

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
45
6 J&J SPORTS PRODUCTIONS, INC.,
7

8 Plaintiff,

No. C 12-2244 PJH

9 v.

**ORDER ADOPTING REPORT AND
RECOMMENDATION AS MODIFIED
AND GRANTING DEFAULT JUDGMENT**10 JUAN C. LOPEZ BANUELOS, et al.,
11Defendants.
_____ /

12 The court has reviewed Magistrate Judge Beeler's Report and Recommendation
13 ("report") re plaintiff's motion for default judgment, as well as plaintiff's objections to the
14 report. In its objections, plaintiff J&J Sports Productions, Inc. ("plaintiff") objects to three
15 specific findings of Judge Beeler's report: (1) the recommended award of statutory
16 damages in the amount of \$1,000; (2) the recommended award of enhanced damages in
17 the amount of \$5,000; and (3) the recommended denial of default judgment on plaintiff's
18 conversion claim.¹

19 As to both issues (1) and (2), plaintiff argues that the recommended damages
20 awards do not adequately address deterrence, which plaintiff argues is a "primary goal" of
21 damage awards for piracy. Plaintiff argues that the report "does not address the
22 deterrence factor at all." However, the report does cite "the need to deter piracy" as one of
23 the factors to consider when awarding damages, and further notes that "there is no
24 allegation that Mr. Banuelos is a repeat offender." See Report at 8. Further, as plaintiff
25 concedes, the report "cites to cases from this district that made similar damages awards."
26

27 ¹In addition to filing objections to the report, plaintiff also filed a motion for de novo
28 determination of its motion for default judgment. The motion addresses the same three issues
addressed in the objections, and in general, is substantively identical to the objections.
Because the court finds that plaintiff properly raised these issues in its objections, the motion
for de novo determination is DENIED as moot.

1 Thus, the court finds that Judge Beeler did indeed properly consider the role of deterrence
2 when recommending a damages award, and hereby OVERRULES plaintiff's objections as
3 to the recommended amount of statutory damages and enhanced damages. Judge
4 Beeler's report is ADOPTED and default judgment is GRANTED as to plaintiff's claim under
5 47 U.S.C. § 553.

6 As to issue (3), plaintiff has submitted new evidence that purports to establish the
7 amount of damages suffered as a result of defendant's alleged conversion. As plaintiff
8 points out, this court has discretion to consider new evidence introduced in objections to a
9 magistrate judge's recommendation. U.S. v. Howell, 231 F.3d 615, 621-22 (9th Cir. 2000).
10 While the court will accept the newly-introduced evidence of damages in this case, it
11 cautions plaintiff that such requests may be denied in the future, if plaintiff continues to
12 withhold evidence during briefing on its motion for default judgment. The court notes that,
13 in at least one previous instance, plaintiff similarly failed to produce any evidence of
14 damages for its conversion claim until after the hearing on its motion for default judgment.
15 See J&J Sports v. Parayno, No. C 12-1704, Dkt. 16 (ordering supplemental briefing after
16 noting that "the amount of the license fee that was lost is not in an affidavit."). In this case,
17 because plaintiff has introduced evidence that the relevant license fee was \$4,200, the
18 court hereby GRANTS default judgment on plaintiff's conversion claim, and awards
19 damages in the amount of \$4,200.

20 Plaintiff's claims under 47 U.S.C. § 605 and Cal. Bus. & Prof. Code § 17200 are
21 DISMISSED with prejudice, for the reasons set forth in the report.

22
23 **IT IS SO ORDERED.**

24 Dated: March 27, 2013

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26 _____
27 PHYLLIS J. HAMILTON
28 United States District Judge