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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Innovative Sports Management
10 Incorporated,

11 Plaintiff,

12 v.

13 Alan Antar,

14 Defendant.
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No. CV-12-00677-PHX-JAT

ORDER

16 Pending before the Court is Plaintiff's Application for Default Judgment (Doc.
17 18). The Clerk of the Court entered default on July 17, 2012 (Doc. 15). Plaintiff now
18 seeks default judgment in the amount of \$111,750,000.

19 Plaintiff's damages are broken down into three categories: 1) statutory damages
20 pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(II); 2) enhanced damages pursuant to 47 U.S.C. §
21 605(e)(3)(C)(ii);¹ and 3) conversion damages pursuant to Arizona law. Plaintiff seeks
22 \$10,000, \$100,000, and \$1,750, in the respective categories.
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25 _____
26 ¹ Statutory and Enhanced Damages arise under Count I of the Complaint.
27 Conversion Damages arise under Count III of the Complaint. Count II of the Complaint
28 alleges violations of 47 U.S.C. § 553. However, Plaintiff contends that it only seeks
liability and damages on its claim under 47 U.S.C. section 605 and its claim for
conversion and does not seek damages for its claim under 47 U.S.C. § 553. (Doc. 18-1 at
3). Accordingly, the Court will award Plaintiff no damages on Count II of its Complaint.

1 **I. STATUTORY DAMAGES**

2 Statutory damages are appropriate pursuant to 47 U.S.C. section 605 when actual
3 damages cannot be easily proven. *J & J Sports Productions, Inc. v. Canedo*, No. C 09-
4 01488 PJH, 2009 WL 4572740, at *5 (N.D. Cal. 2009). “Under § 605(e)(3)(C)(i)(II), an
5 aggrieved party may recover ‘a sum not less than \$1,000 or more than \$10,000, as the
6 court considers just’ for each violation.” *J & J Sports Productions Inc. v. Miramontes*,
7 No. CV-10-02345-PHX-FJM, 2011 WL 892350, at * 2 (D. Ariz. March 14, 2011)
8 (internal citation omitted). Further, “[a]n award of damages should deter future conduct
9 but not destroy the business.” *Id.* (quoting *Kingvision Pay-Per-View v. Lake Alice Bar*,
10 168 F.3d 347, 360 (9th Cir. 2009)).

11 In awarding statutory damages pursuant to 47 U.S.C. section 605, courts in this
12 district have considered factors such as the maximum capacity of the commercial
13 establishment, the total number of patrons present at the time of the unauthorized
14 showing, and the amount defendant would have paid if it had purchased the rights to
15 show the broadcast. *See, e.g., id.*

16 In this case, Plaintiff has presented evidence that the Program was broadcast on 32
17 televisions to between 45 and 51 patrons, and the capacity of the sports bar was
18 approximately 404 patrons. Plaintiff offered no information about what an establishment
19 with a capacity of 404 patrons would have had to pay for the program. Based on the size
20 of the establishment and number of patrons present, the Court finds a \$3,000 penalty to
21 be appropriate and will award \$3,000 under § 605(e)(3)(C)(i)(II).

22 Further, “[e]nhanced damages are awarded upon a showing that defendant acted
23 willfully and for the purpose of direct or indirect commercial advantage or private
24 financial gain. Under § 605(e)(3)(C)(ii), the court may award up to \$100,000 . . .”
25 *Miramontes*, 2011 WL 892350, *2. In deciding whether to award enhanced damages,

26 Courts generally consider factors such as repeat violations,
27 substantial unlawful monetary gains, significant actual
28 damages to plaintiff, advertising, cover charges, or charging

1 premium menu and drink prices. *See Kingvision Pay-Per-*
2 *View v. Gutierrez*, 544 F.Supp.2d 1179, 1185 (D. Colo.
3 2008). Some courts find the mere unauthorized showing of a
4 program sufficient to award enhanced damages because given
5 the low probability of accidentally showing it, it must have
6 been done willfully and for profit. *See Entertainment By J &*
J, Inc. v. Al-Waha Enter., Inc., 219 F.Supp.2d 769, 776 (S.D.
Tex. 2002).

7 *Id.*

8 Here, there is evidence of 2 other violations,² and there is evidence there was no
9 cover charge. There is no evidence that there were substantial unlawful monetary gains,
10 advertising, or premium drink or menu prices. Further, Plaintiff alleged that Defendant's
11 showing of the fight was willful and that allegation is accepted as true for purposes of
12 default judgment. *See J & J Sports Productions, Inc. v. Marcaida*, No. 10-5125 SC, 2011
13 WL 2149923, at *2 (N.D. Cal. May 31, 2011) (noting that it is extremely unlikely that the
14 signal to display the fight is acquired inadvertently and, thus, without evidence of the
15 absence of willfulness, the Court can assume that Defendant acted willfully and for the
16 purposes of commercial advantage warranting enhanced damages). Because Plaintiff has
17 presented some evidence of repeat violations, the Court finds that \$10,000 in enhanced
18 damages to be appropriate. *See Joe Hand Promotions, Inc. v. Coen*, No. CV 11-2531-
19 PHX-JAT, 2012 WL 2919710, *2 (D. Ariz. July 17, 2012) (awarding \$10,000 in
20 enhanced damages for deterrence purposes).

21 **II. DAMAGES FOR CONVERSION**

22 Plaintiff also seeks \$1,750 in conversion damages. "Conversion is any act of
23 dominion wrongfully asserted over another's personal property in denial of or
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25 ² Although Plaintiff contends that it has presented evidence of six other
26 violations, this Court does not consider the simple filing of a complaint to be evidence of
27 an actual violation. Plaintiff has presented evidence that two other Courts entered default
28 judgment against Defendant, and, thus, the Court finds that there is evidence that
Defendant violated the statute two other times.

1 inconsistent with his rights therein.” *Scott v. Allstate Ins. Co.*, 553 P.2d 1221,
2 1225 (Ariz. Ct. App. 1976). Under Arizona law, “the measure of conversion damages
3 includes not only the value of the property taken, but also other damage suffered because
4 of the wrongful detention or deprivation of the property.” *Collins v. First Fin. Servs.,*
5 *Inc.*, 815 P.2d 411, 413 (Ariz. Ct. App. 1991).

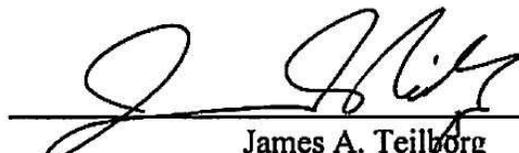
6 Plaintiff seeks \$1,750 in conversion damages, but does not explain how the value
7 of what was converted was \$1,750. Further, Plaintiff states that the evidence of
8 conversion is in the *Gagliardi Affidavit* at ¶ 8. Doc. 18-1 at 14. No such affidavit is in
9 this record. Accordingly, because the Court has no evidence of conversion damages, the
10 request for conversion damages will be denied, including that the Court will not award
11 nominal damages.

12 **III. CONCLUSION**

13 Based on the foregoing,

14 **IT IS ORDERED** that Plaintiff’s Application for Default Judgment (Doc. 18) is
15 granted as set forth herein. The Clerk of the Court shall enter judgment in favor of
16 Plaintiff and against Defendant in the amount of 13,000.00. Plaintiff may move for
17 attorney’s fees as provided in the Local Rules of Civil Procedure.

18 Dated this 27th day of March, 2013.

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23 James A. Teilborg
24 Senior United States District Judge
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