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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

J & J SPORTS PRODUCTIONS, INC.,	)	Case No. 1:10-cv-0762 AWI JLT
	)	
Plaintiff,	)	ORDER ADOPTING FINDINGS AND
	)	RECOMMENDATIONS TO DENY
v.	)	PLAINTIFF’S APPLICATION FOR DEFAULT
	)	JUDGMENT WITHOUT PREJUDICE
	)	
CAL CITY POST NO. 476,	)	(Doc. 20)
THE AMERICAN LEGION, et al.,	)	
	)	
Defendant.	)	
_____	)	

J& J Sports Productions (“Plaintiff”) is seeking the entry of default judgment against Defendant California City Post No. 4767, The American Legion, Department of California, doing business as Cal City American Legion, Post 476 and also known as Harry V. Bailey, Sr. American Legion Post 476. (Docs. 13, 14). On October 27, 2010, the Magistrate Judge recommended that the plaintiff’s motion for entry of default against the defendant be denied. (Doc. 20). The Magistrate Judge found that Plaintiff provided evidence that another organization held the distribution rights, and that Plaintiff failed to state a claim upon which relief could be granted. *Id.* Plaintiff has not objected to the Findings and Recommendations of the Magistrate Judge.

Granting or denying a motion for default judgment is within the discretion of the Court.

1 *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In considering the factors promulgated by  
2 the Ninth Circuit in *Eitel v. McCool*, the Magistrate Judge found that the merits of Plaintiff's claim  
3 and the sufficiency of the complaint, when examined together, weigh against granting default  
4 judgment in light of evidence that Plaintiff was neither a "person aggrieved" under 47 U.S.C. § 605  
5 nor a party holding exclusive ownership rights to be enforced under a claim of conversion. *See* 47  
6 U.S.C. § 605; *see also* *G.S. Rasmussen & Assoc., Inc. v. Kalitta Flying Services, Inc.*, 958 F.2d 896,  
7 906 (9th Cir. 1992). Specifically, the Magistrate Judge noted that "Plaintiff has not demonstrated  
8 that it had the right to license broadcasting of the program." (Doc. 20 at 5). Finally, the Magistrate  
9 judge noted the possibility of dispute concerning material facts: who held proprietary rights in the  
10 distribution of the program Plaintiff alleged Defendant broadcast unlawfully.

11 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C) and *Britt v. Simi Valley*  
12 *United School Dist.*, 708 F.2d 452, 454 (9<sup>th</sup> Cir. 1983), this Court has conducted a *de novo*  
13 review of the case. Having carefully reviewed the entire file, the Court finds that the findings and  
14 recommendation are supported by the record and by proper analysis.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. The Findings and Recommendations filed October 27, 2010, are **ADOPTED IN**  
17 **FULL**; and
- 18 2. Plaintiff's motion for entry of default judgment is **DENIED** without prejudice.

19 IT IS SO ORDERED.

20 Dated: November 22, 2010

21   
22 CHIEF UNITED STATES DISTRICT JUDGE