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

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10 J & J Sports Productions, Inc.,
11 Plaintiff,

12 v.

13 Francisca Angelica Gonzalez Arvizu,
14 individually and d/b/a/ Taco Mich; and
15 Taco Mich & Bar #4, LLC, an unknown
business entity d/b/a Taco Mich

16 Defendants.

No. CV-17-03130-PHX-DGC

ORDER AND DEFAULT JUDGMENT

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18 Plaintiff J & J Sports Productions has filed a motion for default judgment against
19 Defendants Francisca Angelica Gonzalez Arvizu and Taco Mich & Bar #4, LLC, doing
20 business as “Taco Mich.” Doc. 16. No response has been filed. For reasons stated
21 below, default judgment is appropriate.

22 **I. Background.**

23 Plaintiff obtains licenses to distribute pay-per-view programming to various
24 commercial establishments, including bars and restaurants. Plaintiff contracted for the
25 right to broadcast a boxing match between Saul “Canelo” Alvarez and Liam Smith and
26 related undercard bouts. The program aired September 17, 2016.

27 Plaintiff claims that Defendants intercepted the program and displayed it to
28 patrons at Taco Mich, a Mexican restaurant and bar operated by Defendants. *See* Doc.

1 16-3 at 5-8. Plaintiff filed suit seeking statutory damages for Defendants' alleged
2 violations of the Communications Act of 1934 and the Cable and Television Consumer
3 Protection and Competition Act of 1992, 47 U.S.C. §§ 553 and 605 *et seq.* Doc. 1.

4 Plaintiff served process on Defendants on November 14, 2017. Docs. 8, 9. The
5 Clerk entered Defendants' default three weeks later after they failed to answer or
6 otherwise respond to the complaint. Doc. 13. Plaintiff then filed the present motion for
7 default judgment pursuant to Rule 55(b) of the Federal Rules of Civil Procedure.
8 Doc. 16.

9 **II. Default Judgment.**

10 After default is entered by the clerk, the district court may enter default judgment
11 pursuant to Rule 55(b). The court's "decision whether to enter a default judgment is a
12 discretionary one." *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Although the
13 court should consider and weigh relevant factors as part of the decision-making process,
14 it "is not required to make detailed findings of fact." *Fair Hous. of Marin v. Combs*, 285
15 F.3d 899, 906 (9th Cir. 2002).

16 The following factors may be considered in deciding whether default judgment is
17 appropriate: (1) the possibility of prejudice to the plaintiff, (2) the merits of the claims,
18 (3) the sufficiency of the complaint, (4) the amount of money at stake, (5) the possibility
19 of factual disputes, (6) whether default is due to excusable neglect, and (7) the policy
20 favoring decisions on the merits. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir.
21 1986). In considering the merits and sufficiency of the complaint, the court accepts as
22 true the complaint's well-pled factual allegations, but the plaintiff must establish all
23 damages sought in the complaint. *See Geddes v. United Fin. Grp.*, 559 F.2d 557, 560
24 (9th Cir. 1977). Having reviewed the complaint and default judgment motion, the Court
25 finds that the *Eitel* factors favor default judgment and an award of damages in the amount
26 of \$30,000.00 is warranted.

27 **A. Possible Prejudice to Plaintiff.**

28 The first *Eitel* factor weighs in favor of default judgment. Defendants failed to

1 respond to the complaint or otherwise appear in this action despite being served with the
2 complaint, the application for default, and the motion for default judgment. If Plaintiff's
3 motion is not granted, Plaintiff "will likely be without other recourse for recovery."
4 *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). The
5 prejudice to Plaintiff in this regard supports the entry of default judgment.

6 **B. Merits of the Claims and Sufficiency of the Complaint.**

7 The second and third *Eitel* factors favor default judgment where, as in this case,
8 the complaint sufficiently states a plausible claim for relief under the Rule 8 pleading
9 standards. *See id.* at 1175; *Danning v. Lavine*, 572 F.2d 1386, 1388-89 (9th Cir. 1978).
10 Plaintiff seeks relief under 47 U.S.C. § 605. To establish a violation of this statute,
11 "a defendant must be shown to have (1) intercepted or aided the interception of, and
12 (2) divulged or published, or aided the divulging or publishing of, a communication
13 transmitted by the plaintiff." *Nat'l Subscription Television v. S & H TV*, 644 F.2d 820,
14 826 (9th Cir. 1981). Section 605 applies to satellite television signals. *DirecTV, Inc. v.*
15 *Webb*, 545 F.3d 837, 844 (9th Cir. 2008).

16 Plaintiff alleges that Defendants willfully intercepted and displayed the licensed
17 program to the public on September 17, 2016. Docs. 1 ¶¶ 9-14, 16 ¶ 4. These allegations
18 are supported by the sworn affidavit of investigator Amanda Hidalgo, who visited Taco
19 Mich on the night in question and saw the program being displayed on a 32-inch
20 television. Doc. 16-4 at 2. Hidalgo witnessed two patrons inside the establishment. *Id.*

21 Because the well-pled factual allegations of the complaint are deemed true upon
22 default, *see Geddes*, 559 F.2d at 560, Plaintiff has shown that Defendants violated § 605.
23 The second and third factors favor default judgment.

24 **C. Amount of Money at Stake.**

25 Under the fourth *Eitel* factor, the Court considers the amount of money at stake in
26 relation to the seriousness of the defendants' conduct. A plaintiff may receive between
27 \$1,000 and \$10,000 in statutory damages for each violation of § 605. 47 U.S.C.
28 § 605(e)(C)(1)(2). The statutory damages may be enhanced by up to \$100,000 where the

1 violation was willful and for purposes of commercial advantage or financial gain.
2 § 605(e)(C)(2).

3 Plaintiff seeks \$10,000 in statutory damages and \$50,000 in enhanced damages for
4 the § 605 violation. Doc. 16-1 at 14. Plaintiff cites cases that consider a host of factors
5 in determining the amount of damages to be awarded under § 605: (1) the size of the
6 establishment, (2) the number and size of screens displaying the broadcast,
7 (3) advertising to attract customers, (4) cover charges, (5) premium prices for food and
8 drink, (6) the need to deter future violations, (7) the difficulty in detecting piracy, and
9 (8) the widespread loss that occurs through piracy. *Id.* at 15-16 (citing *J & J Sports*
10 *Prods., Inc. v. Guzman*, No. CV-F-08-0091, 2008 WL 2682605, at *4-5 (E.D. Cal. July 1,
11 2008); *Kingvision Pay-Per-View, Ltd. V. Gutierrez*, 544 F. Supp. 2d 1179, 1185-86
12 (D. Colo. 2008).

13 Plaintiff has presented strong evidence of willfulness, noting that default judgment
14 has been entered against Defendant Gonzalez Arvizu or her companies in six other piracy
15 cases. *Id.* at 17. Plaintiff also has established the harm caused by the pirating of licensed
16 broadcasts, and the need for an award that will serve as a deterrent to future violations.
17 Doc. 16-5.

18 Even so, the other factors listed above do not support a substantial enhanced
19 damages award. Only two patrons were seen in the establishment, there is no evidence of
20 advertising to entice a larger crowd, and the program was shown on a single 32-inch
21 television. Doc. 16-4 at 2. The establishment did not have a cover charge, and it does
22 not appear that premium prices were charged for food and drink (the investigator paid
23 \$6.50 for two beers). *Id.* Plaintiff provides no evidence of significant earnings by
24 Defendants on the night of the broadcast. The cost of the program for this establishment
25 was only \$1,800. Doc. 16-5 ¶ 8.

26 Having considered and balanced the relevant factors, the Court finds an enhanced
27 damages award of \$20,000.00 to be appropriate. This amount will be awarded in
28 addition to statutory damages of \$10,000.

1 **D. Possible Dispute Concerning Material Facts.**

2 Given the sufficiency of the complaint and Defendants’ default, “no genuine
3 dispute of material facts would preclude granting [Plaintiff’s] motion.” *PepsiCo*, 238 F.
4 Supp. 2d at 1177.

5 **E. Whether Default Was Due to Excusable Neglect.**

6 Plaintiff properly served Defendants with the summons and complaint. Docs 8, 9.
7 It therefore is unlikely that Defendants’ failure to answer and the resulting default were
8 due to excusable neglect. *Gemmel v. Systemhouse, Inc.*, No. CIV 04-187-TUC-CKJ,
9 2008 WL 65604, at *5 (D. Ariz. Jan. 3, 2008). This *Eitel* factor, like the other five
10 discussed above, weighs in favor of default judgment.

11 **F. Policy Favoring a Decision on the Merits.**

12 The last factor usually weighs against default judgment given that cases “should
13 be decided on their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. The
14 mere existence of Rule 55(b), however, “indicates that this preference, standing alone, is
15 not dispositive.” *PepsiCo*, 238 F. Supp. 2d at 1177. Moreover, Defendants’ failure to
16 answer or otherwise respond to the complaint “makes a decision on the merits
17 impractical, if not impossible.” *Id.* Stated differently, it is difficult to reach the merits
18 when the opposing parties are absent. The Court therefore is not precluded from entering
19 default judgment against Defendants. *See id.*; *Gemmel*, 2008 WL 65604, at *5.

20 **G. Conclusion.**

21 Six of the seven *Eitel* factors favor default judgment, and one factor is neutral.
22 The Court therefore concludes that default judgment is appropriate. The Court will
23 award \$10,000 in statutory damages enhanced by \$20,000 for Defendants’ willful
24 conduct and deterrence purposes.

25 **IT IS ORDERED:**

- 26 1. Plaintiff’s motion for default judgment (Doc. 16) is **granted**.
27 2. Default judgment is entered in favor of Plaintiff and against Defendants
28 Francisca Angelica Gonzalez Arvizu, individually and d/b/a Taco Mich,

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and Taco Mich & Bar #4, LLC, an unknown business entity d/b/a Taco Mich, in the amount of **\$30,000**.

Dated this 15th day of February, 2018.



David G. Campbell
United States District Judge