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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

J & J SPORTS PRODUCTIONS, INC.,

CASE NO. 1:10-cv-02253-AWI-SMS

Plaintiff,

**FINDINGS AND RECOMMENDATIONS
RECOMMENDING DENIAL OF
PLAINTIFF’S MOTION FOR
DEFAULT JUDGMENT**

v.

ANA A. BARRAGAN, et al.,

(Doc. 19)

Defendants.

Plaintiff J & J Sports Productions, Inc., moves for Entry of Default Judgment against Defendants Ana A. Barragan and Angel O. Barragan, individually, and doing business as Los Compadres Restaurant a/k/a/ Los Compadres Mexican Restaurant. This Court has reviewed Plaintiff’s motion and supporting documents and has determined that this matter is suitable for decision without oral argument pursuant to Local Rule 78-230(h). Because Plaintiff moves for summary judgment on a claim that is not included within its complaint, its motion for default judgment must be denied.

I. Discussion

On December 3, 2010, Plaintiff filed its complaint against Defendant, alleging copyright infringement pursuant to 17 U.S.C. §§ 501(a) and 501(b), conversion, and violation of California Business and Professions Code § 17200 *et seq.* The allegations were based on Defendant’s alleged unlawful interception, copying, and public exhibition of a December 6, 2008 pay-per-view program featuring the Oscar De La Hoya v. Manny Pacquiao Welterweight Championship Fight Program, including under-card bouts and fight commentary (the “program”). Plaintiff was

1 the exclusive commercial distributor of the program in the United States as well as the assignee
2 of the copyright to the program for enforcement purposes. Plaintiff sub-licensed the right to
3 exhibit the program to commercial establishments in the hospitality industry, such as bars,
4 restaurants, hotels, and similar establishments.

5 Plaintiff served Defendants on April 3, 2011. Neither Defendant has answered or
6 otherwise appeared in this action. The Clerk of Court entered default against both Defendants on
7 May 9, 2011.

8 On June 23, 2011, Plaintiff moved for default judgment for unauthorized publication or
9 use of communications, contrary to 47 U.S.C. § 605 *et seq.*, and 47 U.S.C. § 553 *et seq.* The
10 complaint does not include claims that Defendants violated 47 U.S.C. § 605 *et seq.*, and 47
11 U.S.C. § 553 *et seq.*, however. Accordingly, a grant of default judgment on these claims would
12 be inappropriate.

13 **IV. Recommendation**

14 Because the complaint does not include a claim that Defendants were not authorized to
15 publish or use communications, contrary to 47 U.S.C. § 605 *et seq.*, and 47 U.S.C. § 553 *et seq.*,
16 the Court **RECOMMENDS** denial of Plaintiff's motion for default judgment.

17 These Findings and Recommendations are submitted to the Honorable Anthony W. Ishii,
18 United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 631(b)(1)(B) and
19 Rule 305 of the Local Rules of Practice for the United States District Court, Eastern District of
20 California. Within fifteen (15) days after being served with a copy, any party may file written
21 objections with the court, serving a copy on all parties. Such a document should be captioned
22 "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that
23 failure to file objections within the specified time may waive the right to appeal the District
24 Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

25 IT IS SO ORDERED.

26 **Dated: August 26, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE