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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOE HAND PROMOTIONS, INC.,  
Plaintiff,  
v.  
RUBEN CONTRERAS MACHUCHA, et  
al.,  
Defendants.

No. 2:13-cv-1228-GEB-KJN

ORDER

Plaintiff Joe Hand Promotions, Inc. commenced this action on June 20, 2013. (ECF No. 1.) The complaint alleges that defendant Ruben Contreras Machucha and defendant Silvia Ochoa Gomez are owners and/or operations of a commercial establishment doing business as Centennial Bar and Grill a/k/a Centennial Ranch Sports Bar and Grill in Elk Grove, California. According to the complaint, defendants directed employees of the establishment to unlawfully intercept and broadcast a televised fight program of which plaintiff was the exclusive commercial domestic distributor. The complaint asserts claims against defendants for violation of the Communications Act of 1934, as amended, 47 U.S.C. §§ 605 et seq.; violation of the Cable and Television Consumer Protection and Competition Act of 1992, as amended, 47 U.S.C. §§ 553 et seq.; conversion; and violation of California Business and Professions Code §§ 17200 et seq. (Id.)  
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1 After the Clerk of Court entered defendant Machucha's default on August 20, 2013,  
2 plaintiff filed a motion for default judgment as to defendant Machucha on September 9, 2013.  
3 (ECF Nos. 8, 9.) However, to date, plaintiff has not yet moved for a default judgment against  
4 defendant Gomez.

5 With respect to multi-defendant cases, Federal Rule of Civil Procedure 54(b) provides  
6 that "the court may direct entry of a final judgment as to one or more, but fewer than all, claims  
7 or parties only if the court expressly determines that there is no just reason for delay." The Ninth  
8 Circuit Court of Appeals has characterized the Supreme Court's holding in Frow v. De La Vega,  
9 82 U.S. 552 (1872), a leading case addressing the grant of default judgments in multi-defendant  
10 cases, as follows:

11 The Court held in *Frow* that, where a complaint alleges that  
12 defendants are jointly liable and one of them defaults, judgment  
13 should not be entered against the defaulting defendant until the  
14 matter has been adjudicated with regard to all defendants. It  
follows that if an action against the answering defendants is decided  
in their favor, then the action should be dismissed against both  
answering and defaulting defendants.

15 Nelson v. Chang (In re First T.D. & Inv., Inc.), 253 F.3d 520, 532 (9th Cir. 2001) (internal  
16 citations and footnote omitted) (citing Frow, 82 U.S. at 554).<sup>1</sup> In In re First T.D. & Inv., Inc., the  
17 Ninth Circuit Court of Appeals followed the Eleventh Circuit Court of Appeals and extended the  
18 rule from Frow beyond jointly liable parties to parties that are "similarly situated," even if not  
19 jointly liable or jointly and severally liable. See 253 F.3d at 532; accord Wordtech Sys., Inc. v.  
20 Integrated Network Solutions, Corp., No. 2:04-cv-01971-MCE-EFB, 2009 WL 3246612, at \*2  
21 (E.D. Cal. Oct. 6, 2009) (unpublished) (observing that the rule from Frow "has been extended in  
22 cases even if the defendants are not jointly liable, as long as they are similarly situated").

23 In this case, both defendants are alleged to own or operate the commercial establishment  
24 where the allegedly unlawful interception and broadcast occurred. Thus, at a minimum, both  
25 defendants appear to be similarly situated for purposes of plaintiff's claims. Consequently, there  
26 is a significant risk of incongruous or inconsistent judgments if the court were to grant a default

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28 <sup>1</sup> In Frow, the Court stated that "a final decree on the merits against the defaulting defendant  
alone, pending the continuance of the cause, would be incongruous and illegal." 82 U.S. at 554.

1 judgment against defendant Machucha at this juncture, but defendant Gomez were potentially to  
2 prevail on the merits.

3 Accordingly, for the reasons outlined above, IT IS HEREBY ORDERED that:

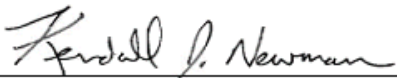
4 1. The November 7, 2013 hearing on plaintiff's motion for default judgment is  
5 VACATED.

6 2. Plaintiff's motion for default judgment (ECF No. 9) is DENIED WITHOUT  
7 PREJUDICE.

8 IT IS SO ORDERED.

9 Dated: October 17, 2013

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE