

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

JOE HAND PROMOTIONS, INC.,)	1:10cv01702 OWW DLB
)	
)	FINDINGS AND
)	RECOMMENDATION
Plaintiff,)	REGARDING PLAINTIFF'S
)	APPLICATION FOR
vs.)	FOR DEFAULT JUDGMENT
)	
TASHA A. JAMES, et al.,)	(Document 28)
)	
Defendants.)	

On May 24, 2011, Plaintiff Joe Hand Promotions, Inc., (“Plaintiff”) filed the present motion for default judgment against Defendant James & Carlton Family Pizza (“Defendants”). The motion was referred to this Court pursuant to [28 U.S.C. § 636\(b\)\(1\)\(B\)](#) and Local Rule 302. The matter was heard on July 1, 2011, before the Honorable Dennis L. Beck, United States Magistrate Judge. Thomas Riley appeared telephonically on behalf of Plaintiff. Defendant did not appear.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed the instant action on September 16, 2010, against Tasha A. James, individually and d/b/a Pizza Factory, and West Coast Pizza Concepts, Inc., d/b/a Pizza Factory a/k/a Visalia Pizza Factory. On December 13, 2010, Plaintiff filed a First Amended Complaint (“FAC”) that added Kari Deanne Carlton, individually and d/b/a Pizza Factory and James & Carlton Family Pizza, Inc., d/b/a

1 Pizza Factory as Defendants. The FAC alleges violations of [47 U.S.C. § 605](#) and [47 U.S.C. § 553](#),
2 as well as state law causes of action for conversion and violation of Cal. Bus. & Prof. Code § 17200,
3 et seq. The allegations are based on Defendants’ alleged unlawful interception, reception, and
4 exhibition of “Ultimate Fighting Championship 103: Rich Franklin v. Vitor Belfort (“Program”),”
5 which was telecast on September 19, 2009. According to the FAC, Plaintiff was the exclusive
6 nationwide commercial distributor of the Program.

7 The First Cause of Action for violation of [47 U.S.C. § 605](#) (Unauthorized Publication or Use
8 of Communications) alleges that Defendants knowingly intercepted, received, published, divulged,
9 displayed and/or exhibited the Program for purposes of direct or indirect commercial advantage or
10 private financial gain. Plaintiff seeks \$110,000 in statutory damages, along with attorneys’ fees and
11 costs. The Second Cause of Action for violation of [47 U.S.C. § 553](#) (Unauthorized Reception of
12 Cable Services) is based upon the same allegations. Plaintiff requests \$60,000 in damages, as well
13 as attorneys’ fees and costs. The Third Cause of Action for conversion alleges that Defendants
14 “tortuously obtained possession” of the Program and wrongfully converted it for their own benefit.
15 Plaintiff alleges that these acts were willful and intentionally designed to harm Plaintiff and subject it
16 to economic distress and financial loss. Plaintiff seeks compensatory, punitive and exemplary
17 damages, attorneys’ fees and costs. The Fourth Cause of Action alleges a violation of Cal. Bus. &
18 Prof. Code § 17200, et seq., for which Plaintiff seeks restitution, declaratory relief and injunctive
19 relief.

20 On January 6, 2011, the Court dismissed Defendants Tasha A. James and West Coast Pizza
21 Concepts, Inc., without prejudice, pursuant to Plaintiff’s request for voluntary dismissal.

22 On March 17, 2011, Plaintiff filed a proof of service indicating that Defendant James &
23 Carlton Family Pizza (“Defendant”) was served on February 16, 2011. Kari Deanne Carlton, the
24 agent for service of process, was served by substituted service on John Doe, the person in charge at
25 250 East Antelope Avenue, Suite C, Woodlake, California. The address is listed as a business
26 address. The process server also mailed the documents to Defendant at the business address.
27 According to the declaration of diligence filed with the proofs of service, the process server
28

1 attempted service on three separate occasions (February 11, 14 and 16).

2 The proof of service indicates that John Doe refused to give his name. He is described as a
3 Hispanic male, 33 years old, with black hair and brown eyes, weighing 220 pounds and standing 5'6"
4 tall.

5 On March 25, 2011, the Court dismissed Kari Deanne Carlton without prejudice, pursuant to
6 Plaintiff's request for voluntary dismissal.

7 On April 7, 2011, Plaintiff filed a second proof of service indicating that Defendant James &
8 Carlton Family Pizza was served on March 17, 2011. Scott Ray James, the agent for service of
9 process, was served by substituted service on Terah Russell, "mailbox clerk/person in charge," at
10 4216 S. Mooney Blvd., Visalia, California. The process server also mailed the documents to this
11 address on March 18, 2011.

12 On April 18, 2011, pursuant to Plaintiff's request, the Clerk of the Court entered default
13 against Defendant James & Carlton Family Pizza.

14 Plaintiff filed the instant motion for default judgment on May 24, 2011. Defendants were
15 served with the motion by mail at 250 East Antelope Avenue, Suite C, Woodlake, California.

16 Defendants have not filed an opposition or otherwise appeared in this action.

17 LEGAL STANDARD

18 [Federal Rule of Civil Procedure 55\(b\)\(2\)](#) provides:

- 19 (2) By the Court. In all other cases, the party must apply to the court for a default
20 judgment. A default judgment may be entered against a minor or incompetent
21 person only if represented by a general guardian, conservator, or other like
22 fiduciary who has appeared. If the party against whom a default judgment is
23 sought has appeared personally or by a representative, that party or its
24 representative must be served with written notice of the application at least 7
25 days before the hearing. The court may conduct hearings or make
26 referrals preserving any federal statutory right to a jury trial when to enter or
27 effectuate judgment, it needs to: (A) conduct an accounting; (B) determine the
28 amount of damages; (C) establish the truth of any allegation by evidence; or
(D) investigate any other matter.

25 "Upon default, the well-pleaded allegations of a complaint relating to liability are taken as
26 true." [Dundee Cement Co. v. Howard Pipe & Concrete Products, Inc., 722 F.2d 1319, 1323 \(7th Cir.](#)
27 [1983\)](#); [TeleVideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917-18 \(9th Cir. 1987\)](#). Thus, "[a]t the

1 time of entry of default, the facts alleged by the plaintiff in the complaint are deemed admitted.” 10
2 J. Moore, Moore's Federal Practice § 55.11 (3d ed. 2000).

3 DISCUSSION

4 Pursuant to the proofs of service filed with the Court, Defendant was properly served with the
5 summons and complaint. The Clerk entered default on April 18, 2011.

6 Defendant is not an infant or incompetent person, and is not in the military service or
7 otherwise exempted under the Soldiers’ and Sailors’ Civil Relief Act of 1940. Declaration of
8 Thomas P. Riley (“Riley Dec.”) ¶ 3.

9 Although the Complaint seeks relief pursuant to Section 605 and Section 553, Plaintiff
10 indicates that it cannot determine the precise means of signal transmission that the Defendant used in
11 this case. Plaintiff therefore requests recovery under Section 605. In cases involving a satellite,
12 Section 605 is the proper statute for a damages award. See, e.g., [DirectTV, Inc. v. Webb, 545 F.3d](#)
13 [837, 844 \(9th Cir. 2008\)](#) (Section 605 covers airborne communications, including satellite television
14 signals). This statute allows for both statutory damages and “enhanced” damages. Section
15 605(e)(3)(C)(i)(II) permits the aggrieved party to recover “statutory damages for each violation ... in
16 a sum of not less than \$1,000 or more than \$10,000.” Additionally, Section 605(e)(3)(C)(ii)
17 provides that where a violation is “committed willfully and for purposes of ... commercial advantage
18 or private gain,” the court may increase the award of damages by an amount of no more than
19 \$100,000 for each violation. Plaintiff seeks both the maximum statutory damages award (\$10,000)
20 and the maximum enhanced damages award (\$100,000) pursuant to Section 605. Additionally,
21 Plaintiff seeks \$2,200.00 for conversion.

22 Having accepted the well pleaded allegations of the complaint as true, Plaintiff is entitled to
23 judgment based on Defendant’s violation of [47 U.S.C. § 605](#). Given the size of the establishment at
24 issue (approximate capacity of 65 people), the number of televisions (two), and the number of
25 viewing patrons (headcounts of 54/57/65), the Court finds that the violation likely had a minimal
26 impact. Affidavit of Michael Ruiz.

1 Within thirty days after being served with a copy, any party may serve on opposing counsel and file
2 with the court written objections to such proposed findings and recommendations. Such a document
3 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Replies to
4 the objections shall be served and filed within fourteen (14) days after service of the objections. The
5 Court will then review the Magistrate Judge's ruling pursuant to [28 U.S.C. § 636\(b\)\(1\)](#).

6 IT IS SO ORDERED.

7 **Dated: July 1, 2011**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28