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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

J & J SPORTS PRODUCTIONS, INC.,)	Case No.: 1:16-cv-00559 - LJO - JLT
Plaintiff,)	
v.)	ORDER ADOPTING THE FINDINGS AND
)	RECOMMENDATIONS IN PART AND
)	GRANTING IN PART PLAINTIFF’S MOTION
)	FOR DEFAULT JUDGMENT
JOSE LUIS OCAMPO and MARCIELA)	
PEREZ, individually and doing business as)	(Docs. 16, 17)
AJUA COCINA MEXICANA,)	
Defendants.)	

J & J Sports Productions, Inc., seeks the entry of default judgment against Jose Luis Ocampo and Maricela Perez, individually and doing business as Ajua Cocina Mexicana. (Doc. 16) On October 26, 2016, the assigned magistrate judge found the factors articulated by the Ninth Circuit in Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986), weighed in favor of default judgment. (Doc. 17 at 3-7) Therefore, the magistrate judge recommended Plaintiff’s motion be granted. (Id. at 10) The magistrate judge specifically recommended imposition of statutory damages in the amount of \$10,000. (Id. at 7-8)

The parties were given fourteen days to file any objections to the recommendation that the action be dismissed. (Doc. 17 at 10) In addition, the parties were “advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order.” (Id.,

1 citing Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991); Wilkerson v. Wheeler, 772 F.3d 834, 834 (9th
2 Cir. 2014)). To date, no objections have been filed.

3 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C) and Britt v. Simi Valley United
4 School Dist., 708 F.2d 452, 454 (9th Cir. 1983), this Court conducted a de novo review of the case.
5 Having carefully reviewed the file, the Court finds the Findings and Recommendations (“F&Rs”) are
6 supported by the record and proper analysis with the exception of the ultimate damages award. As the
7 F&Rs explained, the Court may consider a number of factors in determining the amount of damages,
8 including any promotional advertising by the defendant, the capacity of the establishment, the number
9 of patrons present at the time of the broadcast, the imposition of a cover charge, the number and size of
10 the crowd who viewed the broadcast, and whether a premium was charged on food or drink. See J & J
11 Sports Prods. Inc. v. Corona, No. 1:12-CV-01844-AWI, 2013 WL 3481697, at *5 (E.D. Cal. July 10,
12 2013) (citing Kingvision Pay-Per-View, Ltd. v. Backman, 102 F. Supp. 2d 1196, 1198 (N.D. Cal.
13 2000)). Here, there is no evidence that Ajua Cocina Mexicana advertised that it would broadcast the
14 event, charged a cover charge or otherwise charged a premium for food and drink. Plaintiff’s own
15 evidence reveals that the capacity of the restaurant was no more than 45 persons and that no more than
16 25 persons were present in the restaurant at any given time. Comparing this case to other similar cases,
17 e.g., J & J Sports Prods., Inc. v. Morales, No. 1:10-CV-01694-AWI, 2012 WL 761670, at *3 (E.D. Cal.
18 Mar. 8, 2012) (awarding \$4,400 in statutory damages with no enhanced damages where bar that could
19 seat 60 persons displayed program licensable at \$2,200 on three televisions to a crowd of no more than
20 fourteen patrons without cover charge or other premium charges); Joe Hand Promotions, Inc. v. Garcia,
21 No. CV F 11-2030 LJO, 2013 WL 5934343, at *6 (E.D. Cal. Nov. 5, 2013) (awarding \$5,000 in
22 statutory damages where establishment that could seat up to 50 persons showed program licensable at
23 \$900 on one television to a crowd of 25-30 persons, without charging a cover charge or other
24 premiums), the Court finds a statutory damages award in the amount of \$5,000 is more appropriate.

25 Accordingly, **IT IS HEREBY ORDERED:**

- 26 1. The Findings and Recommendations dated October 26, 2016 (Doc. 17) are **ADOPTED**
27 **WITH THE EXCEPTION OF THE DAMAGES AWARD;**
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2. Plaintiff's application for default judgment (Doc. 16) is granted in part and denied in part, as follows:
 - A. Plaintiff's request for statutory damages for the violation of the Communications Act is **GRANTED** in the amount of \$5,000;
 - B. Plaintiff's request for enhanced damages is **DENIED**; and
 - C. Plaintiff's request for damages for the tort of conversion is **DENIED**;
3. Judgment **SHALL** be entered in favor of Plaintiff J & J Sports Productions, Inc. and against Defendants Jose Luis Ocampo and Maricela Perez, individually and doing business as Ajua Cocina Mexicana; and
4. Plaintiff **SHALL** file any application for attorney's fees pursuant to 47 U.S.C. § 605 no later than fourteen days from the entry of judgment.

IT IS SO ORDERED.

Dated: November 21, 2016

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE