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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 J & J SPORTS PRODUCTIONS, INC.,

9 Plaintiff,

10 v.

11 SARA JANET CARRANZA, et al,

12 Defendants.
13

CASE NO. 1:15-CV-1041-TLN-SMS

FINDINGS AND RECOMMENDATIONS
RECOMMENDING GRANTING
PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT IN PART

Doc. 14

14
15 Plaintiff J & J Sports Productions, Inc. brings this suit against defendants Sara Janet
16 Carranza, individually and d/b/a El Sinaloense Restaurant a/k/a El Paraiso Mexican Restaurant, and
17 Jesus Joel Ruiz, Jr., individually and d/b/a El Sinaloense Restaurant a/k/a El Paraiso Mexican
18 Restaurant, for exhibiting a sports and entertainment program through unlawful means and without
19 paying the licensing fee. Having been duly served, none of the defendants have entered an
20 appearance in this action. Plaintiff moves for default judgment. The Court recommends that
21 Plaintiff's motion be granted in part and that damages be awarded in the amount of \$1,400.

22 **I. BACKGROUND**

23 According to Plaintiff's motion and the accompanying affidavits, Plaintiff held the
24 domestic commercial exhibition rights to broadcast "*Honor & Glory: Saul Canelo Alvarez vs.*
25 *Erismandy Lara*" (the "Program") telecast nationwide on Saturday, July 12, 2014. Doc. 14, Exh. 4
26 at p. 2. Plaintiff entered into sublicensing agreements with commercial entities throughout the
27 United States, wherein it granted limited public exhibition rights in exchange for a license fee of
28 \$1,400 for establishment with a thirty-person maximum occupancy. Id. at p. 2-3. On July 12,

1 2014, around 7:50 pm an investigator observed the Program being exhibited at El Sinaloense
2 Restaurant a/k/a El Paraiso Mexican Restaurant (the “Restaurant”) in Huron, California. Doc. 14,
3 Exh. 3 at p. 1. The Program was being displayed on a flat screen television mounted near the
4 ceiling at the south west corner of the restaurant. Id. The investigator observed the “SHOWTIME
5 PPV” logo on the lower left-hand corner of the screen and saw the boxers in the center. Id. He
6 could not hear the Showtime commentary due to a live band performing in the dining area. Id. The
7 capacity of the Restaurant was 30, and there were approximately 10 patrons present. Id. at p. 2.
8 Photographs of the exterior of the Restaurant were attached to the investigator’s affidavit. See Id.
9 The photographs include pictures of a satellite dish on the roof. See Id.

10 On July 7, 2015, Plaintiff filed a complaint in this court alleging violations of 47 U.S.C. §
11 605, *et seq.* (“section 605”), and 47 U.S.C. § 553, *et seq.* (“section 553”), as well as conversion
12 under California state law. Doc. 1. Plaintiff alleges that Defendants unlawfully intercepted and
13 intentionally exhibited the Program at the Restaurant for the purpose of commercial advantage. On
14 October 5, 2015, summonses for each defendant returned executed. Docs. 10-11. The returned
15 summonses indicated that answers were due on October 14, 2015. No defendant filed an answer or
16 has appeared in the action to date. On October 19, 2015, Plaintiff requested entry of default, which
17 was entered by the clerk. Docs. 12-13.

18 II. DEFAULT JUDGMENT

19 Entry of default judgment is governed by Federal Rule of Civil Procedure 55, which allows
20 the court to enter default judgment against a defendant who has failed to plead in an action. Fed.
21 R. Civ. P. 55(a)-(b). The Ninth Circuit has provided seven factors for consideration by the district
22 court to determine whether to enter a default judgment, known as the *Eitel* factors. They are: (1)
23 the possibility of prejudice to the plaintiff; (2) the merits of plaintiff’s substantive claim; (3) the
24 sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of
25 dispute concerning material facts; (6) whether default was due to excusable neglect and; (7) the
26 strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.
27 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). ““The general rule of law is that upon
28 default the factual allegations of the complaint, except those relating to the amount of damages,

1 will be taken as true.” *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir.
2 1987) (quoting *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977)).

3 Here, summonses were issued, served, and returned executed. Defendants did not file an
4 answer within the required time, and they have not made any appearances to date. The clerk duly
5 entered default upon Plaintiff’s request. Plaintiff requests default judgment under both Section
6 552, which prohibits the unauthorized interception of any communications service offered over a
7 cable system (47 U.S.C. § 553(a)(1)), and section 605, which prohibits the unauthorized receipt
8 and use of radio communications, including satellite television signals, for one’s own benefit or
9 for the benefit of another not entitled thereto. (47 U.S.C. § 605(a)). Both sections are provisions of
10 the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-622. However, it is highly
11 unlikely that Defendants intercepted the Program by both cable *and* satellite. Taking the
12 allegations as true, the Court could find a violation of one or the other. In this case, the Court
13 should find a violation of section 605 rather than section 553 because a satellite dish was
14 photographed atop the Restaurant, and because Plaintiff indicates a preference for section 605 by
15 discussing damages solely under section 605. Consequently, Plaintiff’s section 553 claim would
16 be unsustainable.

17 According to the *Eitel* factors, default judgment on the section 605 and conversion claims
18 is appropriate. Defendants have not appeared in this action making it impossible for Plaintiff to
19 litigate its claims, Plaintiff’s substantive claims appear meritorious, the complaint is sufficiently
20 pled, the amount of money at stake is relatively small, Defendants have not disputed any material
21 fact, and there are no facts indicating that default was due to excusable neglect. Accordingly, the
22 Court recommends granting Plaintiff’s motion for default judgment as to his section 605 claim and
23 his conversion claim, and dismissing his section 553 claim as moot.

24 III. DAMAGES

25 Plaintiff seeks a total of \$111,400 in damages. Plaintiff requests the maximum permissible
26 statutory damages of \$10,000 under 47 U.S.C. § 605(e)(3)(C)(i)(II). Plaintiff also requests
27 enhanced damages of \$100,000 permissible for willful violations for purposes of direct or indirect
28 commercial advantage or private financial gain under 47 U.S.C. § 605(e)(3)(C)(ii). Plaintiff argues

1 that the higher amount of permissible statutory damages is necessary in order to deter unlawful use
2 of communications like the Program. Plaintiff also requests \$1,400 in conversion damages,
3 reflecting the value of the licensing fee Defendants would have been required to pay to order the
4 Program from Plaintiff.

5 A. 47 U.S.C. § 605

6 Under section 605, a court may award actual or statutory damages at the election of the
7 aggrieved party. 47 U.S.C. § 605(e)(3)(C)(i). Actual damages may be awarded in the actual loss
8 suffered by the plaintiff as a result of the violation and any profits of the violator attributable to the
9 violation not taken into account in computing actual damages. 47 U.S.C. § 605(e)(3)(C)(i)(I).
10 Statutory damages may be awarded in an amount between \$1,000 and \$10,000, as the court
11 considers just. 47 U.S.C. § 605(e)(3)(C)(i)(II). Section 605 also allows the court to award a
12 smaller amount of not less than \$250 where the court finds that the violator was not aware and had
13 no reason to believe that his acts constituted a violation of the section. 47 U.S.C. §
14 605(e)(3)(C)(iii) .

15 *Statutory Damages*

16 Plaintiff argues that statutory damages, rather than actual damages, should be awarded
17 because actual damages are difficult to prove. To support this contention, Plaintiff states that it
18 would be impossible to calculate the full extent of the profits lost by Plaintiff and the additional
19 damages sustained by Plaintiff as a result of the Defendants' unlawful actions. Plaintiff's affidavit
20 alleges abstract harm in the form of lost customers and damage to goodwill. Doc. 14, Exh. 4 at p.
21 4. Plaintiff's actual damages –the loss of the \$1,400 licensing fee- are within the range of
22 permissible statutory damages. Plaintiff has not demonstrated any damages greater than the loss of
23 the \$1,400 licensing fee and the facts do not warrant statutory damages in excess of \$1,400. A
24 \$1,400 award is just and should be the amount awarded in statutory damages.

25 *Enhanced Damages*

26 Enhanced penalties may be awarded in an amount up to \$100,000 for willful violations for
27 purposes of commercial advantage or private financial gain. 47 U.S.C. § 605(e)(3)(C)(ii). Courts
28 have awarded enhanced damage awards due to willful violations of the Communications Act for

1 repeated violations of the Act, the intent to profit from the violations, and actual profit derived
2 from the violation. *Kingvision Pay-Per-View Ltd. v. Backman*, 102 F. Supp. 2d 1196, 1197-98
3 (N.D. Cal. 2000). While Plaintiff’s allegations are deemed admitted under the rules governing
4 default, “Plaintiff’s allegations of willfulness bear directly on the question of damages;” hence,
5 “the mere assertion that Defendant acted willfully is insufficient to justify enhanced damages.” *Id.*
6 at 1198.

7 Here, Plaintiff has not provided any evidence that Defendants intended to exhibit the
8 Program in order to draw patrons and gain a commercial advantage, or that Defendants gained
9 actual commercial advantage. Plaintiff has not provided evidence or alleged that Defendants are
10 repeat violators of the Act. Plaintiff has not alleged that Defendants advertised the Program or
11 charged a premium for food and drinks. While the investigator was in the Restaurant, he could not
12 even hear the audio portion of the Program because a live band was playing in the Restaurant.
13 There were only ten patrons in the Restaurant at the time. These facts do not demonstrate an intent
14 to profit from the violation or actual profit from the violation. Accordingly, enhanced damages for
15 willful violations for purposes of commercial advantage or financial gain are not appropriate.

16 B. Conversion

17 Under California law, the elements of conversion are (1) ownership or right to possession
18 of the property; (2) wrongful disposition of that property right; and (3) monetary damages.
19 *Krueger v. Bank of America*, 145 Cal.App.3d 204, 215 (1983). Plaintiff alleges ownership of the
20 exclusive right to distribute the broadcast signal of the Program, Defendants exhibited the
21 Program without legally purchasing exhibition rights, and Plaintiff suffered a loss of the license
22 fee, which would have been \$1,400 for a venue similar to the Restaurant. Plaintiff would be
23 entitled to \$1,400 in compensatory damages for the tort of conversion; however, Plaintiff is not
24 entitled to duplicative recovery for the same items of damage. *See Joe Hand Promotions, Inc. v.*
25 *Lim*, 2015 U.S. Dist. LEXIS 131824, *9 (C.D. Cal. Sept. 29, 2015); *J & J Sports Prods. v. Gibbs*,
26 2015 U.S. Dist. LEXIS 123047, *9 (C.D. Cal. Sept. 14, 2015). Damages awarded under section
27 605 sufficiently compensate Plaintiff. Additional damages for conversion are not recommended.
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2 IV. RECOMMENDATION

3 For the foregoing reasons, the Court RECOMMENDS as follows:

- 4 1. Plaintiff's motion for default judgment be GRANTED IN PART as to Plaintiff's 47
5 U.S.C. § 605 and conversion claims;
- 6 2. Judgment be entered against Defendants Sara Janet Carranza, individually and d/b/a El
7 Sinaloense Restaurant a/k/a El Paraiso Mexican Restaurant, and Jesus Joel Ruiz, Jr.,
8 individually and d/b/a El Sinaloense Restaurant a/k/a El Paraiso Mexican Restaurant, with
9 joint and several liability, as to Plaintiff's 47 U.S.C. § 605 and conversion claims;
- 10 3. Plaintiff's 47 U.S.C. § 553 claim be dismissed; and
- 11 4. Damages be awarded in the total amount of \$1,400.00 in statutory damages pursuant to
12 47 U.S.C. § 605(e)(3)(C)(i)(II).

13 These Findings and Recommendations are submitted to the Honorable Troy L. Nunley,
14 United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 631(b)(1)(B) and
15 Rule 305 of the Local Rules of Practice for the United States District Court, Eastern District of
16 California. Within thirty (30) days after being served with a copy, any party may file written
17 objections with the court, serving a copy on all parties. Such a document should be captioned
18 "Objections to Magistrate Judge's Findings and Recommendations." The District Judge will then
19 review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised
20 that failure to file objections within the specified time may waive the right to appeal the District
21 Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

22
23 IT IS SO ORDERED.

24 Dated: December 29, 2015

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE