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

9 J & J Sports Productions, Inc.,

10 Plaintiff,

11 v.

12 Gaudencio Becerra and Rosa Evelia
13 Becerra, individually and d/b/a Ramiro's
14 Mexican Food,

15 Defendants.

No. CV-15-00803-PHX-NVW

ORDER

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17 Before the Court are Plaintiff's Application for Default Judgment by the Court
18 (Doc. 15) and supporting documents (Docs. 15-1, 15-2, 15-3, and 17). For the reasons
19 that follow, the application will be granted, but damages will be limited.

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21 **I. BACKGROUND**

22 Plaintiff acquired the "exclusive nationwide commercial distribution (closed-
23 circuit) rights" to a May 4, 2013 television program entitled "*Floyd Mayweather, Jr. v.*
24 *Robert Guerrero WBC Welterweight Championship Fight Program*" ("the Program).
25 (Doc. 1 at ¶ 18.) Plaintiff then sublicensed to various hotels, restaurants, and clubs the
26 right to show the Program to their customers. (*Id.* at ¶ 19.) According to Plaintiff,
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1 Defendants willfully intercepted the Program without Plaintiff's consent and publicly
2 displayed it for the purpose of commercial advantage or financial gain. (*Id.* at ¶¶ 21-22.)

3 Plaintiff filed suit on May 1, 2015, seeking relief for Defendants' violations of the
4 Communications Act of 1934 (47 U.S.C. § 605 *et seq.*) and the Cable and Television
5 Consumer Protection and Competition Act of 1992 (47 U.S.C. § 553 *et seq.*). (Doc. 1 at
6 5-9.) Defendants were served with process in this action (*see* Docs. 9, 11, 12) but have
7 failed to appear. On September 14, 2015, the Clerk granted Plaintiff's request to enter
8 default. (Doc. 14.) Plaintiff now moves for entry of default judgment pursuant to
9 Federal Rule of Civil Procedure 55(b)(2). Defendants have not filed a response.

11 **II. APPLICATION FOR DEFAULT JUDGMENT**

12 After a party's default has been entered, the district court has discretion to grant
13 default judgment against that party. *See* Fed. R. Civ. P. 55(b)(2); *Aldabe v. Aldabe*, 616
14 F.2d 1089, 1092 (9th Cir. 1980). Factors the court may consider in deciding whether to
15 grant default judgment include (1) the possibility of prejudice to the plaintiff, (2) the
16 merits of plaintiff's claim, (3) the sufficiency of the complaint, (4) the amount of money
17 at stake, (5) the possibility of a dispute concerning material facts, (6) whether the default
18 was due to excusable neglect, and (7) the strong policy favoring decisions on the merits.
19 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Here, consideration of these
20 factors supports granting default judgment.

21 Plaintiff adequately states a claim under 47 U.S.C. § 605.¹ The statute prohibits
22 the unauthorized interception and publication of "radio" communications. 47 U.S.C.
23 § 605(a). This prohibition has been interpreted to apply to satellite television signals,
24 *DirectTV, Inc. v. Webb*, 545 F.3d 837, 844 (9th Cir. 2008), but not to wire
25 communications, *J & J Sports Prods. Inc. v. Preciado*, No. CV-14-02232-PHX-NVW,

27 ¹ The complaint also sought relief under 47 U.S.C. § 553, but the present
28 application seeks default judgment only under section 605. (Doc. 15 at ¶ 5.)

1 2015 WL 1062037, at *3 (D. Ariz. Mar. 11, 2015) (collecting federal appellate cases).
2 Accordingly, a complaint alleging a violation of 47 U.S.C. § 605(a) must definitively
3 specify that the intercepted communications were wireless in order to state a claim
4 sufficient to sustain a default judgment. *Preciado*, 2015 WL 1062037, at *2-3. Here,
5 Plaintiff has so specified. Plaintiff’s investigator watched Defendants show the Program
6 at their restaurant, noticed a satellite dish on the roof, and concluded the satellite dish was
7 used to access the Program wirelessly. (Doc. 15-3 at 2, 6-7.) Thus, Plaintiff states a
8 claim for relief under 47 U.S.C. § 605(a).

9 In addition, Plaintiff may be prejudiced if default judgment is not entered, because
10 without default judgment Plaintiff will have little recourse for recovery. *See J & J Sports*
11 *Prods., Inc. v. Molina*, No. CV-15-0380-PHX-DGC, 2015 WL 4396476, at *1 (D. Ariz.
12 July 17, 2015). Similarly, Defendants’ absence from these proceedings despite service of
13 process suggests there is neither a dispute concerning material facts nor excusable
14 neglect. *See id.* at *2. Although the policy favoring decisions on the merits counsels
15 against default judgment, the mere existence of Rule 55(b) indicates this policy is not
16 dispositive. *Id.* Therefore, default judgment will be entered.

17 18 **III. DAMAGES**

19 Plaintiff seeks statutory damages and costs. Under the relevant provision, Plaintiff
20 “may” recover between \$1,000 and \$10,000 for each statutory violation, and between
21 \$10,000 and \$100,000 for each willful violation, “as the court considers just.” 47 U.S.C.
22 § 605(e)(3)(C)(i)(II). Plaintiff also “shall” recover full costs, including “reasonable
23 attorneys’ fees.” 47 U.S.C. § 605(e)(3)(B)(iii). In assessing damages, the Court balances
24 the need to deter piracy with the importance of not putting restaurants out of business.
25 *See Kingvision Pay-Per-View Ltd. v. Lake Alice Bar*, 168 F.3d 347, 350 (9th Cir. 1999).

26 Plaintiff seeks \$26,600 in damages, excluding costs. This punishment exceeds the
27 crime. Plaintiff’s investigator counted only seven customers in the restaurant over the
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1 course of ten minutes. (Doc. 15-3 at 2.) The Program was playing on only one
2 television, and the investigator does not state whether anyone was watching. (*Id.*)
3 Because of the restaurant's small size, Plaintiff would have charged only a \$2,200
4 sublicense fee to broadcast the Program in the first place. (Doc. 17 at ¶ 8.)

5 A better-suited damages award is \$5,000, including costs and fees. To the extent
6 this award does not cover Plaintiff's fees, those fees are not "reasonable" as contemplated
7 by the statute.

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9 IT IS THEREFORE ORDERED that Plaintiff's Application for Default Judgment
10 by the Court (Doc. 15) is granted. Judgment will be entered by separate order for a
11 violation of 47 U.S.C. § 605 in the amount of \$5,000, including costs and fees.

12 Dated this 3rd day of December, 2015.

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17 Neil V. Wake
18 United States District Judge
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