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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 Incorporated,

No. CV-18-02211-PHX-MTL

10 Plaintiff,

ORDER

11 v.

12 Anjani Komar Singh, et al.,

13 Defendants.
14

15 This action involves alleged satellite piracy of an exclusive pay-per-view telecast.
16 Plaintiff Innovative Sports Management, Inc. d/b/a Integrated Sports Media has brought
17 suit against Defendant restaurant owners and operator under 47 U.S.C. §§ 553 and 605.
18 Before the Court is Plaintiff's Motion for Summary Judgment. (Doc. 35.) The Motion is
19 granted.

20 **I. FACTUAL BACKGROUND**

21 Plaintiff holds the exclusive nationwide commercial licensing rights to exhibit the
22 *2017 International Indian Film Academy Awards Program* (the "Program"), a pay-per-
23 view telecast, which aired on Saturday, July 15, 2017. Restaurants, bars, and other
24 commercial establishments that wanted to display the Program for customers were required
25 to pay Plaintiff a \$750 commercial licensing fee. The Program was distributed as an
26 interstate satellite transmission.

27 Defendants Anjani Komar Singh and Shilpa Mishra are both managing members of
28 Defendant Chutney's LLC d/b/a Chutneys Indian Cuisine, a restaurant operating in Tempe,

1 Arizona. On July 15, 2017, the day that it aired, Chutney’s purchased a \$39.99 non-
2 commercial license to view the Program from Flippo Media Inc. Chutney’s Facebook page
3 advertised that the Program would be shown at the restaurant for customers that evening.
4 The Facebook page was updated with Program-related posts during the telecast. Chutney’s
5 also posted print advertisements at the restaurant.

6 An investigator affiliated with Plaintiff was present at Chutney’s during the evening
7 hours on July 15, 2017. She observed the Program displayed on a pull-down screen via
8 projector and noted approximately 15 customers in the establishment. The investigator
9 estimates that the dining room can hold up to 50 customers, however, Defendants state that
10 their dining room capacity is 180 customers. The investigator provided a written report to
11 the Plaintiff and this lawsuit ensued.

12 **II. SUMMARY JUDGMENT STANDARD**

13 Summary judgment is appropriate if the evidence, viewed in the light most favorable
14 to the nonmoving party, demonstrates “that there is no genuine dispute as to any material
15 fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A
16 genuine issue of material fact exists if “the evidence is such that a reasonable jury could
17 return a verdict for the nonmoving party,” and material facts are those “that might affect
18 the outcome of the suit under the governing law” *Anderson v. Liberty Lobby, Inc.*,
19 477 U.S. 242, 248 (1986). At the summary judgment stage, “[t]he evidence of the non-
20 movant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Id.* at
21 255 (internal citations omitted); *see also Jesinger v. Nevada Fed. Credit Union*, 24 F.3d
22 1127, 1131 (9th Cir. 1994) (court determines whether there is a genuine issue for trial but
23 does not weigh the evidence or determine the truth of matters asserted).

24 **III. DISCUSSION**

25 **A. Violation of § 605(a)**

26 Plaintiff elects § 605, the Communications Act, as its remedy. (Doc. 35-3 at 7.) The
27 Communications Act “prohibits the unauthorized receipt and use of radio communications
28 for one’s own benefit or for the benefit of another not entitled thereto.” *DirecTV, Inc. v.*

1 *Webb*, 545 F.3d 837, 844 (9th Cir. 2008) (*quoting* 47 U.S.C. § 605(a)) (internal quotation
2 marks omitted). In 1984, Congress amended the Communications Act to include satellite
3 television piracy. *Id.* at 843. The 1984 amendments rearranged the pre-existing prohibition
4 on radio interception into a new subsection (a) and codified new provisions relating to
5 satellite piracy in subsections (d) through (e) of Section 605. *Id.* Although subsection (a)
6 does not textually mention satellite piracy, the Ninth Circuit has consistently held “that the
7 ‘communications’ protected by § 605(a) include satellite television signals.” *Id.* at 844
8 (citing cases). The Ninth Circuit’s interpretation advances Congress’s intent in protecting
9 property rights for those who provide satellite entertainment. *Id.* at 843-44. It also
10 harmonizes the pre-existing language arranged into subsection (a) and the new language in
11 subsections (d) through (e) concerning satellite piracy. *Id.*

12 Defendants’ receipt and use of the Program through Flipp Media was
13 “unauthorized receipt and use” within the meaning of § 605(a). Plaintiff had the exclusive
14 nationwide commercial distribution rights to the Program. The minimum fee for a
15 restaurant such as Chutney’s was \$750. Defendants did not purchase a license from
16 Plaintiff. They, instead, purchased what appears to be a residential viewing license for
17 \$39.99 from another distributor. This was done to benefit their restaurant business.

18 Defendants contend that they were not aware that displaying the Program in a
19 commercial establishment requires a different license and fee than purchasing the pay-per-
20 view license for residential viewing. While this may be true, § 605(a) is a strict liability
21 statute that can be violated regardless of a person’s mental state. It is well-established in
22 commercial piracy cases that ignorance of the law is not a defense to liability. *E.g., J & J*
23 *Sports Productions, Inc. v. Mendoza-Govan*, No. C 10-05123 WHA, 2011 WL 1544886,
24 at *5-6 (N.D. Cal. Apr. 25, 2011). For these reasons, the Court finds one violation of
25 § 605(a), and summary judgment is granted in Plaintiff’s favor.

26 **B. Individual Defendants**

27 Plaintiff seeks summary judgment against Singh and Mishra, the co-owners of
28 Chutney’s. Defendants oppose summary judgment against the individual defendants,

1 arguing that Plaintiff has not satisfied its burden to impose vicarious liability for the
2 violation. Many courts, including courts in this District, have adopted a standard for
3 vicarious liability for business owners, including members of limited liability companies,
4 in the context of entertainment piracy. “[T]o establish vicarious liability of an individual
5 shareholder [or LLC member] for a violation of . . . § 605, [a p]laintiff must show that:
6 (1) the individual had a right and ability to supervise the infringing activities and (2) had
7 an obvious and direct financial interest in those activities.” *G & G Closed Circuit Events,*
8 *LLC v. Miranda*, 13-CV-2436-HRH, 2014 WL 956235, at *4 (D. Ariz. Mar. 12, 2014)
9 (quoting *J & J Sports Productions, Inc. v. Walia*, No. 10-5136 SC, 2011 WL 902245, at *3
10 (N.D. Cal. Mar. 14, 2011)).

11 At the time of the unauthorized use, Singh and Mishra were the co-managing
12 members of the business entity operating as Chutney’s. In that capacity, they had the right
13 and the ability to supervise conduct including the entertainment offered to customers
14 during dining room hours. This includes making decisions on the source of entertainment
15 displayed in the restaurant’s dining room. Indeed, Mr. Singh was in the establishment when
16 the Program was exhibited to customers and it was his credit card that was used to authorize
17 the Flippis Media purchase. Both Singh and Mishra are members of Chutney’s, LLC, giving
18 them an obvious financial interest in the business. The individual defendants are, therefore,
19 liable for the violation.

20 C. Damages Award

21 Plaintiff elects to recover statutory damages (Doc. 35-3 at 17). *See* 47 U.S.C.
22 § 605(e)(3)(C)(i). A successful plaintiff “may recover an award of statutory damages for
23 each violation of subsection (a) involved in the action in a sum of not less than \$1,000 or
24 more than \$10,000, as the court considers just” 47 U.S.C. § 605(e)(3)(C)(i)(II). As
25 mentioned above, the Court finds one violation in this case.

26 The commercial license fee was \$750. Plaintiff is entitled to at least this amount in
27 statutory damages. Plaintiff is entitled to an additional amount given that 15 people viewed
28 the unlicensed broadcast. The Court is also aware of the need to incorporate the statutory

1 goal of deterrence as part of the statutory damages award. The Court finds that statutory
2 damages in the amount of \$2,500 is just.

3 Plaintiff seeks an enhancement under § 605(e)(3)(C)(ii), which authorizes an
4 increased damages award “of not more than \$100,000 for each violation of subsection (a).”
5 This enhancement is available where the court finds that a “violation was committed
6 willfully and for the purposes of direct or indirect commercial advantage or private
7 financial gain.” 47 U.S.C. § 605(e)(3)(C)(ii); *J & J Sports Productions, Inc. v. Vargas*, No.
8 11-CV-02229-PHX-JAT, 2013 WL 1249206 at *3 (D. Ariz. Mar. 27, 2013).

9 As support for its argument for enhanced damages, Plaintiff points to Chutney’s
10 Facebook advertisements and the Declaration of Doug Jacobs, who is Plaintiff’s president.
11 The Court is not persuaded that this evidence supports a finding that the Defendants acted
12 willfully, as is required under § 605(e). While probative on other issues, the Facebook
13 advertisements say nothing about whether Defendants were aware that their actions
14 violated Plaintiff’s exclusive distribution rights. Although Mr. Jacobs’ declaration is useful
15 in understanding generally applicable concepts concerning television piracy, his
16 declaration, likewise, is not helpful in determining the issue of willfulness. Mr. Jacobs has
17 no personal knowledge about what motivated Defendants to purchase the Program from
18 Flippo Media rather than through Integrated Sports Media. His opinions concerning his
19 “experience in the industry” are self-serving and are given no weight on this issue.

20 The evidence indicates that Defendants mistakenly purchased a residential license,
21 rather than a commercial license, without knowing that their decision violated the law. *Joe*
22 *Hand Promotions v. Kennedy*, No. 1:10 CV 2857, 2012 WL 1068789 at *1 (N.D. Ohio
23 Mar. 29, 2012) (denying enhanced damages where “[p]laintiff presented no evidence
24 whatsoever that would have led the Court to conclude that Mr. Kennedy’s violation was in
25 any way willful or that Mr. Kennedy had any reason to believe his conduct was a violation
26 of the wire and radio communications laws”). The Court, therefore, denies Plaintiff’s
27 request for enhanced damages.

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D. Attorneys' Fees

Plaintiff has prevailed on its Communications Act claim. Under the Act, a prevailing plaintiff is entitled to “the recovery of full costs, including awarding reasonable attorneys’ fees” 47 U.S.C. § 605(e)(3)(B)(iii). Plaintiff may seek costs and move for attorneys’ fees as provided for in the Local Rules of Civil Procedure.

IV. CONCLUSION

Accordingly,


IT IS ORDERED granting Plaintiff’s Motion for Summary Judgment on its claim for relief under 47 U.S.C. § 605. (Part of Doc. 35.) The Clerk of the Court shall enter judgment in favor of Plaintiff and against Defendants in the amount of \$2,500.

IT IS FURTHER ORDERED that, because Plaintiff concedes that it can recover under only one, and not both, claim for relief, Plaintiff’s alternative claim under 47 U.S.C. § 553 is dismissed and judgment of dismissal on this count shall be included in the judgment.

IT IS FURTHER ORDERED construing Defendants’ request for *sua sponte* summary judgment in their favor stated in their Response brief (part of Doc. 37) as a Motion for Summary Judgment, which is denied.

IT IS FINALLY ORDERED that the oral argument previously scheduled for May 13, 2020 (Doc. 40) is hereby **vacated**. Upon full consideration of the pending motion and relevant authorities, the Court believes that oral argument would not significantly aid the decisional process. *See* Fed. R. Civ. P. 78(b); LRCiv 7.2(f).

Dated this 29th day of April, 2020.



Michael T. Liburdi
United States District Judge