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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

J & J SPORTS PRODUCTIONS, INC.,)	1:11-cv-1893 LJO GSA
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	ON PLAINTIFF’S MOTION FOR
v.)	DEFAULT JUDGMENT BY THE COURT
)	
)	(Document 14)
SERGIO CERDA, d/b/a LA FOGATA,)	
)	
)	
Defendant.)	

On May 24, 2012, Plaintiff J & J Sports Productions, Inc. (“Plaintiff”) filed the instant Motion for Default Judgment against Defendant, Sergio Cerda, d/b/a La Fogata (“Defendant”). (Doc. 14). Defendant has not appeared in the action, nor has he filed any oppositions. The matter was taken under submission and the hearing on Plaintiff’s motion set for June 22, 2012, was vacated. Upon a review of the pleadings, Plaintiff’s motion is GRANTED IN PART.

BACKGROUND

Plaintiff filed the instant action on November 10, 2011. (Doc. 1). Defendant was served with the summons and complaint on April 24, 2011. (Doc. 10). The complaint alleges violations of 47 USC sections 605 and 553. Plaintiff also alleges a state law claim of conversion, as well as a violation of California Business and Professions Code section 17200, *et seq.* (Doc. 1).

Defendant has not answered the complaint or otherwise appeared in this action. (Doc.

1 14-2, pg. 2). On May 23, 2012, the Clerk of the Court entered default against Defendant. (Doc.
2 12).

3 Plaintiff filed the instant motion for default judgment on May 24, 2012. (Doc. 14).
4 Plaintiff requests that the Court enter default judgment against Defendant in the amount of
5 \$112,200.00 for violations of 47 U.S.C. sections 605(e)(3)(B)(iii) and (c)(ii) and conversion
6 only. (Doc. 14-2 and 14-4). Despite being served with the motion by United States Mail,
7 Defendant has not responded to the motion. (Doc. 14-2). Defendant is not an infant or
8 incompetent person, and is not in the military service or otherwise exempted under the Soldiers'
9 and Sailors' Civil Relief Act of 1940. *Id.*

10 **Legal Standard**

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

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

- 17 (A) conduct an accounting;
- 18 (B) determine the amount of damages;
- 19 (C) establish the truth of any allegation by evidence; or
- 20 (D) investigate any other matter.

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

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

1 **DISCUSSION**

2 *1. Federal Claims*

3 Plaintiff seeks judgment pursuant to Title 47 of the United States Code section 605
4 against Defendant for unlawfully intercepting, receiving and exhibiting “*Tactical Warfare*” :
5 *Manny Pacquiao v. Antonio Margarito WBC Light Middleweight Championship Fight Program*,
6 televised on November 13, 2011 (“the program”) at Defendant’s commercial establishment, *La*
7 *Fogata*.¹ The program included undercard preliminary bouts, televised replay, and color
8 commentary. Plaintiff requests statutory and enhanced damages in the amount of \$110,000.00
9 pursuant 47 U.S.C. sections 605(e)(3)(B)(iii) and (c)(ii). (Docs. 14-2 and 14-4).

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

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

22 Additionally, the aggrieved party is authorized to obtain statutory damages of “not less than
23 \$1,000 or more than \$10,000, as the court considers just” for each violation. 47 U.S.C. §
24 605(e)(3)(C)(i)(II). The court may award enhanced damages up to \$100,000 for each violation if
25 it finds the violation was willfully committed for commercial advantage or private financial gain.
26 47 U.S.C. § 605 (e)(3)(C)(ii).

27
28 ¹ La Fogata is located at 10458 Avenue 416, Sultana, California 93666.

1 Plaintiff argues that it is a closed-circuit distributor of sports and entertainment
2 programming that purchased and retained the commercial exhibition licensing rights to the
3 program at issue. Plaintiff marketed the sub-licensing (commercial exhibition) rights in the
4 program to its commercial customers. Plaintiff contends that persistent signal piracy of its
5 programming costs the company, its customers, and other paying vendors of the program
6 considerable financial losses. Plaintiff believes this results in part from the perceived lack of
7 significant consequences (including nominal or minimal damage awards by the Courts who hear
8 its cases) for such unlawful interception and exhibition by the commercial signal pirates.

9 In this case, Plaintiff requests the maximum amount of enhanced damages pursuant to
10 section 605 (e)(3)(C)(ii) because Defendant Cerda is a repeat offender, and has been found liable
11 in two other actions in this district for similar violations. Defendant never appeared in those
12 actions and default judgment was entered against him in both of those cases : *See, Entertainment*
13 *by J & J Incorporated v. Cerda d/b/a Acapulco Restaurant et al.*, 01-cv-6540 AWI DLB
14 (Judgment in the amount of \$8,001.05 entered on November 7, 2002 for violations of 47 U.S.C.
15 sections 553 and 605); *Don King Productions/Kingvision v. Cerda d/b/a Acapulco Café et al.*,
16 1:96-cv-5025 AWI v. SMS (Judgment in the amount of \$3,400.00 entered on March 10, 1997).²
17 As such, Plaintiff requests the maximum allowance for statutory violations, totaling \$110,000.00.

18 Here, the summons and complaint was properly served on Defendant.³ (Docs. 10). Thus,
19 it appears that Defendant's default was properly entered, and the complaint is sufficiently well-
20 pled. By his default, Defendant has admitted to willfully violating the referenced statutes for
21 purposes of commercial advantage.

22 It is clear that deterrence of future violations is an important objective of the statutes. The
23

24 ² The Court takes judicial notice of these judgments pursuant to Federal Rules of Evidence 201. A "court
25 may take judicial notice of its own records in other cases, as well as the records of an inferior court in other cases."
26 *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980); *accord In re Korean Air Lines, Co., Ltd.*, 642 F.3d 685,
689 n.1 (9th Cir. 2011); *United States v. Howard*, 381 F.3d 873, 876 n.1 (9th Cir. 2004).

27 ³ The complaints was served on an individual who refused to provide his name at the restaurant who was
28 identified as the person in charge. The complaints were later sent to Defendant 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 facts before the Court indicate that Defendant's establishment serves primarily Spanish speaking
2 patrons and is in poor condition. It has a maximum capacity of approximately seventy to eighty
3 patrons. (Doc. 14-3). The clientele is mainly laborers. *Id.* Jeffrey Lange, an investigator for
4 Plaintiff, submitted an affidavit indicating that after getting through security, he entered the bar a
5 8:46 p.m. on November 13, 2010. *Id.* There were approximately 70 patrons in the bar which
6 housed two nineteen inch televisions behind the bar's counter (one at the north end of the counter
7 and one at the south end of the counter). *Id.* When he entered, he saw Antonio Margarito on the
8 screens making his way through the crowd that was standing ringside. *Id.* Shortly after he
9 entered the premises, the televisions were suddenly turned off and the words "Dish Network"
10 appeared on both sets before going to a static screen. *Id.*

11 Mr. Lang re-entered the bar at 9:24 p.m. After passing through security, he saw that both
12 televisions were airing a boxing match. *Id.* Mr. Lange clearly saw the "HBO PPV" logo in the
13 lower right hand corner of the screen. *Id.* Airing was a slow motion replay of Antonio Margarita
14 hitting Manny Pacquiao with an uppercut. *Id.* The signal was again abruptly turned off. *Id.* He
15 left the premises at 9:26 pm. *Id.*

16 In cases alleges these statutory violations, the amount of damages should be an amount
17 that is adequate to deter this Defendant and others from committing similar acts in the future.
18 Therefore, the Court recommends the maximum allowable statutory damages be awarded
19 pursuant to 42 U.S.C. sec. 605(e)(3)(C)(i)(II) in the amount of \$10,000.00.

20 With regard to enhanced statutory damages, the Court is mindful that there were
21 approximately seventy patrons in this establishment at the time of the show, but the bar is in poor
22 condition. Moreover, it does not appear that a cover charge was required to enter the bar, or that
23 the program was advertised to attract additional patrons. However, the fact that this defendant
24 has two prior judgments entered for similar conduct is troubling. Additionally, it appears that the
25 Defendant's conduct was willful as the televisions screens were turned off shortly after the
26 investigator entered the premises. As such the Court recommends an additional \$10,000 in
27 enhanced damages pursuant to 47 U.S.C. § 605 (e)(3)(C)(ii).

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