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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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J & J Sports Productions, Inc.,

No. CV 11-2216-PHX-JAT

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Plaintiff,

ORDER

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vs.

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Barrio Fiesta of Manila Restaurant LLC,
an unknown business entity d/b/a "Barrio
Fiesta Restaurant,"

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Defendant.

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Pending before the Court is Plaintiff's motion for default judgment (Doc. 20). The

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Court now rules on the motion.

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I. BACKGROUND

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As stated in the Complaint, Plaintiff J & J Sports Productions, Inc. was granted the

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exclusive nationwide television distribution rights to "*Firepower: Manny Pacquiao v.*

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Miguel Cotto, WBO Welterweight Championship Fight Program," telecast nationwide on

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Saturday, November 14, 2009 (hereinafter the "Program"). Doc. 1 at ¶ 10. These rights

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included all under-card bouts and fight commentary, in addition to the main event,

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encompassed in the television broadcast of the Program. *Id.* Pursuant to contract, Plaintiff

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entered into sublicensing agreements with various commercial establishments to permit the

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public exhibition of the Program. *Id.* at ¶ 11. Plaintiff alleges that Defendant Barrio Fiesta

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of Manila Restaurant LLC ("Barrio Fiesta") unlawfully intercepted and exhibited the

1 Program at its establishment in Chandler, Arizona.¹ *Id.* at ¶ 13.

2 According to an affidavit submitted by Plaintiff, Barrio Fiesta is a restaurant with an
3 estimated capacity of 150 to 175 people. Doc. 20-3 at 2. On the night the Program aired, a
4 representative of Plaintiff visited Barrio Fiesta for approximately five minutes. *Id.* at 1-2.
5 He noted that no cover was charged for entry. *Id.* at 1. He observed that the Program was
6 displayed on two television screens within the establishment. *Id.* He also took three separate
7 head counts during his visit, counting 110, 112, and 115 patrons. *Id.* at 2.

8 Plaintiff filed the Complaint in this Court on November 10, 2011, alleging violations
9 of the Federal Communications Act of 1934 (“FCA”), 47 U.S.C. § 605 *et seq.*, and the Cable
10 & Television Consumer Protection and Competition Act of 1992 (“Cable Act of 1992”), 47
11 U.S.C. § 553 *et seq.*, as well as conversion under Arizona law. *Id.* at ¶¶ 15, 20 & 24. Barrio
12 Fiesta has not answered the Complaint. Default as to Barrio Fiesta was entered by the Clerk
13 on March 30, 2012. Doc. 18. Plaintiff then filed the pending motion for default judgment
14 on June 14, 2012. Barrio Fiesta has not moved to set aside the entry of default or otherwise
15 appeared.

16 **II. ANALYSIS**

17 Once the Clerk of Court has entered default, the Court has discretion to grant default
18 judgment pursuant to Rule 55(b). *See* Fed. R. Civ. P. 55(b)(2); *Aldabe v. Aldabe*, 616 F.2d
19 1089, 1092 (9th Cir. 1980). When the Court considers the entry of default judgment, the
20 well-pleaded “factual allegations of the complaint, except those relating to the amount of
21 damages, will be taken as true.” *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir.
22 1977) (citing *Pope v. United States*, 323 U.S. 1, 12 (1944)).

23 **A. Violation of § 605**

24 “[T]o be held liable for a violation of [47 U.S.C. § 605], a defendant must be shown
25 to have (1) intercepted or aided the interception of, and (2) divulged or published, or aided

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27 ¹ Plaintiff voluntarily dismissed Defendants Nelson L. Reyes and Manilon Reyes a/k/a
28 Marilou A. Reyes, individually and d/b/a/ “Barrio Fiesta Restaurant,” without prejudice on
March 23, 2012. Doc. 16.

1 the divulging or publishing of, a communication transmitted by the plaintiff.” *Nat’l*
2 *Subscription Television v. S & H TV*, 644 F.2d 820, 826 (9th Cir. 1981). Section 605 applies
3 to satellite television signals.² *DirecTV, Inc. v. Webb*, 545 F.3d 837, 844 (9th Cir. 2008).
4 The statute states that “the party aggrieved may recover an award of statutory damages for
5 each violation of subsection (a) of this section involved in the action in a sum of not less than
6 \$1,000 or more than \$10,000, as the court considers just.” 47 U.S.C. § 605(e)(3)(C)(i)(II).
7 The statute further provides that for any violation that “was committed willfully and for
8 purposes of direct or indirect commercial advantage or private financial gain, the court in its
9 discretion may increase the award of damages, whether actual or statutory, by an amount of
10 not more than \$100,000 for each violation.” 47 U.S.C. § 605(e)(3)(C)(ii).

11 By defaulting, Barrio Fiesta has admitted that it unlawfully intercepted and published
12 the Program to its patrons in violation of 47 U.S.C. § 605, and that it further did so “willfully
13 and for purposes of direct or indirect commercial advantage or private gain.” Doc. 1 at ¶ 13.
14 Thus, Plaintiff requests that the Court award statutory damages, including an increase for a
15 willful violation, in the maximum available amount of \$110,000. Indeed, the facts indicate
16 that Barrio Fiesta showed the Program on two screens in its establishment, which is open to
17 the public and located in an urban area. Though the restaurant was not filled to capacity,
18 three separate head counts revealed that approximately 110 to 115 people were present at the
19 time the Program was displayed. Furthermore, Barrio Fiesta willfully and unlawfully
20 intercepted the Program and displayed it to its patrons for commercial gain. The Court agrees
21 that, based on these facts, Plaintiff is entitled to the maximum award of \$10,000 available
22 under § 605(e)(3)(C)(i)(II).

23 With regard to enhanced damages, however, the Court does not agree that the
24 maximum enhancement is appropriate in this case. Barrio Fiesta did not charge a cover for

25 ² In the Complaint, Plaintiffs also sought relief under 47 U.S.C. § 553, which applies
26 to cable signal transmissions. *See Kingvision Pay-Per-View Ltd. v. Lake Alice Bar*, 168 F.3d
27 347, 349 n.1 (9th Cir. 1999). However, Plaintiff cannot determine the means of signal
28 transmission that Defendant used to unlawfully obtain the Program, and therefore only seeks
damages under § 605.

1 entry, the restaurant was not filled to capacity, and there is no evidence that Barrio Fiesta has
2 repeatedly violated this statute, that it advertised the Program to draw larger crowds, that it
3 charged a premium for food and drinks, or that its earnings were significantly larger than
4 usual during the time that the Program was displayed. *See Kingvision Pay-Per-View, Ltd.*
5 *v. Gutierrez*, 544 F. Supp. 2d 1179, 1185 (D. Colo. 2008) (discussing these factors as
6 reducing the size of an enhanced damages award).

7 However, Plaintiffs correctly note that enhanced damages are desirable in many cases
8 because of their tendency to deter future violations. Thus, based on the facts of this case, the
9 Court finds that an enhanced damages award of \$15,000 is appropriate. The combined award
10 of \$25,000 will serve to compensate Plaintiff and also deter future violations.

11 **B. Conversion**

12 Plaintiff also requests an award of \$4,200 for conversion. In Arizona, “the measure
13 of conversion damages includes not only the value of the property taken, but also other
14 damage suffered because of the wrongful detention or deprivation of the property.” *Collins*
15 *v. First Fin. Servs., Inc.*, 815 P.2d 411, 413 (Ariz. Ct. App. 1991). However, if actual
16 damages are not proven, only an award of nominal damages can be made. *SWC Baseline &*
17 *Crimson Investors, LLC v. Augusta Ranch LP*, 265 P.3d 1070, 1092 (Ariz. Ct. App. 2011).
18 Here, Plaintiff has not provided any factual support for the requested award. Therefore, the
19 Court will award nominal damages in the amount of \$1 for the conversion claim.

20 **C. Costs and Attorney Fees**

21 Plaintiff also asks for an award of costs and attorneys’ fees, though Plaintiff has not
22 provided the Court any basis on which to make such awards. Therefore, the Plaintiff may
23 separately file a bill of costs in accordance with LRCiv 54.1 and a motion for attorneys’ fees
24 in accordance with LRCiv 54.2. The Court will rule on a motion for attorneys’ fees if and
25 when one is filed.

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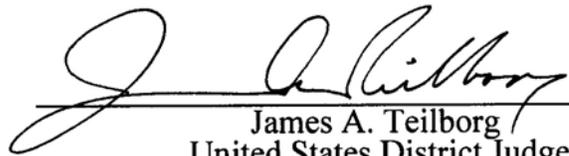
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1 **III. CONCLUSION**

2 Accordingly,

3 **IT IS ORDERED** granting Plaintiff's motion for default judgment (Doc. 20).
4 Judgment is entered for Plaintiff J & J Sports Productions, Inc. and against Defendant Barrio
5 Fiesta of Manila Restaurant, LLC, an unknown business entity d/b/a "Barrio Fiesta
6 Restaurant," in the amount of \$25,001. The Clerk shall enter judgment.

7 DATED this 17th day of July, 2012.

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12 James A. Teilborg
13 United States District Judge
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