

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

**WO**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

G & G Closed Circuit Events, LLC,	)	CV 12-1282-PHX-PGR
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER</b>
	)	
Nadir Soofi, et al.,	)	
	)	
Defendants.	)	
	)	

---

Before the Court is Plaintiff’s Application for Default Judgment, seeking judgment against Nadir Soofi, individually and d/b/a Cleopatra Bistro Pizza, and Cleopatra Bistro Pizza, an unknown business entity d/b/a Cleopatra Bistro Pizza (hereinafter “Defendants”). (Doc. 15.) Having reviewed the record, the Court finds that the application should be granted pursuant to Fed.R.Civ.P. 55(b)(2) to the extent that the Court will award the plaintiff the sum of \$2001.00 in damages, as well as its recoverable costs, including reasonable attorney’s fees, if timely sought.

**Background**

Plaintiff alleges that Defendants showed a closed-circuit boxing telecast entitled “*World Grand Prix*”: *Alistair Overeem v. Fabricio Werdum* (“the program”) at their restaurant on June 18, 2012. (Doc. 1.) The complaint alleges that the program was shown without authorization as Defendants never purchased a commercial license to do so from the

1 Plaintiff, which held the exclusive commercial distribution rights to the program. (*Id.*) The  
2 complaint raises three claims: a violation of 47 U.S.C. § 605, the Federal Communications  
3 Act of 1934 (Count I); a violation of 47 U.S.C. § 553, the Cable & Television Protection and  
4 Competition Act of 1992 (Count II); and conversion (Count III). (*Id.*)

5 The record establishes that Defendants were served on September 20, 2012. (Docs. 9,  
6 10.) Defendants did not respond to the complaint, and Plaintiff filed an application for entry  
7 of default on November 16, 2012. (Doc. 13.) The Clerk of the Court entered default on  
8 November 19, 2012. (Doc. 14.)

### 9 Discussion

10 Plaintiff's application for default judgment addresses only 47 U.S.C. § 605. The  
11 complaint alleges in part in Count I, which asserts a violation of § 605, that Defendants "did  
12 unlawfully intercept, receive, publish, divulge, and/or exhibit the *Program* at the time of its  
13 transmission at their commercial establishment" and that they did so "willfully and for  
14 purposes of direct and/or indirect commercial advantage and/or private financial gain." (Doc.  
15 1, ¶¶ 19, 20.)

16 The general rule of law is that upon default all well pleaded factual allegations of the  
17 complaint regarding liability, but not those relating to damages, are taken as true. *DIRECTV,*  
18 *Inc. v. Huynh*, 503 F.3d 847, 851 (9th Cir. 2007); *Geddes v. United Financial Group*, 559  
19 F.2d 557, 560 (9th Cir. 1977).

20 Plaintiff seeks damages pursuant to § 605, which provides for statutory damages per  
21 violation "of not less than \$1,000 or more than \$10,000, as the court considers just." 47  
22 U.S.C. § 605(e)(C)(i)(II). Section 605 further permits an additional discretionary award of  
23 enhanced damages of up to \$100,000 if the court determines that the defendants willfully  
24 violated the statute "for purposes of direct or indirect commercial advantage or financial  
25 gain." 47 U.S.C. § 605(e)(3)(C)(ii). Plaintiff seeks the maximum award under both  
26 subsections, for a total § 605 award of \$110,000.  
27

1 In support of its request for damages, Plaintiff has submitted an affidavit by its  
2 investigator, who was present at Cleopatra Bistro Pizza on the night of the broadcast.  
3 According to the affidavit, the restaurant had one television, a 32" Panasonic. (Doc. 15, Ex.  
4 3.) Three patrons were present while the program was broadcast. (*Id.*) The capacity of the  
5 restaurant is approximately 15 people. (*Id.*) The investigator paid no cover charge. (*Id.*) He  
6 purchased wings and a large bottle of soda for \$10.32. (*Id.*)

7 Based on this record, the Court concludes that the statutory damages sought by Plaintiff  
8 are disproportionate. *See Innovative Sports Management, Inc. v. Gonzalez*, No. CV-12-0381-  
9 PGR, 2012 WL 3762436, at \*2 (D.Ariz. Aug. 29, 2012); *see also Kingvision Pay-Per-View,*  
10 *Ltd. v. Backman*, 102 F.Supp.2d 1196, 1198–99 (N.D.Cal. 2000); *Joe Hand Promotions, Inc.*  
11 *v. Streshly*, 655 F.Supp.2d 1136, 1139 (S.D.Cal. 2009). The Court will award the minimum  
12 \$1,000 in statutory damages pursuant to § 605(e)(3)(C)(i)(II).

13 In determining whether a defendant’s conduct is subject to enhanced damages for  
14 willfulness, courts assess a variety of factors, “including prior infringements, substantial  
15 unlawful monetary gains, significant actual damages to the plaintiff, the defendant’s  
16 advertising of the broadcast, and the defendant’s charging a cover charge or premiums for  
17 food and drinks during the broadcast.” *Kingvision Pay-Per-View, Ltd. v. Guzman*, No. CV-07-  
18 963-PHX-PGR, 2008 WL 1924988, at \*3 (D.Ariz. April 30, 2008). In reviewing Plaintiff’s  
19 request for enhanced damages, the Court notes little evidence in the record suggesting  
20 Defendants achieved commercial advantage or private financial gain from broadcasting the  
21 program. The record does not indicate that Defendants advertised the program or charged a  
22 premium for food and drink. The record does indicate that Defendant imposed no cover  
23 charge. In light of this evidence, the Court will award \$1,000 in enhanced damages pursuant  
24 to § 605(e)(3)(C)(ii).

25  
26 The complaint also alleges a claim for conversion, seeking damages of \$1200. Plaintiff  
27 offers no support for damages in that amount. Under Arizona law, only an award of nominal  
28

1 damages for conversion may be made if actual damages are not proven. *SWC Baseline &*  
2 *Crimson Investors, LLC v. Augusta Ranch Limited P'ship*, 265 P.3d 1070, 1092  
3 (Ariz.App.2011). Given the absence of factual and legal support for the requested award, the  
4 Court will award nominal damages of \$1.00 for the conversion claim. *See Innovative Sports*  
5 *Management*, 2012 WL 3762436, at \*3; *J&J Sports Production, Inc. v. Barrio Fiesta of*  
6 *Manila Restaurant LLC*, No. CV-11-2216-PHX-JAT, 2012 WL 2919599, at \*2 (D.Ariz. July  
7 17, 2012).

8 Plaintiff also requests an award of reasonable attorney's fees and relevant costs. (Doc.  
9 15, Ex. 1 at 14.) Section 605(e)(3)(B)(iii) provides that the court "shall direct the recovery of  
10 full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails."  
11 Plaintiff does not set forth a requested amount, but seeks 14 days from entry of judgment to  
12 submit its request for costs and attorneys' fees.

13 The Court will require Plaintiff to submit an itemized list of attorney's fees no later  
14 than February 1, 2013, wherein it details the actual time expended by task (taking into account  
15 any "boilerplate" pleading and motion related forms used by its attorney in this type of action)  
16 and the hourly rate charged, and details its costs.

17 Accordingly,

18  
19 IT IS ORDERED that Plaintiff's Application for Default Judgment (Doc. 15) is granted  
20 against Nadir Soofi, individually and d/b/a Cleopatra Bistro Pizza, and Cleopatra Bistro Pizza,  
21 pursuant to Fed.R.Civ.P. 55(b)(2), in the amount of \$2,001.00. The Clerk of the Court shall  
22 enter judgment accordingly.

23 DATED this 16<sup>th</sup> day of January, 2013.

24  
25   
26 Paul G. Rosenblatt  
27 United States District Judge  
28