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

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9 J & J Sports Productions, Incorporated,
10 Plaintiff,

No. CV-13-00936-PHX-GMS

DEFAULT JUDGMENT ORDER

11 v.

12 Damien Stone, individually and dba Stone
13 Hard Boxing; James G. Bennett, Jr.,
14 individually and dba Stone Hard Boxing;
and Stonehard Boxing, LLC, an unknown
business entity dba Stone Hard Boxing,

15 Defendants.

16 Pending before the Court is Plaintiff's Motion for Default Judgment as to
17 Defendant Damien Stone, individually, and d/b/a Stone Hard Boxing; and Stonehard
18 Boxing, LLC, an unknown business entity d/b/a Stone Hard Boxing (hereinafter
19 "Defendant Stone") (Doc.14). In conjunction with the motion, Plaintiff filed a
20 memorandum of points and authorities in support of its application of default judgment.
21 It further files a Declaration of Thomas E. Riley; an Affidavit of Michael Conrad; and an
22 Affidavit of Joseph M. Gagliardi, President of Plaintiff J & J Sports Productions, Inc.

23 **BACKGROUND**

24 Plaintiff filed its Complaint on May 6, 2011. The relevant allegations in the
25 Complaint are contained in ¶ 24 which alleges that:

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27 With full knowledge that the Program was not to be
28 intercepted, received published, divulged, displayed, and/or
exhibited by commercial entities unauthorized to do so, each
and every one of the above named Defendants, either through
direct action or through actions of employees or agents

1 directly imputable to Defendants (as outlined in paragraphs 7-
2 19 above, did unlawfully intercept, receive, publish, divulge,
3 display, and/or exhibit the Program at the time of its
4 transmission at their commercial establishment in Chandler,
Arizona located at 2775 N. Arizona Avenue, Chandler,
Arizona 85225.

5 The Complaint further alleged Defendant Stone knowingly violated 47 U.S.C.
6 § 605 (see Complaint ¶¶ 27-29). The Court thus treats that allegation as true for purposes
7 of the entry of default judgment. According to 47 U.S.C. § 605(e)(c)(1)(2), Plaintiff can
8 receive not less than \$1,000.00, no more than \$10,000.00 in statutory damages.
9 Nevertheless, pursuant to 47 U.S.C. § 605(e)(c)(2) the statutory award of damages can be
10 increased to an amount of not more than \$100,000.00 for each violation of the statute
11 because Defendant Stone committed the interception willfully and for purposes of direct
12 or indirect commercial and private financial gain. The Court therefore considers the
13 action cap on the damages awarded to be \$100,000.00. *J & J Sports Productions v.*
14 *Ferrejera*, 2008 WL 4104315 (E.D.CA. 2008). Plaintiff sets forth in its memorandum of
15 points and authorities cases which consider a number of factors in determining the
16 damages to be awarded within the \$100,000.00 statutory range. Those factors include:

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21 (1) the size of the offending establishment; (2) the number
22 and size of screens displaying the pirated broadcast; (3) any
23 evidence of advertising the pirated broadcast to attract
24 customers; (4) any cover change made to patrons of the
25 establishment broadcasting the pirated transmission; (5) any
26 premium for any food and drink charged for any pirated
27 transmission; (6) the need to deter future violations; (7) the
28 difficulty in detecting the unlawful acquisition of the
broadcast; and (8) the widespread loss that occurs through
pirating license transmissions.

29 In his Affidavit attached to the motion, Michael Conrad avows that on the date in
30 question he entered the bar for approximately thirty (30) minutes and observed “the

1 decision being given for the bout between Alfonso Lopez and Kelly Pavlik.” The
2 broadcast was on two 36” inch televisions stationed inside the establishment. Mr. Conrad
3 “counted the number of patrons at three separate times. The head counts were 20, 23,
4 and 25” people in the establishment and noted that he paid a \$10.00 cover charge to enter
5 the establishment during the fight. In his Affidavit, Mr. Joseph Gagliardi, President of
6 Plaintiff indicates that his broadcast could not have been presented by Defendant Stone
7 through a legitimate means. He further indicates that the pirating of J & J Sports’
8 broadcasts cost his corporation what he believes to be several millions of dollars. He
9 further states that he believes that some of the traditional factors considered by Courts,
10 such as whether or not additional fees are charged by a pirating entity are not appropriate
11 considerations in calculating a damage amount.
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15 After having considered and balanced the difficulty in detecting those who pirate
16 criminal broadcasts, the need to deter future illegitimate pirating of broadcasts and the
17 widespread loss caused in the industry balanced against the four screens on which the
18 broadcast was displayed, or to demonstrate that Defendant Stone profited significantly by
19 the illegal broadcast, the Court arrives at the conclusion that the appropriate statutory
20 damages in this case authorized by 47 U.S.C. § 605(e)(3)(c)(ii) is \$35,000.00. To that the
21 Court awards \$3,600.00 based on account of conversion.
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