use than Respondent's use of a scarce, rare photograph on a commercial website.[2]

The CCB made no adjustment to the one out of context license from Getty that it selected. It apparently did so because the arbitrary dollar amount of the Getty educational license ($325) aligned with approximately what the CCB characterized as the "low end" of what Dermansky offers to licensees for editorial uses (which she testified was $500, arbitratrily reduced by the CCB to $450), and the "day rate" that she charged to Reveal for the photoshoot (also $450). (Dkt. 55, at 10-11). But none of these three uses are comparable: the CCB provided no explanation for why a commercial use such as the one made by Respondent deserves to be considered as comparable to the lowest possible end of the range of less expensive and more limited editorial use licenses, to a license by a stock agency for educational use, or to a photographer's day rate.

[2] Commercial use means "use for purposes of advertising or promoting the licensee's business." *Sternbaum v. Refinery Lab, LLC*, No. 22-cv-22002, 2022 U.S. Dist. LEXIS 201960, at *8 (S.D. Fla. Nov. 4, 2022); *Myeress*, 2022 U.S. Dist. LEXIS 80586, at *8. While Rule 62 did not sell copies of Dermansky's photograph, the CCB's conclusion that the Photograph was not used "directly to generate sales" is erroneous and unjustified. Respondent clearly used the Photograph to promote its services, and the CCB's ruling thus rewards Respondent for ignoring the proceeding.

The CCB compounded its error by, without explanation, using what Dermansky said in her uncontested witness statement was the low end of her usual license fee for *editorial* works (rather than commercial uses as here). (*See* Dkt. 51, at ¶ 6) (explaining that editorial uses are licensed for less than commercial uses such as the one at issue here, and that her range for such less expensive editorial licenses is typically between $500 and $3,500). Despite the fact that editorial licenses are usually given for less than the license that would have been required here, the CCB arbitrarily reduced the low end of this range from $500 to $450 when calculating its "base rate." In summary, none of these three items should have been used to calculate the damages award.

Instead, the CCB should have started with the top of the editorial use range testified to by Dermansky, or $3,500, and then adjusted upwards. *Reiffer v. N.Y.C. Luxury Limousine Ltd.*, 1:22-cv-2374-GHW, 2023 U.S. Dist. LEXIS 104552 (S.D.N.Y. June 15, 2023) is exemplary. There, the Court awarded statutory damages at the high end of the range of past licenses:

> Mr. Reiffer presented undisputed evidence that he has licensed other images for what he describes as "similar" use for between €5,800 and €8,900. . . . [T]he revenue lost by Plaintiff is the value of the licensing fee that should have been paid by Defendant-which, as is indisputably established on this record, is $8,500.

Id., at *3, 27.

Using the higher end of the range here makes more sense particularly because Dermansky has "not issued any individual licenses comparable to the one the Respondent would have needed here." (Dkt. 51, at ¶ 18). "Nor are [her] typical rates for editorial use comparable to the commercial use made by Respondent of my Photograph. . . . Respondent would have been required to pay a fee for commercial use of the Photograph that is comparable to those shown in Exhibits G and H-1 through H-6 to my August Statement." (*Id.,* at ¶ 20). Since commercial licenses should be more expensive for licensees such as Respondent than editorial (or educational ones), at worst, the starting point should have been $3,500, not $450.

Nor should the CCB have relied on the fee that Reveal paid for the photoshoot to formulate a "base rate." The CCB acknowledged that a "day rate," *i.e.*, "the fee paid for a commissioned photo shoot," is an "apples-to-oranges comparison with the lost license fee on a preexisting photograph and the two should not be conflated." (Dkt. 55, at 10, *citing Baker v. Urban Outfitters, Inc.*, 254 F. Supp.2d 346, 353-54 (S.D.N.Y. 2003)). Nevertheless, the CCB used the $450 "day rate" paid by Reveal as part of its determination of the "base rate" it used to calculate statutory damages. (*Id.*, at 11). This is inconsistent with the CCB's own statement of the applicable law, and therefore using that number is arbitrary, improper and erroneous.

In summary the CCB erred by using a stock Getty license that it "agrees" is not relevant and then compounded the error by using only the "low end" of Dermansky's typical editorial licenses and conflated it with her day rate for the photoshoot. None are comparable to the license needed for the commercial use of the scarce photo at issue.

2. <u>The CCB Erred by Failing to Consider Dermansky's Back-Licenses</u>

Instead of using the three numbers it plucked from the record, the CCB should have used Dermansky's back-licenses for similar commercial uses to the one made by Respondent. The CCB rejected those licenses simply because they derived from other infringing uses, even though those uses were closer to the one at issue than the three items the CCB relied upon. (Dkt. 55, at 9-10 and n. 1). In so doing, the CCB cited several out-of-date and out-of-step district court opinions from within the Ninth Circuit from 2009 and 2019, which, aside from being factually and procedurally distinguishable, do not accurately reflect the law in the Eleventh Circuit (whose law applies).[3]

[3] None of the three decisions cited by the CCB were statutory damages cases. (Dkt. 55, at 10, *citing Yue v. Chordiant Software, Inc.*, No. C08–00019, 2010 WL 11575579 (N.D. Cal. Apr. 22, 2010); *Attachmate Corp. v. Sentry Insurance*, C08-1035, 2009 U.S. Dist. LEXIS 145100, at *9 (W.D. Wash. Jan. 15, 2009); *Attachmate Corp. v. Health Net, Inc.,*

Rather, courts within the Eleventh Circuit, and elsewhere, have noted that in copyright cases "especially when there is a lack of other reliable evidence on the issue, post-litigation settlement agreements may be admitted to show the hypothetical value of a license for the infringed intellectual property." *Virtual Studios, Inc. v. Royalty Carpet Mills, Inc.*, No. 4:12-CV-0077, 2013 U.S. Dist. LEXIS 191978, at *14 (N.D. Ga. Dec. 23, 2013) (citations omitted). Similarly, the well-reasoned opinion by Judge Sheindlin in *Smith v. NBC Universal*, No. 06-CV-5350, 2008 U.S. Dist. LEXIS 13280 (S.D.N.Y. Feb. 22, 2008), explains cogently that, in a case where there is an absence of evidence about a defendant's profits, "evidence of the settlements and their amounts are relevant to a determination of the amount of statutory damages and are therefore admissible. The settlements bear directly on the value of Smith's claim." *Id.*, at *19.

Notably, in holding that settlements are useful in the statuory damage analysis, the *Virtual Studios* court recognized that while not always perfect proxies, perfection is not required in the context of statutory damages calculations. It held similar agreements to those submitted here to be relevant because: "Plaintiff fails to refute Defendant's contention that the Settlements concern 'similarly situated defendants on the same claims of copyright infringement'. . . and similar facts." *Virtual Studios*, 2013 U.S. Dist. LEXIS 191978, at *16. Importantly, it then continued:

> As such, while the Court accepts Plaintiff's argument that, in most cases, such agreements are poor indicators of what a hypothetical license is worth, there is no clear indication that this case is not one of the exceptions where

C09-1161, 2010 U.S. Dist. LEXIS 156918, at *2-3 (W.D. Wash. June 18, 2010)). In *Yue*, the district court granted a motion in limine to exclude past settlement agreements entered into after the commencement of litigation, relying on older patent cases that are no longer good law. In *Sentry*, the district court stated that the defendant cited no cases that showed that the evidence it was seeking was relevant, unlike here. In *Health Net*, the district court misconstrued one of the *ResQNet* patent case that Dermansky relies upon. In *Small v. Nobel Biocare USA, LLC*, 808 F. Supp.2d 584, 586-92 (S.D.N.Y. 2011), the court explained the proper interpretation of *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860 (Fed. Cir. 2010), showing why the interpretation by the *Attachmate* court was wrong. Similarly, the patent cases cited by the CCB in footnote 10 are significantly out of step with current Federal Circuit jurisprudence. While the CCB noted Dermansky cited initially only to patent cases, as shown herein, courts also apply this rule in copyright cases, and in any event, case law on damages in patent and copyright cases share many similar doctrinal policies since they both emanate from the same clause in the Constitution and share similar statutory language. *See Lifeguard Licensing Corp. v. Kozak*, No. 15-CV-8459, 2016 U.S. Dist. LEXIS 122418, at *17 (S.D.N.Y. Sept. 9, 2016) (trademark case citing *Smith* (copyright) and *Small* (patent) decisions on this issue).

> such agreements may be relied upon. While clearly a license negotiated under the shadow of pending litigation will not mirror the free market value of that license, the Court sees no reason why it could not serve as a starting point for such determination, to be adjusted up or down depending on the circumstances surrounding its creation.

Id. at *16-17. *See also* *Oppenheimer v. Episcopal Communicators, Inc.*, No. 1:19-CV-00282, 2020 U.S. Dist. LEXIS 146398, 2020 WL 4732238, at *7 (W.D.N.C. Aug. 14, 2020) (holding Plaintiff's prior copyright assertions and lawsuits were relevant to statutory damages: "instances where the Plaintiff has asserted his rights in his copyrights, the amounts recovered from those assertions, and the Plaintiff's licensing agreements are all relevant here."); *Oppenheimer v. Williams*, No. 2:20-CV-4219, 2021 U.S. Dist. LEXIS 170057, at *10 (D.S.C. Sept. 8, 2021) ("What is necessary to the relevant consideration is the income Oppenheimer has derived from copyright infringement lawsuits, claims, and/or demands.").

The same considerations in all of those cases merit the crediting of Dermansky's settlements of comparable matters here because she explained in her witness statements why her prior agreements are all comparable (Dkt. 39, at ¶¶ 20-26; Dkt. 51, at ¶¶ 3-8, 18-20). Further, Respondent made it impossible to determine whether there is something different about its infringement compared to other similar infringing uses by shunning the proceedings. And, because Dermansky has not granted similar commercial licenses for comparable works, the settlement agreements submitted are the most comparable agreements for licenses granted for "similar works" and "similar uses." Thus, those agreements should be used to determine an appropriate starting royalty here. *Virtual Studios*, 2013 U.S. Dist. LEXIS 191978, at *14; *Myeress*, 2022 U.S. Dist. LEXIS 80586, at *8; *Reiffer*, 2023 U.S. Dist. LEXIS 104552, at *27.[4]

[4] As one additional point, the CCB's refusal to consider the fact that Respondent ripped Dermansky's authorship and ownership credits ("CMI") from the Photograph is also an error. While it is true that the CCB cannot hear Section 1202 claims, courts do consider the removal of CMI in the context of assessing willfulness as a statutory damage

Dermansky submitted "past agreements to resolve similar infringements of my photographs which are similar to or cover the same types of subject matters as the photograph at issue here." (Dkt. 39, at ¶ 20). The agreements submitted as Exhibits H-1 to H-6, and described in Exhibit G, evidence a license fee in a range of approximately $10,000, much larger than the "base rate" adopted by the CCB. At the very least, the CCB should have used a five-figure "base rate", represented by the higher end of Dermanky's range of editorial licenses (*i.e.*, $3,500, adjusted upwards), especially given the uncontested testimony that editorial uses are less expensive to license than commercial uses as here.

3. <u>The CCB Erred By Failing To Apply A Scarcity Multiplier</u>

In addition to using a significantly higher "base rate", the CCB should have applied a higher multiplier to calculate the statutory damage award. The Decision arbitrarily devalues the Photograph because it is of a building, but the CCB erred in disregarding the difficulty and challenges of getting the particular shot and the skills involved. The Decision states that "[t]aking a photograph of one building from another building does not rise to a level that would make the Board consider the Work 'scarce,'" (Dkt. 55, at 11, n.2) (determining that "the Board has no need to decide whether it can use scarcity multipliers."). But that is a too-simple description of the photograph, the difficulty in getting it, and the lack of availability of similar shots. Specifically, the Decision fails to recognize that: (a) this was not a shot from just any building, but a state capitol building with significant security, requiring savvy and dangerous efforts to get access to the roof; and (b) no stock photographs from that vantage point exist. (*See* Dkt. 39, at ¶ 6 (describing

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factor. *See, e.g.*, *Reiffer,* 2023 U.S. Dist. LEXIS 104552, at *25-28 ("Defendant's infringement was willful. Defendant saw Plaintiff's name on the Work, which attributed ownership to Plaintiff. Defendant intentionally altered the image when it posted the Work to its website to delete Plaintiff's name. Defendant's awareness of, and intentional deletion of, Plaintiff's name on the Work is sufficient to establish that, at a minimum, it recklessly disregarded the possibility that its conduct represented infringement. . . . All factors weigh in favor of the imposition of a meaningful award of statutory damages. First, as described above, Defendant's conduct was willful: it cribbed an image to use on its website without authorization and altered the image to delete attribution to the Work's author.").

difficulty of the shot); Dkt. 37, at 2 ("There is no other known photograph of the refinery from the same vantage point" available from stock photograph agencies)).

Where a photographer employs special skill, technique and/or know-how "to catch the perfect angle" of a subject that is scarcely photographed in the first place, Courts within the Eleventh Circuit apply a scarcity multiplier in addition to the "deterrence" multiplier that the CCB used here. (*See* Dkt. 37, at 9-10 (*citing Cate Brown Photography v. David-Jacobs Publ. Group, LLC*, No. 8:19-CV-447, 2019 US Dist LEXIS 145012, *2-3 (M.D. Fla. Aug. 27, 2019); *Reiffer v. Legendary Journeys, Inc.*, No. 8:17-cv-2748-T-35AAS, 2019 U.S. Dist. LEXIS 62401, 2019 WL 2029973, at *8-9 (Apr. 10, 2019), *adopted by* 2019 U.S. Dist. LEXIS 79794, 2019 WL 2029829 (M.D. Fla. May 2, 2019); *Affordable Aerial Photography, Inc. v. VisitWPB.Com, Inc.*, No. 17-CV-81306, 2018 U.S. Dist. LEXIS 227389, at *7, 2018 WL 6519104 (S.D. Fla. Apr. 23, 2018)). Had Dermansky filed an infringement suit in Florida, the Court would have applied a scarcity multiplier in this case on top of the so-called "deterrence" multiplier. *See, e.g.*, *Myeress*, 2022 U.S. Dist. LEXIS 80586, at *5-12 (first applying a 5x multiplier for scarcity ($4,000 license fee x 5 = $20,000) and then applying a 3x multiplier on top of that for statutory deterrence ($20,000 x 3 = $60,000). The CCB's refusal to do so was thus a clear error of law and an abuse of discretion.

Since this matter involves a Respondent who first ignored Dermansky's several attempts to resolve her claims through written correspondence (Dkt. 55, at 5), and then defaulted in appearing in these proceedings despite its many clear notices to participate (*id.*, at 2-3), in the absence of contrary evidence, the CCB should have accepted as true the fact that the Photograph is quantitatively and qualitatively scarce and rare.[5] The CCB thus erred both as a legal matter in

[5] *Cf. Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009) ("A defendant, by his default, admits the plaintiff's well-pleaded allegations of fact, is concluded on those facts by the judgment"); *Tcyk, LLC v. Martin*, No. 8:14-CV-00087, 2014 U.S. Dist. LEXIS 170077, at *1 (M.D. Fla. Dec. 8, 2014) ("Upon entry of a default, the defendant admits the plaintiff's well-pleaded allegations of fact.").

not awarding a scarcity multiplier, and as a factual matter in minimizing the value of the work by not considering the difficulty of creating it and the unavailability of similar works. The CCB should thus reverse that aspect of its decision and award a 5x multiplier on the appropriate "base."

4. <u>The CCB's Decision Will Disincentivize Participation In The CCB</u>

Finally, the statutory award calculated by the CCB by using an artificially low "base rate" and then compounding the error by not using a scarcity multiplier will only serve to dissuade copyright owners from filing claims with the CCB in the first place. And, it is unlikely to have *any* deterrent effect on Respondent or those similary situated from infringing copyrighted works.

Although the CCB applied a 3x "deterrence multiplier" applying it to such a small base and not also including a scarcity multiplier essentially rewards Respondent for its theft. This is not permissible or just. *See Prepared Food Photos, Inc. v. Perry Wings Plus, Inc.*, No. 22-CV-61883, 2022 U.S. Dist. LEXIS 227304, at *9 (S.D. Fla. Dec. 19, 2022) ("When awarding increased damages in the context of Section 504(c)(2), 'deterrence of future violations is a legitimate consideration' because 'defendants must not be able to sneer in the face of copyright owners and copyright laws.'") (*quoting Cable/Home Commc'n Corp. v. Network Prods.*, 902 F.2d 829, 851 (11th Cir. 1990)). Infringers must be put "on notice that it costs less to obey the copyright laws than to violate them, [so] a statutory damage award should significantly exceed the amount of unpaid license fees." (Dkt. 55, at 8 (quotations omitted)). This proceeding has already cost hundreds of dollars in filing fees and service costs. And, Dermansky will face only more costs to enforce the decision, including filing fees in state or federal court and the engagement of local counsel in Florida to pursue enforcement of the award.

The out-of-pocket costs alone thus will likely exceed the amount of the award. And, while Dermansky and the undersigned counsel certainly appreciate the CCB may be concerned about the public perception in granting a larger award in the face of a default, the attorney efforts that have

been put forth in an effort to determine whether the CCB is a viable alternative for claimants to avoid the costs associated with district court litigation.[6] The Decision will encourage future respondents in CCB proceedings to simply default and keep the profits of their infringements from being discovered. If the cost to claimants of bringing, enforcing and collecting a CCB award outweigh the damages recovered, it would defeat the very purpose of the CCB to provide a low cost means of recovering a fair value for the willful infringement of copyrighted works. A copyright owner would simply be better off incurring the added costs of federal litigation to recover sufficient compensatory damages from a reclusive infringer. Those considerstions make the Decision patently unjust.

III. CONCLUSION

Dermansky respectfully requests that the CCB reconsider the Decision and recalculate the award using the proper framework as discussed above and in her prior submissions.

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Respectfully submitted,

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[6] In public comments before the passage of the CASE Act, some extremely well capitalized technology companies urged Congress not to pass the Act because it would lead to large default judgments, mostly citing to concerns about individuals who may share copyrighted works without authorization on social media who would not have the wherewithal to appear in a proceeding. But Respondent here is a commercial entity that could have well-afforded to participate in these proceedings and intead ignored them and showed disdain for the process.