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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

J & J SPORTS PRODUCTIONS, INC.,)	1:11-cv-680 LJO GSA
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	ON PLAINTIFF’S MOTION FOR
v.)	DEFAULT JUDGMENT BY THE COURT
)	
)	(Document 12)
)	
ANTHONY PAOLILLI, et al.,)	
)	
)	
Defendants.)	
)	

On August 31, 2011, Plaintiff J & J Sports Productions, Inc. (“Plaintiff”) filed the instant Motion for Default Judgment against Defendants Bonfiglios Inc., Giulia Paolilli, and Anthony Paolilli individually and d/b/a B.B.’s Lounge and Oyster Bar & Grill a/k/a Giulia Italian Restaurant (“Defendants”) . (Doc. 12). Defendants have not filed any oppositions. A hearing was held on October 21, 2011 at 9:30 am. Thomas P. Riley, Jr. appeared telephonically on behalf of Plaintiff. No appearance was made by or on behalf of Defendants.

The day before the hearing on the Motion for Default Judgment, a Notice of Bankruptcy was filed on behalf of Defendant Giulia Paolilli. (Doc. 19). The Court ordered that Plaintiff file a supplemental brief addressing how Defendant Giulia Paolilli’s bankruptcy petition effects the Motion for Default Judgment. The Court ordered that the additional briefing be filed no later than November 30, 2011. Another hearing was set for December 15, 2011 at 10:00 am.

1 Plaintiff filed the supplemental brief on November 30, 2011. The Court has reviewed the
2 Brief and has determined that the default judgment against the remaining Defendants may
3 proceed as outlined below.¹ The hearing on December 15, 2011 was vacated.

4 **BACKGROUND**

5 Plaintiff filed the instant action on April 28, 2011. (Doc. 1). Defendants were served with
6 the summons and complaint on July 11, 2011. (Docs. 5-7). The complaint alleges violations of
7 Title 47 of the United States Code sections 605 and 553. Plaintiff also alleges a state law claim
8 of conversion and a violation of California Business and Professions Code section 17200, *et seq.*
9 (Doc. 1).

10 Defendants have not answered the complaint or otherwise appeared in this action. (Doc.
11 12-1 at pg. 2 lines 19-21 & Doc. 12-2 at ¶ 2). On August 17, 2011, the Clerk of the Court
12 entered default against all Defendants. (Docs. 9-11).

13 Plaintiff filed the instant motion for default judgment on August 31, 2011. (Doc. 12).
14 Plaintiff requests that the Court enter default judgment against Defendants in the amount of
15 \$116,200.00. (Doc. 12-2 at pg. 2). Despite being served with the motion by United States Mail,
16 Defendants have not responded to the motion. (Doc. 12, at pg. 23). Defendants are not infants or
17 incompetent persons, and are not in the military service or otherwise exempted under the
18 Soldiers' and Sailors' Civil Relief Act of 1940. (Doc. 12-2 at ¶3).

19 **Legal Standard**

20 Federal Rule of Civil Procedure 55(b)(2) provides that judgment may be entered:

21 By the Court. In all other cases, the party must apply to the court for a
22 default judgment. A default judgment may be entered against a minor or
23 competent person only if represented by a general guardian, conservator, or other
24 like fiduciary who has appeared. If the party against whom a default judgment is
25 sought has appeared personally or by a representative, that party or its
26 representative must be served with written notice of the application at least 3 days
27 before the hearing. The court may conduct hearings or make referrals--preserving
28 any federal statutory right to a jury trial--when, to enter or effectuate judgment, it
needs to:

- (A) conduct an accounting;
- (B) determine the amount of damages;
- (C) establish the truth of any allegation by evidence; or

¹ Plaintiff served a copy of the brief on all Defendants on November 31, 2011. (Doc. 22-1 at pg. 6).

1 (D) investigate any other matter.

2 “Upon default, the well-pleaded allegations of the complaint relating to liability are taken
3 as true.” *Dundee Cement Co. v. Highway Pipe and Concrete Products*, 722 F.2d 1319, 1323 (7th
4 Cir. 1983); *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917-918 (9th Cir. 1987).

5 Factors which may be considered by courts in exercising discretion as to the entry of a
6 default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of
7 plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake
8 in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default
9 was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil
10 Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-1472 (9th Cir.
11 1986).

12 DISCUSSION

13 1. Federal Claims

14 Plaintiff seeks judgment pursuant to Title 47 of the United States Code section 605
15 against Defendants for unlawfully intercepting, receiving and exhibiting the “*The Floyd*
16 *Mayweather v. Shane Mosley, Welterweight Championship Fight Program*” on May 1, 2010, at
17 its commercial establishment located at 3050 West Shaw Avenue, Suite 116, in Fresno
18 California. Plaintiff requests enhanced statutory damages in the amount of \$110,000.00 pursuant
19 42 U.S.C. sections 605(e)(3)(B)(iii) and (c)(i) and \$6,200.00 for state law conversion.

20 The relevant provisions of Title 47 of the United States Code section 605, which address
21 unauthorized publication or use of wire or radio communications, state:

22 (a) . . . no person receiving, assisting in receiving, transmitting, or assisting
23 in transmitting, any interstate or foreign communication by wire or radio shall
24 divulge or publish the existence, contents, substance, purport, effect, or meaning
25 thereof, except through authorized channels of transmission or reception, (1) to
26 any person other than the addressee, his agent, or attorney. . . . No person not being
27 authorized by the sender shall intercept any radio communication and divulge or
28 publish the existence, contents, substance, purport, effect, or meaning of such
intercepted communication to any person. No person not being entitled thereto
shall receive or assist in receiving any interstate or foreign communication by
radio and use such communication (or any information therein contained) for his
own benefit or for the benefit of another not entitled thereto. No person having
received any intercepted radio communication or having become acquainted with
the contents, substance, purport, effect, or meaning of such communication (or
any part thereof) knowing that such communication was intercepted, shall divulge

1 or publish the existence, contents, substance, purport, effect, or meaning of such
2 communication (or any part thereof) or use such communication (or any
3 information therein contained) for his own benefit or for the benefit of another not
entitled thereto.

4 Additionally, the aggrieved party is authorized to obtain statutory damages of “not less than
5 \$1,000 or more than \$10,000, as the court considers just” for each violation. 47 U.S.C. §
6 605(e)(3)(C)(i)(II). The court may award enhanced damages up to \$100,000 for each violation if
7 it finds the violation was willfully committed for commercial advantage or private financial gain.
8 47 U.S.C. § 605 (e)(3)(C)(ii).

9 Plaintiff attests that it is a closed-circuit distributor of sports and entertainment
10 programming that purchased and retained the commercial exhibition licensing rights to the
11 program at issue. Plaintiff marketed the sub-licensing (commercial exhibition) rights in the
12 program to its commercial customers. (Doc. 12-4 at ¶ 3). Plaintiff contends that persistent signal
13 piracy of its programming costs the company, its customers, and the community millions of
14 dollars annually. (Doc. 12-4 at ¶ 11). Plaintiff believes this results in part from the perceived
15 lack of significant consequences (including nominal or minimal damage awards by the Courts
16 who hear its cases) for such unlawful interception and exhibition by the commercial signal
17 pirates. (Doc. 12-4 at ¶ 12). As such, Plaintiff requests the maximum allowance for statutory
18 violations, totaling \$110,000.00. (Doc. 12-4 at ¶ 13).

19 Here, the summons and complaint were properly served on Defendants.² (Docs. 5-7).
20 Thus, it appears that Defendants’ default was properly entered, and the complaint is sufficiently
21 well-pled. By his default, Defendants have admitted to willfully violating the referenced statutes
22 for purposes of commercial advantage.

23 Although deterrence of future violations is an important objective of the statutes, the facts
24 before the Court indicate that Defendants establishment is a bar and restaurant with a maximum
25 capacity of approximately one hundred and fifty patrons inside the bar area. Lawrence Brooktez,
26 an investigator for Plaintiff, submitted an affidavit indicating that the fight was being played in
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28 ² The complaints were served on Andre Lagrange at the restaurant who was identified as the person in
charge. The complaints were later sent to Defendants via United States mail. Therefore, service is proper pursuant to
Federal Rule of Civil Procedure 4(e) and 4(h)(1) and California Civil Procedure section 415.20.

1 the bar on a large projector screen about fifty-six inches wide as well as on three small
2 televisions behind the bar. (Doc. 12-3). Patrons were standing both inside and outside of the bar
3 with standing room only. Several security guards were both inside and outside of the bar. There
4 were approximately fifty motorcycles in the parking lot surrounding the bar and it appeared that
5 these were motorcycle clubs. Photographs of the establishment depict that the restaurant and bar
6 is a large establishment, however, it is unclear from the photos whether other businesses also
7 occupy the large space. (Doc. 12-3 at 4-8).

8 Given these circumstances, the Court will recommend the maximum statutory award of
9 \$10,000.00 for the violation pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(II) and an additional
10 \$30,000 in enhanced damages pursuant to 47 U.S.C. § 605 (e)(3)(C)(ii).

11 2. *Conversion*

12 Additionally, Plaintiff seeks \$6,200.00 in conversion damages, the value of the property
13 at the time of the conversion. (Doc. 26-5 at 8.) Under California law, "[c]onversion is the
14 wrongful exercise of dominion over the property of another. The elements of a conversion are
15 (1) the plaintiff's ownership or right to possession of the property at the time of the conversion;
16 (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3)
17 damages." *Greka Integrated, Inc. v. Lowrey*, 133 Cal.App.4th 1572, 1581, 35 Cal.Rptr.3d 684
18 (2005) (internal quotation marks omitted); *see also G.S. Rasmussen & Assocs., Inc. v. Kalitta*
19 *Flying Serv., Inc.*, 958 F.2d 896, 906 (9th Cir.1992). "Because conversion is a strict liability tort,
20 questions of the defendant's good faith, lack of knowledge, motive, or intent are not relevant."
21 *Gilman v. Dalby*, 176 Cal.App.4th 606, 615 n.1, 98 Cal.Rptr.3d 231 (2009). Exclusive right to
22 distribute a broadcast signal to commercial establishments constitutes a "right to possession of
23 property" for purposes of conversion. *See Don King Prods./Kingvision v. Lovato*, 911 F.Supp.
24 419, 423 (N.D. Cal. 1995); *see also DIRECTV, Inc. v. Pahnke*, 405 F.Supp.2d 1182, 1189 (E.D.
25 Cal. 2005) (concluding that the "right to distribute programming via satellite" constituted a "right
26 to possession of personal property" for purposes of a conversion claim under California law).

27 Here, Defendants were operating a larger established business and had approximately one
28 hundred and fifty patrons watching the program in question. Plaintiff was granted the exclusive

1 domestic commercial exhibition licensing rights to the program at issue, and thus had the right to
2 possession of the property at the time of the conversion. (Doc. 12-5, ¶ 3.) Defendants did not
3 legally purchase the pay-per-view programming, “*The Floyd Mayweather v. Shane Mosley,*
4 *Welterweight Championship Fight Program*” on May 1, 2010, which constituted Defendant’s
5 conversion by a wrongful act or disposition of property rights. (Doc. 12 at pg. 20). Finally,
6 Plaintiff has indicated that the sub-license fee for an establishment similar in size to Defendants
7 for the program would have been \$6,200.00. (Doc. 12-4 at Ex. 1.) Thus, Plaintiff is entitled to
8 damages for conversion in the amount of \$6,200.00.

9 3. *Entry of Judgment Against Less Than All Defendants*

10 Here there is an issue regarding the pending bankruptcy against Giulia Paolilli. It is clear
11 that these proceedings are stayed against this Defendant pursuant to 11 U.S.C. § 362. However,
12 the question remains whether default judgments should be entered as to the other defendants,
13 Anthony Poalilli and Bonfiglios Inc. Rule 54(b) of the Federal Rules of Civil Procedure provides
14 “when multiple parties are involved, the court may direct the entry of a final judgment as to one
15 or more but fewer than all of the ... parties only upon an express determination that there is no
16 just reason for delay and upon an express direction for the entry of judgment.” Federal Rule of
17 Civil Procedure Rule 54(b). The Ninth Circuit has noted that where a complaint alleges that
18 defendants are jointly liable and one of them defaults, judgment should not be entered against the
19 defaulting defendant until the matter has been adjudicated with regard to all defendants. *In re*
20 *First T.D. & Investment Inc.*, 253 F. 3d 520, 532 (9th Cir. 2001) *citing Frow v. De La Vega*, 82
21 U.S. 552, 554 (1872). The purpose of the rule is to avoid inconsistent judgments against
22 defaulting defendants and the remaining answering defendants. *Shanghai Automation Instrument*
23 *Co., Ltd., v. Kuei*, 194 F. Supp. 2d 995 (N.D. Cal. 2001) *citing Frow*, 82 U.S. at 554-55. In this
24 instance, however, the policy considerations underlying Rule 54(b) do not apply because default
25 has been entered against all Defendants. Therefore, there is no risk of inconsistent results among
26 the Defendants and the Court sees no just reason to delay these proceedings.

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These findings and recommendations are submitted to the district judge assigned to this action, pursuant to Title 28 of the United States Code section 636(b)(1)(B). Within **fifteen** (15) days of service of this recommendation, any party may file written objections to these findings and recommendations with the Court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The district judge will review the magistrate judge's findings and recommendations pursuant to Title 28 of the United States Code section 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may waive the right to appeal the district judge's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

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Dated: December 14, 2011

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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