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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 JOE HAND PROMOTIONS, INC.,

CASE NO. 1:09-cv-01374-AWI-SMS

10 Plaintiff,

**FINDINGS AND RECOMMENDATIONS
RECOMMENDING THE GRANT OF
PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT**

11 v.

12 ROBERT L. MORRIS, et al.,

13 Defendants.

(Doc. 12)

14
15 Plaintiff Joe Hand Promotions, Inc., moves for Entry of Default Judgment against
16 defendants Rebecca L. Morris, and Terry E. Morris, Jr., individually and d/b/a Pizza Plus. This
17 court has reviewed the papers and has determined that this matter is suitable for decision without
18 oral argument pursuant to Local Rule 78-230(h). Having considered all written materials
19 submitted, the undersigned recommends that Plaintiff's motion be granted.

20 **II. Background**

21 On August 6, 2009, Plaintiff filed its complaint against Defendants, alleging violations of
22 47 U.S.C. § 605, *et seq.*, and 47 U.S.C. § 553, *et seq.*, as well as claims under California state
23 law. The allegations are based on Defendants' alleged unlawful interception, receiving, and
24 exhibiting of "Ultimate Fighting Championship 87: 'Seek and Destroy'" (the "Program"), which
25 was telecast on August 9, 2008. According to the complaint, plaintiff was the exclusive
26 commercial distributor of the Program.

27 The first cause of action for violation of 47 U.S.C. § 605 (Unauthorized Publication or
28 Use of Communications) alleges that Defendants knowingly intercepted, received, and exhibited

1 the Program for purposes of direct or indirect commercial advantage or private financial gain.
2 Plaintiff seeks \$50,000.00 in statutory damages as well as attorneys' fees and costs. The second
3 cause of action for violation of 47 U.S.C. § 553 (Unauthorized Reception of Cable Services) is
4 based upon the same allegations. Plaintiff requests \$50,000.00 in statutory damages as well as
5 attorneys' fees and costs. The third cause of action for conversion alleges that Defendants
6 tortuously obtained possession of the Program and wrongfully converted it for their own benefit.
7 Plaintiff alleges that these acts were willful and intentionally designed to harm Plaintiff and
8 subject it to economic distress. Plaintiff seeks compensatory damages in the amount of \$875.00
9 (representing the licensing fee for an establishment the size of Pizza Plus, according to its
10 maximum fire code occupancy), punitive and exemplary damages in addition to attorneys' fees
11 and costs. The fourth count alleges a violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, for
12 which Plaintiff seeks restitution, declaratory and injunctive relief.

13 On September 28, 2009, Plaintiff filed proofs of service indicating the Defendants were
14 served September 9, 2009. On October 1, 2009, the Court entered default as to Rebecca Morris.
15 On October 20, 2009, the Court entered default as to Terry E. Morris, Jr. Plaintiff moved for
16 default judgment on December 22, 2009. Defendants did not oppose the motion.

17 **II. Legal Standard for Default Judgment**

18 Federal Rule of Civil Procedure 55(b)(2) provides:

19 (2) By the Court. In all other cases the party entitled to judgment by default shall
20 apply to the court therefor; but no judgment shall be entered against an infant or
21 incompetent person unless represented in the action by a general guardian,
22 committee, conservator, or other such representative who has appeared therein. If
23 the party against whom judgment by default is sought has appeared in the action,
24 the party (or, if appearing by representative, the party's representative) shall be
25 served with written notice of the application for judgment at least 3 days prior to
26 the hearing on such application. If, in order to enable the court to enter judgment
27 or to carry it into effect, it is necessary to take an account or to determine the
28 amount of damages or to establish the truth of any averment by evidence or to
make an investigation of any other matter, the court may conduct such hearings or
order such references as it deems necessary and proper and shall accord a right of
trial by jury to the parties when and as required by any statute of the United States.

26 “[U]pon default, the well pleaded allegations of the complaint relating to liability are
27 taken as true.” *Dundee Cement Co. v. Highway Pipe and Concrete Products, Inc.*, 722 F.2d
28 1319, 1323 (7th Cir. 1983). *See also Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th

1 Cir. 1987). Thus, “[a]t the time of entry of default, the facts alleged by the plaintiff in the
2 complaint are deemed admitted.” 10 J. Moore, *Moore’s Federal Practice* § 55.11 (3d ed. 2000).

3 **III. Discussion**

4 Pursuant to the proofs of service filed with the court on September 28, 2009, Defendants
5 were served on September 9, 2009. Defendants are not infants or incompetent persons, and are
6 not in the military service or otherwise exempted under the Soldiers’ and Sailors’ Civil Relief
7 Act of 1940. Declaration of Thomas P. Riley, ¶ 3. The Clerk entered default against Rebecca
8 Morris on October 1, 2009, and against Terry E. Morris, Jr., on October 20, 2009.

9 Having accepted the well pleaded allegations of the complaint as true, Plaintiff is entitled
10 to judgment based on Defendants’ violation of 47 U.S.C. § 605 and 47 U.S.C. § 553 as well as
11 the common law tort of conversion. Because the license fee for an establishment the size of
12 Pizza Plus would have been \$875.00, Plaintiff is entitled to \$875.00 in compensatory damages
13 for the tort of conversion. Given the size of Pizza Plus, the population of Riverbank and nearby
14 cities,¹ and the fact that the Program was shown on three televisions, the federal violations likely
15 had more than minimal impact. Accordingly, the Court finds that \$15,000.00 for each federal
16 statutory violation is an appropriate remedy. This amount both compensates Plaintiff and serves
17 as a deterrent to the acts at issue.

18 **IV. Recommendation**

19 Accordingly, the Court **RECOMMENDS** that judgment be entered in this action against
20 Defendants and **RECOMMENDS** that damages in the total amount of \$30,875.00 be fixed as
21 follows:

- 22 1. For violation of 47 U.S.C. § 605, the sum of \$15,000.00;
- 23 2. For violation of 47 U.S.C. § 553, the sum of \$15,000.00; and
- 24 3. For the common law tort of conversion, the sum of \$875.00.

25 These findings and recommendations are submitted to the Honorable Anthony W. Ishii,
26 United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 631(b)(1)(B) and
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28 ¹ Riverbank’s population is approximately 20,000 people. It is located on the outskirts of Modesto and
within a short distance of numerous small towns including Oakdale, Escalon, Meyers, and Del Rio.

1 Rule 305 of the Local Rules of Practice for the United States District Court, Eastern District of
2 California. Within thirty (30) days after being served with a copy, any party may file written
3 objections with the court, serving a copy on all parties. Such a document should be captioned
4 “Objections to Magistrate Judge’s Findings and Recommendations.” Replies to the objections
5 shall be served and filed within ten (10) days after service of the objections. The Court will then
6 review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are
7 advised that failure to file objections within the specified time may waive the right to appeal the
8 District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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12 IT IS SO ORDERED.

13 **Dated: February 5, 2010**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE