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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

J & J SPORTS PRODUCTIONS, INC.,)	1:12-cv-736 LJO GSA
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	ON PLAINTIFF’S MOTION FOR
v.)	DEFAULT JUDGMENT BY THE COURT
)	
)	(Document 15)
JAVIER GONZALEZ and LOURDES)	
VARGAS LOPEZ individually, d/b/a El 8)	
Latino,)	
)	
Defendants.)	

On October 9, 2012, Plaintiff J & J Sports Productions, Inc. (“Plaintiff”) filed the instant Motion for Default Judgment against Defendants, Javier Gonzalez and Lourdes Vargas Lopez, individually, and d/b/a El 8 Latino (“Defendants”). (Doc. 15). Defendants have not appeared in the action, nor have they filed any oppositions. The matter was taken under submission and the hearing on Plaintiff’s motion set for November 16, 2012, was vacated. Upon a review of the pleadings, Plaintiff’s motion is GRANTED IN PART.

BACKGROUND

Plaintiff filed the instant action on May 4, 2012. (Doc. 1). Defendants were served with the summons and complaint on August 3, 2012. (Docs. 7 & 8). 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).

1 Defendants have not answered the complaint or otherwise appeared in this action. (Doc.
2 15-2, pg. 1). On September 19, 2012, the Clerk of the Court entered default against Defendants.
3 (Doc. 14).

4 Plaintiff filed the instant Motion for Default Judgment on October 9, 2012. (Doc. 15).
5 Plaintiff requests that the Court enter default judgment against Defendants in the amount of
6 \$116,200.00 for violations of 47 U.S.C. sections 605(e)(3)(B)(iii) and (c)(ii) and conversion
7 only. (Doc. 15-2). Despite being served with the motion by United States Mail, Defendants have
8 not responded to the motion. (Doc. 15-2). Defendants are not infants or incompetent persons,
9 and they are not in the military service or otherwise exempted under the Soldiers' and Sailors'
10 Civil Relief Act of 1940. *Id.*

11 Legal Standard

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

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

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

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

25 Factors which may be considered by courts in exercising discretion as to the entry of a
26 default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of
27 plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake
28 in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default
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.

1 1986).

2 **DISCUSSION**

3 *1. Federal Claims*

4 Plaintiff seeks judgment pursuant to Title 47 of the United States Code section 605
5 against Defendant for unlawfully intercepting, receiving and exhibiting “*The Event*”: *The Manny*
6 *Pacquiao v. Shane Mosley WBO Welterweight Championship*, televised on May 7, 2011 (“the
7 program”) at Defendants’ commercial establishment, *El 8 Latino*.¹ The program included
8 undercard preliminary bouts, televised replay, and color commentary. Plaintiff requests statutory
9 and enhanced damages in the amount of \$110,000.00 pursuant 47 U.S.C. sections
10 605(e)(3)(B)(iii) and (c)(ii). (Docs. 15-2).

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

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

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

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¹ *El 8 Latino* is located at 2380 South Bascom Avenue, Suite 200, Campbell, California 95008.

1 47 U.S.C. § 605 (e)(3)(C)(ii).

2 Plaintiff argues that it is a closed-circuit distributor of sports and entertainment
3 programming that purchased and retained the commercial exhibition licensing rights to the
4 program at issue. Plaintiff marketed the sub-licensing (commercial exhibition) rights in the
5 program to its commercial customers. Plaintiff contends that persistent signal piracy of its
6 programming costs the company, its customers, and other paying vendors of the program
7 considerable financial losses.

8 In this case, Plaintiff requests the maximum amount of enhanced damages pursuant to
9 section 605 (e)(3)(C)(ii) because instead of lawfully contracting with Plaintiff to show the
10 program, Defendants engaged in wrongful acts to intercept and/or receive and broadcast
11 encrypted telecast. Plaintiff requests the maximum allowance for statutory violations, totaling
12 \$110,000.00.

13 Here, the summons and complaint was properly served on Defendants. (Docs. 7 & 8).
14 Thus, it appears that Defendants' defaults were properly entered, and the complaint is sufficiently
15 well-pled. By their defaults, Defendants have admitted to willfully violating the referenced
16 statutes for purposes of commercial advantage.

17 It is clear that deterrence of future violations is an important objective of the statutes. The
18 facts before the Court indicate that Defendants' establishment is a pool hall with approximately
19 ten tables and a bar. Mr. Gilbert Tate, an investigator for Plaintiff, submitted an affidavit
20 indicating that he entered the establishment on May 7, 2011. (Doc. 15-3). Although the
21 capacity of the establishment is approximately 200 people, there were approximately ninety
22 patrons in the bar at the time the program aired. The bar housed three thirty-two inch televisions
23 (one in the back, one to the right and one to the left). *Id.* When he entered, Mr. Tate saw Manny
24 Pacquiao and Shane Mosley on the screens being introduced by the announcer. *Id.* When Mr.
25 Tate completed a second and third head count, there were approximately ninety-five patrons in
26 the establishment. Mr. Tate left the bar at 9:00 pm.

27 In cases alleging these statutory violations, the amount of damages should be an amount
28 that is adequate to deter this Defendant and others from committing similar acts in the future.

1 Therefore, the Court recommends the maximum allowable statutory damages be awarded
2 pursuant to 42 U.S.C. sec. 605(e)(3)(C)(i)(II) in the amount of \$10,000.00.

3 With regard to enhanced statutory damages, the Court is mindful that there were between
4 ninety and ninety-five patrons in this establishment at the time of the program. However, it does
5 not appear that a cover charge was required to enter the bar, or that the program was advertised to
6 attract additional patrons. Given these facts, the Court recommends an additional \$10,000 in
7 enhanced damages pursuant to 47 U.S.C. § 605 (e)(3)(C)(ii).

8 2. *Conversion*

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

24 Here, Defendant had approximately ninety-five patrons watching the program in question.
25 Plaintiff was granted the exclusive domestic commercial exhibition licensing rights to the
26 program at issue, and thus had the right to possession of the property at the time of the
27 conversion. Defendants did not legally purchase the program. (Doc. 15-1 at pg. 20). Finally,
28 Plaintiff has indicated that Defendants would have been required to pay \$6,200.00 if they had

1 ordered the Program from Plaintiff. *Id.* Thus, Plaintiff is entitled to damages for conversion in
2 the amount of \$6,200.00.

3 **RECOMMENDATIONS**

4 Based on consideration of the declarations, pleadings, and exhibits the Court
5 RECOMMENDS the following:

- 6 1. Plaintiff's application for default judgment be GRANTED IN PART;
- 7 2. Judgment be entered in this action against Defendants Javier Gonzalez and
8 Lourdes Vargas Lopez, individually, and d/b/a El 8 Latino Bonfiglios Inc.;
- 9 3. Damages in the total amount of \$ 26,200.00 be awarded as follows:
 - 10 a. For the violation of 47 U.S.C. § 605(e)(3)(C)(i)(II), the sum of
11 \$ 10,000.00;
 - 12 b. For the violation of 47 U.S.C. § 605 (e)(3)(C)(ii), the sum of \$10,000.00;
13 and
 - 14 c. For the conversion of Plaintiff's property, the sum of \$ 6,200.00.

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