

1 November 14, 2009. *Id.* at 3. Plaintiff's claims are based upon the defendants' alleged unlawful
2 interception and broadcast of the Program.

3 Defendant was properly served with the complaint, but failed to respond within the time
4 prescribed by the Federal Rules of Civil Procedure. Upon application of Plaintiff, and pursuant to
5 Fed.R.Civ.P. 55(a), default was entered against Defendant on February 9, 2011. (Doc. 7). Plaintiff
6 filed its application for default judgment on September 14, 2010. (Doc. 9).

7 **II. Applications for Default Judgment**

8 The Federal Rules of Civil Procedure govern applications to the Court for issuance of default
9 judgment. Where a default was entered because "a party against whom a judgment for relief is
10 sought has failed to plead or otherwise defend," the party seeking relief may apply to the court for a
11 default judgment. Fed.R.Civ.P. 55(a)-(b). An application for default judgment qualifies as a motion
12 before the Court. *Johnson v. Cate*, 2009 U.S. Dist. LEXIS 57942, at *2 (E.D. Cal. June 23, 2009).
13 Therefore, Plaintiff's application "should include briefs on the pertinent issues." *Id.*; *see also* Local
14 Rule 230(b).

15 **III. Default Judgment**

16 In determining whether to enter default judgment, the factual assertions of Plaintiff are taken
17 as true because default has been entered against Defendant. *Pope v. United States*, 323 U.S. 1, 22
18 (1944). In its complaint, Plaintiff asserted that it (J & J Sports Productions) was granted the
19 exclusive domestic commercial distribution rights to the Program. (Doc. 1 at 3-4). In addition, Mr.
20 Gagliardi, president of J & J Sports Productions, stated his company "purchased and retains the
21 commercial exhibition licensing rights" to the Program. (Doc. 9, Decl. of Joseph Gagliardi at 2).
22 However, in spite of these assertions, Plaintiff has provided evidence that indicate another company
23 possessed the licensing rights. The rate sheet for the Program states:

24 All commercial locations that have been licensed to carry this event must have a valid
25 license agreement from the OFFICIAL CLOSED-CIRCUIT PROVIDER, G&G Closed
26 Circuit Events, Inc. There is NO OTHER LEGAL LICENSOR. Any location that has
not been licensed by this provider will be considered a PIRATE and TREATED
ACCORDINGLY.

27 (Decl. of Joseph Gagliardi, Exh. 1). Moreover, the rate sheet names G & G Closed Circuit Events
28 and its representative as the contact for any questions regarding the purchase of packages. *Id.*

1 Notably, the complaint, the application for default and its supporting documents are devoid of
2 allegations connecting J & J Sports Productions and G&G Closed Circuit Events. (*See* Docs. 1, 9).
3 According to the evidence, *there is no other legal licensor* than G & G Closed Circuit Events, and
4 Plaintiff could not have been a legal licensor and possessed the exclusive distribution rights to the
5 Program.

6 Since Plaintiff has not established that it has the distribution rights, it has not met the burden
7 of establishing that it is the party aggrieved, and has not stated a claim upon under 47 U.S.C. § 605
8 or for the tort of conversion. *See* 47 U.S.C. § 605(d)(6) (A “person aggrieved” includes a party “with
9 proprietary rights in the intercepted communication by wire or radio, including wholesale or retail
10 distributors of satellite cable programming”); *see also Greka Integrated, Inc. v. Lowrey*, 133
11 Cal.App.4th 1572, 1581, 35 Ca. Rptr. 3d 684 (2005) (“elements of a conversion are the plaintiff’s
12 ownership or right to possession of the property at the time of the conversion; the defendant’s
13 conversion by a wrongful act or disposition of property rights; and damages”). Notably, in J&J
14 Sports Productions, Inc., case number 1:10-cv-02085 OWW JLT, the Court discovered that Plaintiff,
15 the same plaintiff here, made the same error. (Doc. 13 at 5, n 1) The Court noted, “. . . Plaintiff is
16 reminded that it is Plaintiff's obligation, not the Court's, to support its motion with evidence that is
17 consistent with its complaint and in the future, **the Court will not cure this defect for Plaintiff.**”
18 Emphasis in the original. Nevertheless, once again, Plaintiff has filed its standard pleadings and, in
19 doing so, failed to prove this most basic element of the torts. Therefore, Plaintiff is not entitled to
20 recover damages for either claim based upon the state of the evidence. However, rather than further
21 waste judicial resources, Plaintiff is granted an opportunity to submit supplemental briefing
22 supported by evidence correcting this error.¹

23 **IV. Conclusion**

24 As addressed above, Plaintiff has not demonstrated that it had the right to license
25 broadcasting of the Program. Because Plaintiff failed to establish it is entitled to damages, it is now
26 ordered to do so by providing evidence to the court such as a copy of the alleged contract by which it

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28 ¹**Once again, Plaintiff is admonished to correct this omission in future filings.**

1 purchased the distribution rights to the Program. Upon receipt of the supplemental
2 pleadings, the Court will revisit whether default judgment is appropriate by weighing factors set
3 forth by the Ninth Circuit in *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

4 Therefore, the Court hereby **ORDERS:** Plaintiff **SHALL FILE** supplemental points and
5 authorities supported by evidence in support of the application for default judgment, addressing the
6 issues set forth above, no later than March 30, 2011.

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8 IT IS SO ORDERED.

9 Dated: March 14, 2011

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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