

1 **Thomas P. Riley, SBN 194706**  
 2 **LAW OFFICES OF THOMAS P. RILEY, P.C.**  
 3 **One California Plaza**  
 4 **300 South Grand Avenue, Suite 2670**  
 5 **Los Angeles, CA 90071-3161**

6 **Tel: 213-229-9292**  
 7 **Fax: 213-229-9295**  
 8 **TPRLA@att.net**

9 **Attorneys for Plaintiff**  
 10 **KingVision Pay-Per-View, Ltd.**

11 **UNITED STATES DISTRICT COURT**  
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **KingVision Pay-Per-View, Ltd.,**

14 **Plaintiff,**

15 **vs.**

16 **James A. Dailey, et al.,**

17 **Defendants.**

18 **Case No. CV 04-4074 WHA**

19 **NOTICE OF PLAINTIFF'S OPPOSITION;**  
 20 **PLAINTIFF'S OPPOSITION TO**  
 21 **DEFENDANT'S MOTION FOR ORDER**  
 22 **SETTING ASIDE ENTRY OF DEFAULT;**  
 23 **AND MEMORANDUM OF POINTS AND**  
 24 **AUTHORITIES IN SUPPORT THEREOF**  
 25 **[FRCP Rule 60 (b)]**

26 **For: Honorable William Alsup**  
 27 **Date: Thursday, June 23, 2005**  
 28 **Time: 8:00 A.M.**

1 **TO THE HONORABLE WILLIAM H. ALSUP, THE DEFENDANT, AND HIS**  
 2 **ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on Thursday, June 23, 2005, at 8:00 am or as soon  
 4 thereafter as this matter may be heard before the Honorable William H. Alsup at the United States  
 5 District Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiff, KingVision  
 6 Pay-Per-View, Ltd., by and through its counsel, will oppose Defendant's Motion for Order Setting  
 7 Aside Entry of Default, (hereinafter "Defendant's Motion").

8 This Opposition will be based on this Notice of Plaintiff's Opposition, Plaintiff's  
 9 Opposition to Defendant's Motion and Declaration for Order Setting Aside Entry of Default, and



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Statement of Facts**

3 Plaintiff, KingVision Pay-Per-View, Ltd., (hereinafter "Plaintiff") is an international  
4 distributor of sports and entertainment programming. Plaintiff procured and retains the exclusive  
5 commercial exhibition (closed-circuit) rights to the *Felix Trinidad v. Bernard Hopkins*  
6 *Championship Fight Program* of September 29, 2001, (hereinafter referred to as the "Program").  
7 Plaintiff thereafter entered into sublicensing agreements with various commercial entities  
8 throughout North America, by which it granted limited public exhibition rights to these entities for  
9 the benefit and entertainment of the patrons within their respective establishments (i.e., hotels,  
10 racetracks, casinos, taverns, bars, restaurants, social clubs, etc.).

11 In an effort to protect itself and its clientele from the pervasive piracy of its proprietary  
12 programming, the Plaintiff undertakes a nationwide program to police commercial establishments  
13 in order to detect and prosecute those establishments which exhibit its programming unlawfully.  
14 On September 29, 2001, a licensee private investigator by the name of Gary Gravelyn (employed by  
15 Gravelyn and Associates) witnessed the contemporaneous exhibition of the Plaintiff's *Program* at  
16 the commercial establishment operated by the moving party Defendant, James A. Dailey and  
17 documented said observations by way of a sworn Affidavit and accompanying covert surveillance  
18 photographs (Please see Plaintiff's Exhibit 1, attached hereto and made part hereof).

19 Plaintiff tried earnestly to try to reach a pre-suit resolution of its claims against Defendant,  
20 James A. Dailey, the lawful operator of the Golden Bear Sport Bar, first notified of Plaintiff's claims  
21 via Certified Mail on October 22, 2001 (Please see letter of Alan Gelb attached hereto as Plaintiff's  
22 Exhibit 2, attached hereto and made part hereof). The Defendant ignored Alan Gelb's letter.  
23 Defendant James A. Dailey was subsequently notified of Plaintiff's claims on December 7, 2001  
24 (Please see Plaintiff's Exhibit 3, attached hereto and made part hereof). Defendant, however, once  
25 again ignored Plaintiffs' counsel's attempts at settlement and as a result suit was brought forth by  
26 way of a civil complaint filed with this Honorable Court.

27 The thrust of Plaintiff's complaint alleged that the Defendant, and or his employees and or  
28 agents unlawfully intercepted and intentionally broadcast the *Program* at the Defendant's  
establishment for the purpose of direct or indirect commercial advantage thereby violating two (2)

1 federal statutes (The Communications Act of 1934, as amended Title 47 U.S.C. § 605, et seq., and  
2 The Cable & Television Consumer Protection and Competition Act of 1992, as amended, Title 47  
3 U.S.C. § 533 et seq.), and one California statute (Business and Professions Code Section 17200, et  
4 seq.). Plaintiff's Complaint also included a pendant state law claim of Conversion against the  
5 Defendant.

6 On January 7, 2005, following Plaintiff's Request, the Clerk of the Court duly entered  
7 default against Defendant James A. Dailey. On or about May 13, 2005, Defendant Dailey filed a  
8 Motion for Order Setting Aside Default and Objections to Plaintiff's Application for Default  
9 Judgment.

10 Plaintiff now comes before this Honorable Court and files its Opposition thereto.

11 **QUESTION PRESENTED**

12 Should the Court set aside the default entered against the instant Defendant?

13 **SHORT ANSWER**

14 No. The Defendant has no grounds to set aside the default properly entered against him, has  
15 no defenses to the underlying action, and *any* set aside of the previously entered default would be  
16 inequitable and improper considering the undisputed facts specific to this particular case.

17 **DISCUSSION**

- 18
- 19
- 20 **1. DEFENDANT HAS NO LEGAL GROUNDS TO SET ASIDE THE ENTRY**
- 21 **OF DEFAULT AGAINST HIM.**
- 22 **a. The Defendant's failure to respond to the suit papers on a timely basis was not**
- 23 **a result of "surprise", nor "excusable neglect", as claimed, but instead the**
- 24 **result of his culpable conduct and the moving party Defendant's inexcusable**
- 25 **decision to completely ignore his affirmative duty to respond to Plaintiff's duly**
- 26 **served complaint in a timely manner, and any set aside of the entry of default**
- 27 **would be inequitable in this instance.**

28 In the instant matter, the Defendant seeks to set aside the default properly entered against  
him, however as is set forth below, the Defendant fails to adduce admissible facts necessary to

1 justify such equitable relief, and the rationale the Defendant does proffer for his failure to respond  
2 to Plaintiff's duly served complaint simply cannot support setting aside the default even if the Court  
3 were to accept the Defendant's singular excuse for his inaction ("Based upon my discussions with  
4 counsel, I did not file an answer to the complaint, because I believed that negotiations were  
5 ongoing") at face value, an insurmountable task in its own right.

6 In actual fact Defendant Dailey was specifically admonished by Plaintiff's counsel that he  
7 had an affirmative obligation to respond to the Complaint he had been served with *and* that he  
8 would be well advised to comply with those obligations or he would *again* suffer the entry of  
9 default for failing to do so (Please see Declaration of Thomas P. Riley attached hereto as Plaintiff's  
10 Exhibit 4, attached hereto and made part hereof).

11 In that very same phone call with Plaintiff's counsel, Defendant Dailey expressly asserted to  
12 Plaintiff's counsel that he would seek the advice of his attorney and aggressively defend the action,  
13 but consistent with his behavior in the two (2) prior piracy actions brought forth against him,  
14 Defendant Dailey failed to retain counsel, failed to respond to the duly served Complaint, and once  
15 again, for now the third (3<sup>rd</sup>) time, default was filed against him in the United States District Court  
16 for the Northern District of California in a commercial signal piracy lawsuit.

17 For these reasons and in this instance the Court need not and should not grant the  
18 discretionary relief the Defendant requests.

19 "A Court *may* set aside the entry of default "for good cause shown" (FRCP 55(c)  
20 (emphasis added) and [t]he 'good cause' that must be shown to set aside *entry* of default  
21 under FRCP 55(c) is essentially the same as the 'mistake, inadvertence, surprise, or  
22 excusable neglect' required for vacating a judgment under FRCP 60(b). *Chrysler Credit  
23 Corp. v. Macino* (7<sup>th</sup> Cir. 1983) 710 F.2d 363, 367." *California Practice Guide: Federal  
24 Civil Procedure Before Trial*, Section 6:139, Rutter Group 1995.

25 "Courts look to the same basic factors in evaluating a request to set aside the entry of  
26 default or a default judgment-i.e., *reasonable* excuse, absence of prejudice to plaintiff, and a  
27 meritorious defense" *Id.* Section 6:143 (emphasis added).

28 Once judgment by default has been entered against a party under Rule 55 (b), the judgment  
may be set aside for "mistake, inadvertence, surprise or excusable neglect, or fraud,  
misrepresentation, or other misconduct of an adverse party. In *Cassidy v. Tenerio*, 856 F.2d 1412,  
1415 (9th Cir. 1998) the Ninth Circuit has stated that a District Court may deny a motion to vacate a

1 default judgment if:

- 2
- 3 1. The Plaintiff would be prejudiced if the judgment is set aside;
- 4 2. The Defendant has no meritorious defense; or
- 5 3. The Defendant's culpable conduct has led to default.

6 In *In re Hammer*, 940 F.2d 524, 525-526 (9th Cir. 1991), the court in *Hammer* further  
7 stated explicitly that this tripartite test is disjunctive, meaning the District Court would be free to  
8 deny the motion if any of the three factors was true. In this case however all factors are true, in  
9 particular the second and third factors, and this Court should therefore deny Defendants' Motion.

10 As set forth below, Defendant Dailey has no **reasonable** excuse for his failure to respond  
11 to Plaintiff's duly served Complaint. He knew he would be sued, he was sued, and he simply  
12 ignored his obligation to respond until this action was framed for disposition. As a result, the  
13 Defendant's failure to act and properly respond are hardly excusable under the circumstances and  
14 ultimately fatal to his discretionary prayer for relief. "What constitutes 'excusable' neglect is  
15 basically an equitable determination. As noted by the Supreme Court in an analogous context:

16 "Because Congress have provided no other guidelines for determining what sorts of  
17 neglect will be considered 'excusable'...the determination is at bottom an equitable one,  
18 taking account of all relevant circumstances surrounding the omission. These include...the  
19 *reason* for the delay, including whether it was in the reasonable control of the movant, and  
20 whether the movant acted in good faith." *Pioneer Investment Services Co. v. Brunswick  
21 Associates, Ltd., Partnership* 113 S.Ct. 1489, 1498 (1993).

22 Moving party, Defendant Dailey - and not Plaintiff - bears the affirmative burden of proof to  
23 show "excusable neglect". Defendant has not met his burden of proof, however, and this failure is  
24 hardly inconsequential. For example, in *Admiral Home Appliances v. Tenavision*, 585 F. Supp. 14  
(D.N.J), the court was faced with a similar setting, in which the Defendant failed to articulate a  
25 reliable explanation for the failure to respond, leading the court to state the following:

26 "Defendant knew, from the demand letter of February 18 that the claim was not an  
27 insignificant amount. His attitude, in his calls to general counsel and the attorney of record,  
28 show an arrogance and disregard for the consequences, not mistake, inadvertence or  
excusable neglect." (P.16)

///

///

1 From the Defendant's omission to explain his failure to respond to the Summons and  
2 Complaint, the Court can infer he had the actual notice of the proceedings.

3 "A Defendant's conduct is culpable if he has received actual or constructive notice  
4 of the filing of the action and has failed to answer" *Meadows v. Dominican Republic*, 817  
5 F2d 517 (9<sup>th</sup> Cir. 1987).

6 Here, the moving party Defendant clearly made a tactical decision not to properly respond  
7 to Plaintiff's Complaint and Defendant Dailey must bear the consequences of his inaction. "If the  
8 inaction is a result of a strategic decision or a delaying tactic, the request for relief will be denied"  
9 *Brand v. N.C.C. Corp*, 540 F.Supp 562 (ED Pa 1982). "Nor will relief be granted if it appears  
10 Defendant received notice of the action, was aware of its consequences and simply failed to  
11 respond". *Direct Mail Specialists, Inc. v. Eclat Computer Technologies, Inc.*, 840 F2d 685 (9<sup>th</sup>  
12 Cir. 1988). To provide for otherwise, would be wholly inequitable and prejudicial to the Plaintiff  
13 at this juncture. "A Defendant should not be able to cause the default and then seek relief from it".  
14 *Meadows v. Dominican Republic, supra*. As such, Defendant's Dailey's Motion should be denied  
15 by this Honorable Court.

16 **b. The Defendant was duly notified and served Plaintiff's Request for Entry of**  
17 **Default**

18 Defendant Dailey would suggest to this Honorable Court that service of the Plaintiff's  
19 Request for Entry of Default and Plaintiff's Affidavit in support thereof were ineffective. The  
20 Defendant's contentions in this particular regard are as meritless as those set forth in his Declaration  
21 filed in support of his Motion. The default were pleadings served upon Defendant Dailey at 389  
22 Grand Avenue in Oakland. This is the very same address that the Defendant received two (2)  
23 demand letters via Certified mail; the very same address the licensed process server served him with  
24 the suit papers filed in this action; the very same address the Defendant was mailed the suit papers  
25 and several subsequent pleadings.

26 Most importantly however, and as set forth in the Declaration of Plaintiff's counsel, not one  
27 of these demand letters or pleadings were *ever* returned undeliverable by the United States Postal  
28 Service. In short, Defendant was duly and repeatedly served by the Plaintiff both correspondence  
and pleadings, and the Defendant's suggestions or contentions otherwise cannot be believed and

1 should not be countenanced by this Court.

2  
3 **c. Defendant Dailey has no meritorious defenses to the underlying action.**

4 As set forth above Defendant Dailey has no grounds whatsoever to set aside the default, was  
5 properly served, and is an appropriate party to the underlying action. In addition, Defendant Dailey  
6 has *no meritorious defenses* to any of the causes of action set forth within Plaintiff's duly served  
7 complaint. Plaintiff's contentions that its Program was unlawfully exhibited at the Defendant's  
8 place of business remains essentially uncontraverted. (Defendant's Declaration merely asserts that  
9 he is "not at fault" for misappropriating Plaintiff's Program, whereas the Plaintiff's allegations that  
10 the Defendant exhibited the event and that said exhibition was unlawful remain entirely  
11 uncontraverted).

12 Further, Plaintiff's contentions that Defendant, James A. Dailey, is the lawful operator of the  
13 subject establishment is uncontraverted and is supported by the licensing records of the California  
14 Department of Alcohol and Beverage Control, California Secretary of State, and Alameda County  
15 Public Records (Please see Exhibit 5, attached hereto and made part hereof).

16 In short, Defendant Dailey has presented not even a scintilla of credible evidence or a  
17 defense to any one of Plaintiff's causes of actions against him. Moreover, Defendant Dailey cannot  
18 and has not filed a proposed answer setting forth any affirmative defenses to the claims set forth in  
19 the complaint. As such, "it would be a fruitless gesture" to set aside the default if Defendant has  
20 no valid defense or counterclaim" *Alexander v. Robertson*, 882 F2d 421, 424 (9<sup>th</sup> Cir. 1989).  
21 Accordingly, Defendant Dailey's Motion should be denied.

22 **d. Defendant Dailey has not moved diligently to set aside the Clerk's entry of  
23 default .**

24 The Complaint in this action was filed September 27, 2004. Defendant was served on  
25 November 19, 2004. The Clerk of the Court entered default against Defendant Dailey January 7,  
26 2005. Defendant Dailey did not retain counsel to represent him until on or about January 10, 2005.  
27 It was not until May 13, 2005, however, some four (4) plus months after hiring a lawyer, did  
28 Defendant James A. Dailey file the instant motion.

1 While under certain circumstances such an inordinate delay might be justified, the present  
2 case before this Court provides no such justification. The Defendant is an experienced and  
3 sophisticated businessman. The instant Defendant has been sued four (4) different times by closed-  
4 circuit distributors for violations of the telecommunications statutes at issue in the present action  
5 (Please see Plaintiff's Exhibit 6, attached hereto and made part hereof).

6 Twice previously, Defendant Dailey failed to respond and suffered entry of default as a  
7 result thereof. When he was served the suit papers this time around, he called Plaintiff's counsel  
8 who specifically informed him that he had an obligation to respond which the Defendant heard,  
9 acknowledged, and responded to the Plaintiff's counsel that he would in fact provide the suit papers  
10 to his attorney and defend the action. Instead, and in keeping with his conduct on the prior federal  
11 piracy actions, he did nothing and suffered the default he was informed would be taken against him  
12 and that he understood would be taken against him. It is inconceivable that this Court - or any other  
13 - would readily permit such conduct and grant the relief this particular Defendant now seeks. To do  
14 so would be prejudicial to the Plaintiff because of the risk posed to admissible evidence in  
15 prosecuting this action to judgment.

16 **Conclusion**

17  
18 **WHEREFORE**, Plaintiff, respectfully requests the Defendant's Motion be **DENIED** in  
19 order that Plaintiff may proceed to judgment in the above-entitled action without further delay.  
20  
21

22  
23 Respectfully submitted,

24 

25 Dated: June 2, 2005

26 **LAW OFFICES OF THOMAS P. RILEY, P.C.**  
27 BY: Thomas P. Riley  
28 Attorneys for Plaintiff  
KingVision Pay-Per-View, Ltd.



# AFFIDAVIT

State of: California

County of: Alameda

I, the undersigned, being duly sworn according to law deposes and says, that on 9/29/01, I entered the establishment known as \_\_\_\_\_

Golden Bear Sport Bar located at \_\_\_\_\_

389 Grand Ave Oakland, CA 94610 at approximately 6:15

a.m. (p.m.) I paid \$ 10<sup>00</sup> to enter this establishment. I ordered \_\_\_\_\_ from

a bartender/waitress whose name is \_\_\_\_\_ and who is described as \_\_\_\_\_

3 bartenders. 1 Black male wearing white USA T shirt  
1 Black Female behind bar w/ Black tank top I observed 11

television sets. They are described as 9 were approx 25" & 2 Large Screens and

they were located 9 TVs were shelf above BAR, Big screen in BACK by pool tables & other near entrance. On the television

set(s) I observed the boxing match between Preliminary Introduce and

before the fight of Romero v. Vorapin was wearing could not identify due to camera shot

trunks and Fight had not started was wearing could not identify

trunks. I also observed the following: Boxer with American Flag draped

over shoulders. Commentator introducing next fight which

is Romero v. Vorapin. several background shots of the fighters

3 quad picture introducing the judges.

A cable box was/ was not visible. The channel \_\_\_\_\_ appeared on the box. This

establishment has/does not have a satellite dish. There were/were not Apartment

above or adjacent to the establishment. The establishment is described as Sports Bar

with outdoor seating. Bleacher seating in middle of room.

2 pool tables in the back. Raiders poster on the wall

This establishment rates Good (Good, Fair, Poor). The Capacity of this

establishment is approximately 50+ people. At the time of my appearance, I

counted approximately 21 people on the first head count and 20 on

the second count.

\* person taking tickets - Black male shaved head wearing blue shirt approx late 30's  
Also Black male late 30's wearing a red football shirt #05 was operating a barbecue.

Prior to my departure, there were approximately 20 people in the establishment. This establishment is located in a commercial/residential neighborhood. There was/was not a parking lot connected or adjacent to this establishment. I observed the following license plates either in the parking lot, in front of, or in the immediate vicinity, of this establishment:

<u>4DNW889</u>	<u>4DK2878</u>
<u>4MGR941</u>	<u>4EQU671</u>
<u>3NSE668</u>	<u>4EUY409</u>

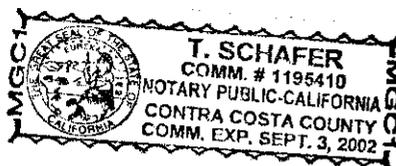
I departed this establishment at 6:20 a.m./p.m.  
Dated: 9/29/01

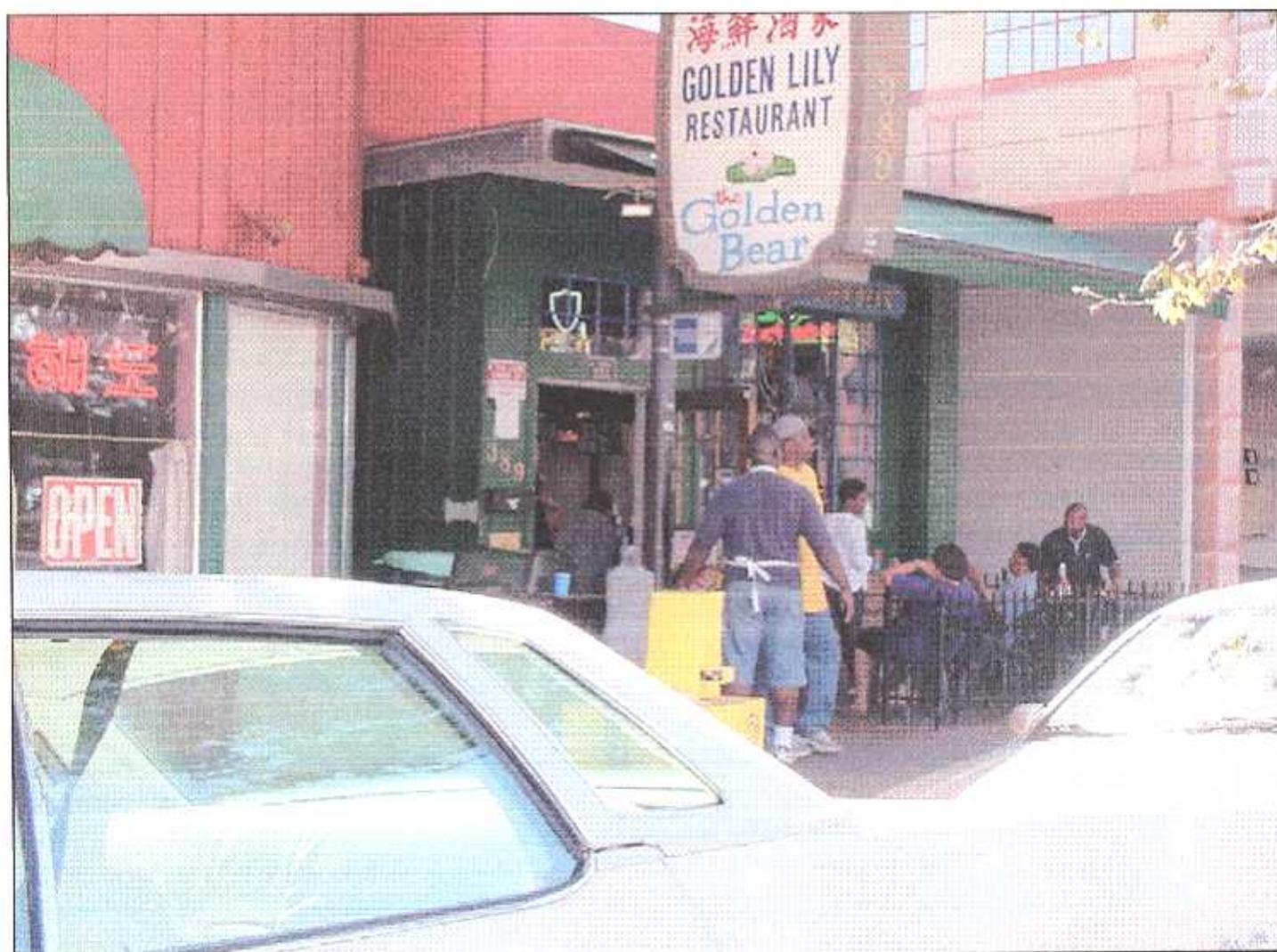
Signed: [Signature]  
Printed Name: Gary Gravelyn  
Agency: Gravelyn & Associates  
Address: 16 Rio Vista  
City/State: Orinda, CA  
Phone #: 925 253-0469  
P.I.#: 18604

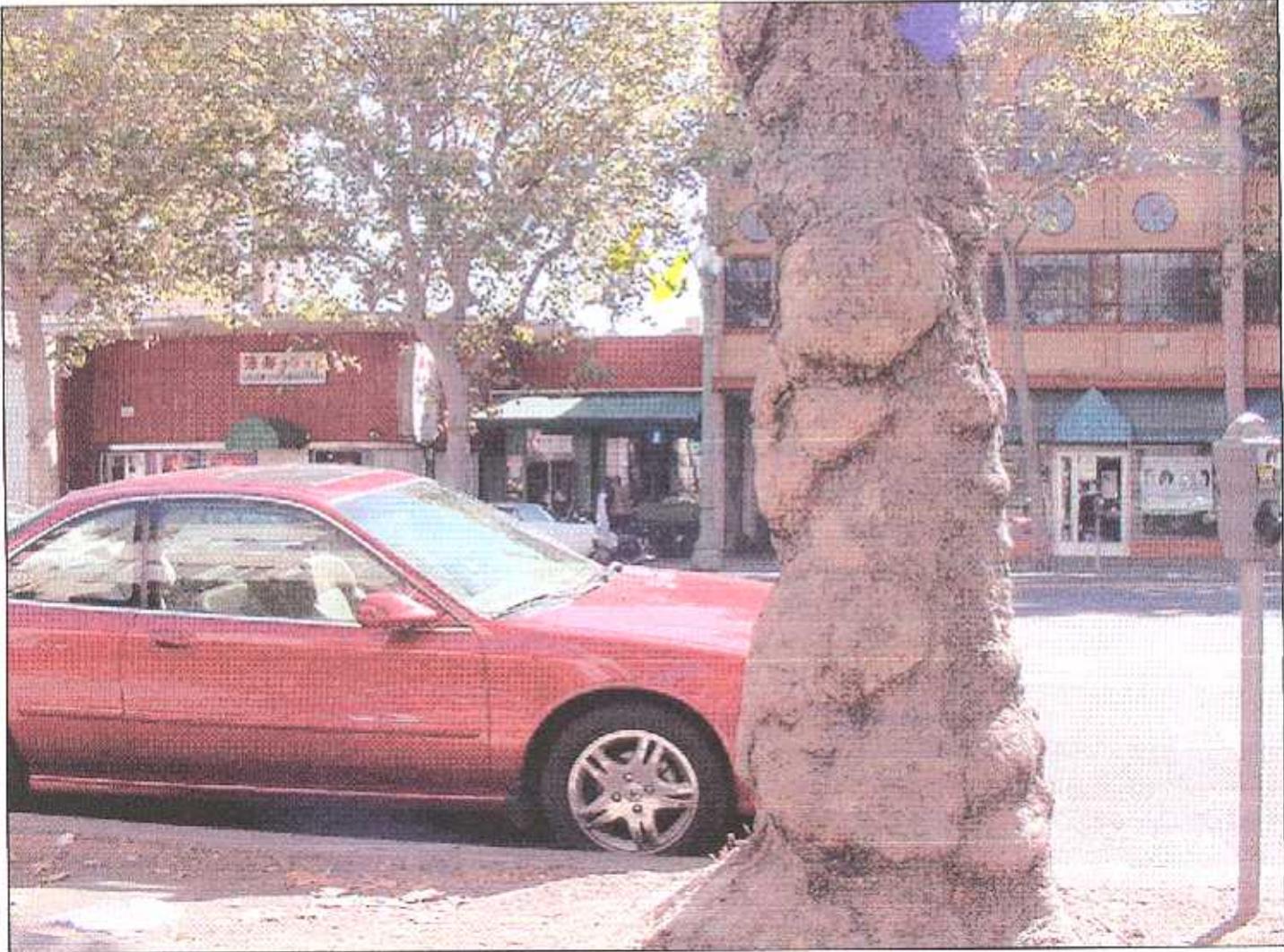
**NOTARY**

On 10/5/01, before me, T. Schafer Notary Republic, personally appeared Gary Gravelyn [ ] personally to me —or— [x] proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.  
WITNESS my hand and official seal.

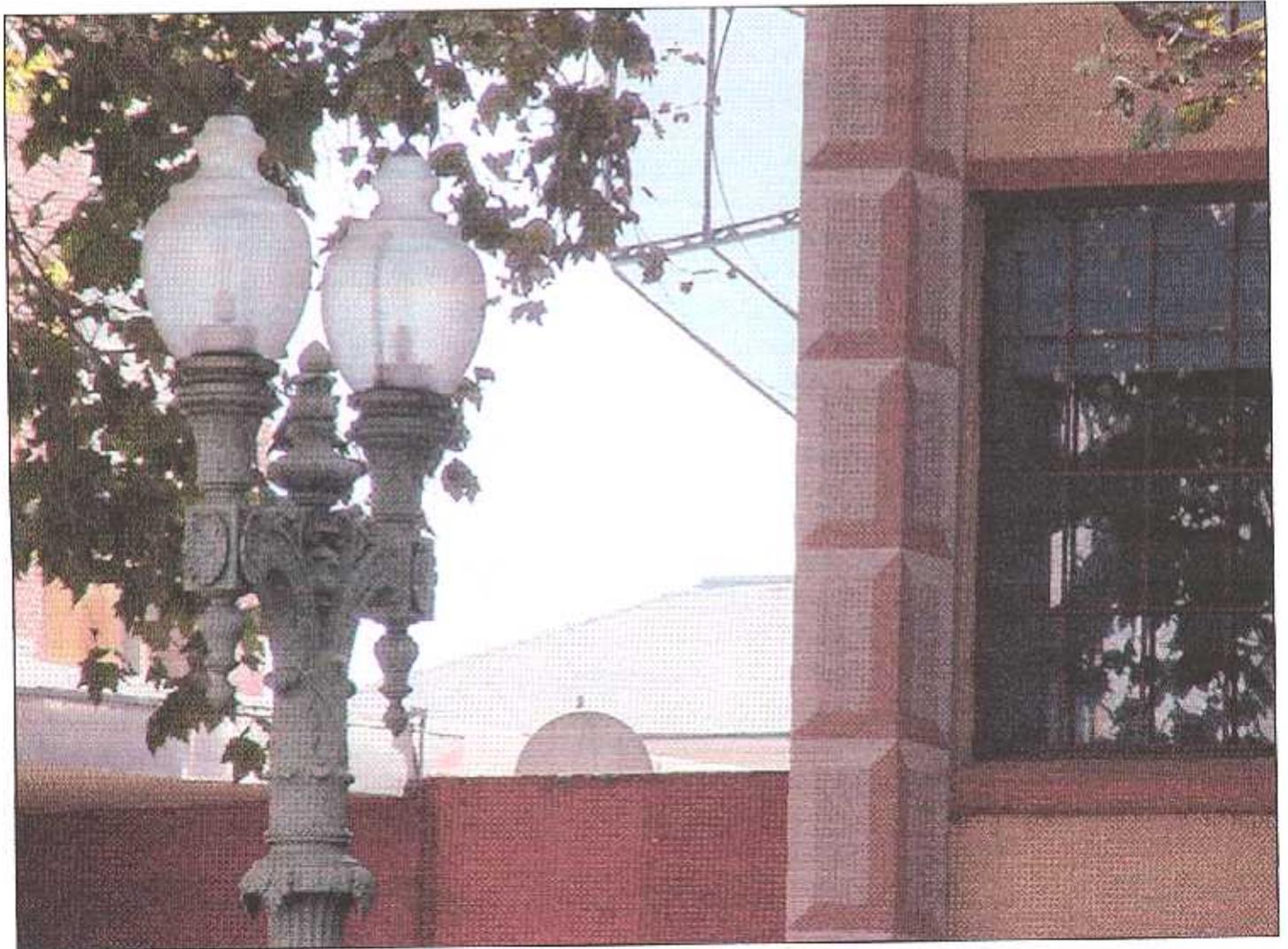
[Signature]  
Signature of Notary













# LAW OFFICES OF ALAN GELB, P.C.

204 S. KINGS HIGHWAY  
CHERRY HILL, NEW JERSEY 08034  
TELEPHONE: (856) 795-9992  
FACSIMILE: (856) 795-5455

## ALAN GELB

MEMBER OF NJ & PA BARS  
THE U.S. SUPREME COURT  
ADMITTED TO FEDERAL BARS OF:  
AR., CT., IL., MD., MI., NE., NJ., NY., PA., TX., VT., WI

JOANN ZANGHI  
PARALEGAL

October 22, 2001

## OF COUNSEL:

THOMAS P. RILEY  
CALIFORNIA  
MEMBER OF CA, NJ & PA BARS

WAYNE D. LONSTEIN  
NEW YORK  
MEMBER OF MA, NJ & NY BARS

Golden Bear Sports Cafe  
389 Grand Ave  
Oakland, CA 94621

RE: Kingvision Pay-Per-View, Ltd. v. Golden Bear Sports Cafe  
**Our File #: 092901-DKP-017**

To Whom It May Concern:

Please be advised that I represent Kingvision Pay-Per-View, Ltd. in connection with its distribution of the Trinidad v. Hopkins boxing event of September 29, 2001.

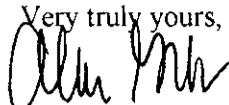
My client had the exclusive license to show and/or distribute this fight and undercard bouts commercially in a territory that encompassed the State of CA.

It has come to our attention that this fight was exhibited at your establishment in violation of the distribution rights owned by my client, Kingvision Pay-Per-View, Ltd.. The showing of said fight was in direct violation of the Laws of the Federal Government, specifically the Federal Cable/Communications Act, 47 U.S.C. Sections 605 and 553.

The purpose of this letter is to give you the opportunity to reach a settlement with my client prior to commencement of a lawsuit. A timely settlement will enable you to avoid the following:

1. Statutory damages of up to \$160,000.00
2. Liability for all of my clients costs in bringing this action, including reasonable attorneys fees & costs.
3. The inconvenience and expense that will attend the defense of a lawsuit.

I will delay the undertaking of any such legal steps for a period of one (1) week from the date of this correspondence. Please contact me forthwith in order to avoid future legal action.

Very truly yours,  
  
ALAN GELB

AG/jcz

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1.  Addressee's Address  
 2.  Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Golden Bear Sports Cafe  
 389 Grand Ave  
 Oakland, CA 94621  
 092901-DKP-017

4a. Article Number  
 2477272442

4b. Service Type

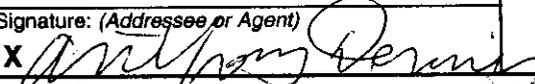
Registered                       Certified  
 Express Mail                       Insured  
 Return Receipt for Merchandise    COD

7. Date of Delivery  
 10-26-01

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)

X 

Thank you for using Return Receipt Service.



**LAW OFFICES OF THOMAS P. RILEY**  
A PROFESSIONAL CORPORATION

---

727 WEST SEVENTH STREET, SUITE 722  
LOS ANGELES, CA 90017-3714

TPRLA@att.net

TEL: (213) 229-9292

FAX: (213) 229-9295

December 7, 2001

Mr. James Dailey  
Golden Bear Sports Bar  
389 Grand Ave  
Oakland, CA 94610

File #: 092901-07

Re: Kingvision Pay-Per-View, Ltd., v. James Dailey, et al.

---

Mr. Dailey: *Transmitted By Certified Mail, Restricted Delivery*

Please be advised that this law firm represents Kingvision Pay-Per-View, Ltd., in connection with the closed-circuit broadcast of the *Trinidad v. Hopkins Championship Fight Program* of September 29, 2001.

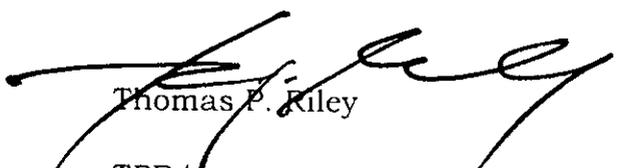
It is alleged that this *Program* was exhibited at your establishment in violation of the exclusive commercial distribution rights owned by my client. Any unauthorized broadcast of said *Program* was in direct violation of the law, including but not limited to 47 U.S.C. Section 605, and 47 U.S.C. Section 553.

The purpose of this correspondence is to give you a final opportunity to reach a settlement with my client prior to the commencement of a lawsuit in Federal Court. A timely settlement of this matter will enable you to avoid the following:

1. Personal exposure to statutory damages of up to \$160,000.00, and
2. Liability for legal costs including our firms attorneys fees, and
3. The inconvenience and expense that will attend the defense of a lawsuit.

This office will delay the undertaking of any such legal steps for a period of fifteen (15) days from the date of this correspondence. At this time I urge you, your attorney, your insurance carrier, or your authorized representative to contact me immediately in order to avoid impending legal action.

Cordially,

  
Thomas P. Riley

TPR/mm

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

7000 1670 0000 9680 7629

OAKLAND CA 94610

Postage	\$ 0.34
Certified Fee	\$2.10
Return Receipt Fee (Endorsement Required)	\$1.50
Restricted Delivery Fee (Endorsement Required)	\$0.00
<b>Total Postage &amp; Fees</b>	<b>\$ 3.94</b>

0115  
10 Postmark  
Here

12/08/2001

Sent To: James Dailey  
 Street, Apt. No., or PO Box No.: 389 Grand Ave.  
 City, State, ZIP+4: Oakland, CA 94610

PS Form 3800, May 2000

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, on the front if space permits.</li> </ul>	<p>A. Received by (Please Print Clearly) B. Date of Delivery                  GEANETTE VENTURA 12/10/11</p> <p>C. Signature                  X Geanette Ventura <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                  If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p>Mr. James Dailey                  Golden Bear Sports Bar                  389 Grand Ave                  Oakland, CA 94610</p>	<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Copy from service label)                  1000 11670 0000 9680 7629</p>	



1 **Thomas P. Riley, SBN 194706**  
2 **LAW OFFICES OF THOMAS P. RILEY, P.C.**  
3 **One California Plaza**  
4 **300 South Grand Avenue, Suite 2670**  
5 **Los Angeles, CA 90071-3161**

6 **Tel: 213-229-9292**  
7 **Fax: 213-229-9295**

8 **Attorney for Plaintiff**  
9 **KingVision Pay-Per-View, Ltd.**

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 KingVision Pay-Per-View, Ltd.,

13 Plaintiff,

14 vs.

15 James A. Dailey, et al.

16 Defendant.

Case No: 04-cv-4074 WHA

17 **DECLARATION OF THOMAS P. RILEY**  
18 **IN SUPPORT OF PLAINTIFF'S**  
19 **OPPOSITION TO DEFENDANT'S**  
20 **MOTION FOR ORDER SETTING**  
21 **ASIDE ENTRY OF DEFAULT**

22 I declare under the penalty of perjury of the laws of the United States and the State of  
23 California the following:

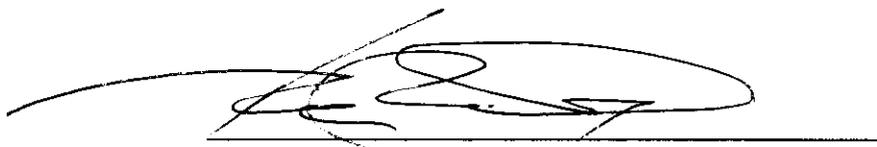
- 24 1. I am the attorney of record for the Plaintiff in this action.
- 25 2. On September 27, 2004, on behalf of the Plaintiff, I filed a complaint against  
26 Defendant James A. Dailey, individually and d/b/a Golden Bear Sport Bar in this  
27 Court.
- 28 3. On or about November 19, 2004, Defendant James A. Dailey was duly subserved with  
Plaintiffs suit papers. The requisite mailing in support of this service was done by the  
process server on November 22, 2004.
4. On or about late November 2004, I received a telephone call from Defendant James  
A. Dailey. Mr. Dailey and I had spoken many times before having resolved several  
signal piracy cases and claims with me on behalf of my clients throughout the years.

- 1           5.     In our telephone call Mr. Dailey acknowledge receipt of suit papers from my office  
2           concerning the instant matter. In that same phone call Mr. Dailey informed me that  
3           he believed he was duly licensed to exhibit the September 29, 2004, *Hopkins v.*  
4           *Trinidad* event at the commercial establishment he operates in Oakland (Golden Bear  
5           Sports Bar) or alternatively claimed that his establishment did not exhibit the fight  
6           program at all.
- 7           6.     I specifically and clearly told Mr. Dailey that he was misinformed and that my client  
8           had no record of him purchasing a closed-circuit license for subject event and I had a  
9           sworn statement and photographs from a licensed private investigator detailing the  
10          fact that the September 29, 2001, *Hopkins v. Trinidad* fight program was unlawfully  
11          exhibited at his sports bar.
- 12          7.     Mr. Dailey refused to accept my contentions at face value and was understandably  
13          upset at having recently been served, nevertheless in our conversation that day he  
14          specifically informed me that he was going to “fight it” and would refer this matter to  
15          his attorney. As is my professional custom with all *in pro per* defendants who contact  
16          my firm I specifically reminded him that he had an affirmative obligation to respond  
17          to Plaintiff’s complaint in a timely manner and that Plaintiff would move to prosecute  
18          the case to judgment without further notice or demand.
- 19          8.     That singular phone call I received from James A. Dailey and that particular  
20          conversation I had with him that day is the first and only conversation I had ever had  
21          with this particular defendant about this particular case.
- 22          9.     There was never any “negotiation” with this particular Defendant concerning  
23          resolution of this case.
- 24          10.    There was never an agreement by me “to discuss the matter” with the instant  
25          Defendant at a later time.
- 26          11.    There was never any forbearance, waiver, agreement or the like that would suggest by  
27          me to the Defendant that would intimate, imply, or infer, that Plaintiff would not be  
28          moving aggressively to seek entry of default in the event the Defendant failed to  
            answer or otherwise respond to Plaintiff’s duly served complaint.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 12. To the contrary, as the instant Defendant well knows (having suffered entry of default twice previously in two prior piracy actions as well as being specifically informed by me personally), entry of default would be sought in the instant action should he fail to respond as he had in the past.
- 13. Defendant James A. Dailey has been fully apprised and duly served with all pleadings filed by the Plaintiff in the instant action as corroborated by the pertinent Proofs of Service affixed to the pleadings Plaintiff filed before the Defendant retained counsel.
- 14. Not a single one of the pleadings my office served on Defendant James A. Dailey in this action has ever been returned by the United States Postal Service as undeliverable.

**Executed this Second Day of June Year of our Lord Two Thousand Five**



**THOMAS PETER PATRICK RILEY, JR.**

///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///



\* NO BUSINESS License on File with City



CALIFORNIA THE GOLDEN STATE



### State of California

## Department of Alcoholic Beverage Control

### License Query System

#### LQS Core

A glossary of terms, and their meanings as used in the License Query System, is available for review.

#### License Information

License Number: 343795 | Office of Application: OAKLAND

#### Licensee Information

Licensee: DAILEY JAMES A

#### Business Name

DBA: GOLDEN BEAR SPORT BAR

#### Business Address

Address: 389 GRAND AVE	Census Tract: 4037.
City: OAKLAND	County: ALAMEDA
State: CA	Zip Code: 94610

#### License Types

License Type: 48 - ON-SALE GENERAL PUBLIC PREMISES		
Status: ACTIVE		
Status Date: 05-OCT-1998	Term: months	
Original Issue Date: 05-OCT-1998	Expiration Date: 30-SEP-2002	
Master: Yes	Duplicates: 0	Fee Code: P40

License Type: 30 - TEMPORARY PERMIT		
Status: ISSUE		
Status Date: 03-OCT-1998	Term: months	
Original Issue Date:	Expiration Date:	
Master: Yes	Duplicates: 0	Fee Code: NA

**License Conditions**

Conditions: 7 - OPERATING RESTRICTIONS
--

**License Transferred From**

Transfer Date: 18-JUN-1998	Transferred From: 228589	Action: CANCEL UPON TRANSFER
-------------------------------	-----------------------------	---------------------------------

**Return to:**

- License Number query
- Business Address query
- Business Name query
- Licensee Name query

Send comments to: [WebMaster@email.abc.ca.gov](mailto:WebMaster@email.abc.ca.gov)

Source: [My Sources](#) > [Public Records](#) > [State Group Files](#) > [CA Public Records, Combined](#) ⓘ  
Terms: [389 grand ave](#) ([Edit Search](#))  
Focus: [san francisco](#) ([Exit FOCUS™](#))

↩ Select for FOCUS™ or Delivery

*CALIFORNIA SECRETARY OF STATE, UCC RECORD*

\*\*\*THIS DATA IS FOR INFORMATION PURPOSES ONLY. CERTIFICATION CAN ONLY BE OBTAINED THROUGH THE OFFICE OF THE CALIFORNIA SECRETARY OF STATE\*\*\*

*CALIFORNIA SECRETARY OF STATE, UCC RECORD*

**DEBTOR(S):** DAILEY JAMES A  
389 GRAND AVE  
OAKLAND, CA 94610  
FID/SS#: 553270806

GOLDEN BEAR SPORTS BAR [BUSINESS]  
389 GRAND AVE  
OAKLAND, CA 94610

**SECURED PARTIES:** ICE MACHINES INCORPORATED  
1228 FOLSOM ST  
**SAN FRANCISCO, CA 94103-3880**

**FILING-DATE:** 08/24/1998

**FILING-TIME:** 08:00 AM

**EXPIRATION DATE:** 08/25/2003

**FILING-NUMBER:** 9824060064

**STATUS:** ACTIVE

**TYPE:** FINANCING STATEMENT

**CALL LEXISNEXIS DOCUMENT SOLUTIONS FOR ALL YOUR FILING NEEDS.  
800.634.9738**

Source: [My Sources](#) > [Public Records](#) > [State Group Files](#) > [CA Public Records, Combined](#) ⓘ  
Terms: [389 grand ave](#) ([Edit Search](#))  
Focus: [san francisco](#) ([Exit FOCUS™](#))  
View: Full  
Date/Time: Tuesday, December 4, 2001 - 10:18 PM EST

[About LexisNexis](#) | [Terms and Conditions](#)

Copyright © 2001 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

Source: [My Sources](#) > [Public Records](#) > [State Group Files](#) > [CA Public Records, Combined](#) ⓘ  
Terms: [golden bear sports](#) ([Edit Search](#))

Select for FOCUS™ or Delivery

*FICTITIOUS BUSINESS NAMES, CALIFORNIA*

**\*\*\* THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY \*\*\***

CALIFORNIA FICTITIOUS BUSINESS NAMES

**DBA NAME: GOLDEN BEAR SPORTS BAR**

**BUSINESS ADDRESS:** 389 GRANT AVE  
OAKLAND, CA 94610

**BUSINESS PHONE:** 510

**STATE:** California

**COUNTY:** Alameda

**OWNER:** DAILEY, JAMES

**OWNER ADDRESS:** 794 OAKES BLVD  
SAN LEANDRO, CA 94577  
Telephone Number: 510

**BUSINESS DESCRIPTION:** BARS

**FILING DATE:** 6/15/1998

**FILE NUMBER:** 98267090

**SIC CODE:** 581301

**CALL LEXIS DOCUMENT SERVICES FOR ALL YOUR CORPORATE NEEDS. 800-634-9738**

Source: [My Sources](#) > [Public Records](#) > [State Group Files](#) > [CA Public Records, Combined](#) ⓘ  
Terms: [golden bear sports](#) ([Edit Search](#))  
View: Full  
Date/Time: Tuesday, December 4, 2001 - 10:18 PM EST

[About LexisNexis](#) | [Terms and Conditions](#)

Copyright © 2001 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, SUITE 1320 • OAKLAND, CALIFORNIA

94612

Financial Services Agency  
Business Tax Section

(510) 238-2704  
TDD (510) 238-3254

Date: 6-2-05

To Whom it May Concern:

The following business has been issued an Oakland business tax certificate:

Business Name: GOLDEN BEAR (SPORTS BAR)

Business Address: 389 GRAND AVE. OAKLAND, CA 94610

Owner Name(s): JAMES A. DAILEY

Business Tax Certificate Number: 169565

Expiration Date: 12-31-05

Classification of Business: A RETAIL SALES

*The certificate is a business tax and is not regulatory. Information concerning ownership or other confidential information is that given by the licensee or certificate holder.*

BARBARA SOLARZANO / RECEPTIONIST

Business Tax Representative  
Phone: (510) 238-3705

BLUE

EXHIBIT 6

# U.S. Party/Case Index

## Civil Name Search Results

**4 Total Party matches for selection DAILEY, JAMES A for California Northern Search Complete**

**Thu Jun 2 11:42:19 CDT 2005**

**Selections 1 through 4 (Page 1)**

● [Download](#) (1 pages \$ 0.00)

Name	Court	Case No.	Filed	NOS	Closed
1 DAILEY, JAMES A.	candce 3:	2002cv00985	02/28/2002	890	11/26/2002
2 DAILEY, JAMES A.	candce 3:	2001cv03877	10/15/2001	890	04/15/2002
3 DAILEY, JAMES A.	candce 3:	2004cv04074	09/27/2004	890	
4 DAILEY, JAMES A.	candce 3:	2001cv04219	11/13/2001	890	03/13/2003

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
06/02/2005 11:42:19			
PACER Login:	tr0120	Client Code:	Los Tres Cachorros 3.19.05
Description:	Civil srch pg 1	Search Criteria:	DAILEY, JAMES A
Billable Pages:	1	Cost:	0.08

**U.S. Party/Case Index - Home**

**Search:** [All Court Types](#) | [Appellate](#) | [Bankruptcy](#) | [Civil](#) | [Criminal](#)  
**Reports:** [Court Code List](#) | [Date Range](#) | [Courts not on Index](#) | [Statistical Reports](#)  
**User Options:** [Change Client Code](#) | [New Login](#) | [Billing History](#) | [PSC Home Page](#) | [E-Mail PSC](#) | [Logout](#)

?? Help  
??

ADRMOP, CLOSED

**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:02-cv-00985**

Kingvision Pay-Per-View, Ltd. v. Dailey

Assigned to: Hon. Susan Illston

Cause: 28:1331 Fed Question: Fed Communications Act of 1

Date Filed: 02/28/2002

Jury Demand: None

Nature of Suit: 890 Other Statutory  
Actions

Jurisdiction: Federal Question

**Plaintiff****Kingvision Pay-Per-View, Ltd.**represented by **Thomas P. Riley**

Law Offices of Thomas P. Riley, P.C.

One California Plaza

300 South Grand Avenue

Los Angeles, CA 90071

213-229-9292

Fax: 213-229-9295

Email: tprla@att.net

**LEAD ATTORNEY****ATTORNEY TO BE NOTICED**

V.

**Defendant****James A. Dailey***individually**doing business as*

Golden Bear Sports Bar

*also known as*

Golden Bear Sports Cafe

<b>Date Entered</b>	<b>#</b>	<b>Docket Text</b>
02/28/2002	1	COMPLAINT against James A. Dailey (Filing fee \$150 receipt number 4405377). Filed by Kingvision Pay-Per-View, Ltd.. (kk, ) (Entered: 02/28/2002)
02/28/2002		Summons Issued as to James A. Dailey (kk, ) (Entered: 02/28/2002)
02/28/2002	2	Certificate of Interested Entities by Kingvision Pay-Per-View, Ltd.. (kk, ) (Entered: 02/28/2002)
02/28/2002	3	ADR SCHEDULING ORDER: Case Management Statement due by 6/26/2002. Case Management Conference set for 7/3/2002 at 10:30 AM. (kk, ) (Entered: 02/28/2002)

03/29/2002	4	AMENDED COMPLAINT against James A. Dailey. Filed by Kingvision Pay-Per-View, Ltd.. (ga, ) (Entered: 03/29/2002)
06/27/2002	5	Declination to Proceed Before a U.S. Magistrate Judge by Kingvision Pay-Per-View, Ltd.. (ga, ) (Entered: 06/27/2002)

ADRMOP, CLOSED, REFPOSTJGMT-EMC

**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:01-cv-03877**

Kingvision Pay-Per-View, Ltd. v. Dailey  
Assigned to: Hon. Susan Illston  
Demand: \$160000  
Cause: 28:1331 Fed. Question

Date Filed: 10/15/2001  
Jury Demand: None  
Nature of Suit: 890 Other Statutory  
Actions  
Jurisdiction: Federal Question

**Plaintiff****Kingvision Pay-Per-View, Ltd.**

represented by **Thomas P. Riley**  
Law Offices of Thomas P. Riley, P.C.  
One California Plaza  
300 South Grand Avenue  
Los Angeles, CA 90071  
213-229-9292  
Fax: 213-229-9295  
Email: tprla@att.net  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**James A. Dailey**  
*individually*  
*doing business as*  
Golden Bear Sports Bar  
*also known as*  
Golden Bear Sports Cafe

<b>Date Entered</b>	<b>#</b>	<b>Docket Text</b>
10/17/2001	1	COMPLAINT <i>no process</i> ; against James A. Dailey (Filing fee \$150 receipt number 4404306). Filed by Kingvision Pay-Per-View, Ltd.. (ys, ) (Entered: 10/17/2001)
10/17/2001	2	ADR SCHEDULING ORDER: Case Management Statement due by 2/8/2002. Case Management Conference set for 2/15/2002 at 02:00 PM.. Signed by Judge Susan Illston on 10/15/01. (ys, ) (Entered: 10/17/2001)
10/17/2001	3	Certification as to Interested Parties by plaintiff Kingvision Pay-Per-View, Ltd.. (ys, ) (Entered: 10/17/2001)
11/08/2001		Summons Issued as to James A. Dailey (ys, ) (Entered: 11/08/2001)

12/19/2001	4	SUMMONS Returned Executed, by Kingvision Pay-Per-View, Ltd., served on James A. Dailey on 12/6/01(ys, ) (Entered: 12/19/2001)
01/02/2002	5	MOTION for Entry of Default <i>against defendant James A. Dailey, individually and d/b/a Golden Bear Sports Bar a/k/a Golden Bear Sports Cafe</i> filed by Kingvision Pay-Per-View, Ltd.. (ys, ) (Entered: 01/02/2002)
01/03/2002		Clerk's Notice ENTRY OF DEFAULT (ys, ) (Entered: 01/03/2002)
02/06/2002	6	CASE MANAGEMENT STATEMENT filed by Kingvision Pay-Per-View, Ltd.. (Riley, Thomas) (Entered: 02/06/2002)
02/07/2002	7	Plaintiff's CASE MANAGEMENT STATEMENT <i>and proposed order</i> filed by Kingvision Pay-Per-View, Ltd.. (ys, ) (Entered: 02/07/2002)
02/13/2002	8	Ex Parte Applicaton <i>to Vacate Case Management Conference and Setting Briefing Schedule Re Plaintiff's Application for Default Judgment By The Court</i> filed by Kingvision Pay-Per-View, Ltd.. (Riley, Thomas) (Entered: 02/13/2002)
02/20/2002	9	ORDER by Judge Susan Illston granting 8 Ex Parte Application 8; adopting briefing schedule. (ts, ) (Entered: 02/20/2002)
03/08/2002	10	MOTION for Default Judgment as to filed by Kingvision Pay-Per-View, Ltd.. Motion Hearing set for 4/12/2002 09:00 AM. (Attachments: # 1 # 2 # 3 # 4 # 5 # 6 # 7 # 8)(Riley, Thomas) (Entered: 03/08/2002)
03/20/2002	11	EXHIBITS re 10 <i>Plaintiff's Supplemental Exhibits in Support of Plaintiff's Application for Default Judgment by the Court</i> filed by Kingvision Pay-Per-View, Ltd.. (Attachments: # 1 # 2 # 3 # 4)(Related document(s)10) (Riley, Thomas) (Entered: 03/20/2002)
04/09/2002	12	ORDER re: Attorney's Fees. Plaintiff is Ordered to submit an itemized list of attorneys' fees detailing the actual time expended by task and the hourly rate charged by 4/10/02. Signed by Judge Susan Illston on 4/5/02. (ys, ) (Entered: 04/09/2002)
04/10/2002	13	<i>DECLARATION OF COUNSEL REGARDING ATTORNEYS FEES AND COSTS IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT BY THE COURT</i> by Kingvision Pay-Per-View, Ltd.. (Riley, Thomas) Modified on 4/15/2002 (ys, ). (Entered: 04/10/2002)
04/17/2002	14	Minute Entry: Motion Hearing re 10 held on 4/12/2002 before Susan Illston. Motion re 10 Granted (Court Reporter J. Yeomans.) (ys, ) (Entered: 04/17/2002)
04/17/2002	15	ORDER by Judge Susan Illston granting 10 Motion for Default Judgment, \$1,815 in damages and \$2,493.75 in costs and fees are awarded (ys, ) (Entered: 04/17/2002)
04/17/2002	16	JUDGMENT in favor of plaintiff against defendants in the amount of \$4,308.75 . Signed by Judge Susan Illston on 4/12/02. (ys, ) (Entered: 04/17/2002)

05/15/2002		Abstract of Judgment issued in the amount of \$4,308.75 re [16] <i>judgment</i> by Kingvision Pay-Per-View, Ltd.. (ys, ) (Entered: 05/15/2002)
05/15/2002		Writ of Execution issued in the amount of \$4,308.75 as to James A. Dailey re [16] <i>judgment</i> by Kingvision Pay-Per-View, Ltd.. (ys, ) (Entered: 05/15/2002)
06/03/2002		CASE REFERRED to Magistrate Judge Edward M. Chen for Judgment Debtor Exam (wh, ) (Entered: 06/03/2002)
06/10/2002	17	Minute Entry: Referral to Magistrate Judge held on 6/3/2002 before Judge Susan Illston. This case shall be referred to a magistrate-judge for purposes of the judgment debtor exam. (Court Reporter not reported.) (gba) (Entered: 06/10/2002)
06/14/2002	18	ORDER to Appear for Examination. Signed by Magistrate Judge Edward M. Chen on 6/11/02. (ys, ) (Entered: 06/14/2002)
06/20/2002		<i>Abstract of Judgment Issued as to James A. Dailey, individually and d.b.a. Golden Bear Sports Bar, a.k.a. Golden Bear Sports Cafe in the amount of \$4,308.75.</i> (ys, ) (Entered: 06/20/2002)
08/16/2002	19	Letter dated 8/15/02 from David J. Cook, Esq. to the Court re taking off calendar the ORAP set for 8/19/02 at 9:00 a.m. before Magistrate Judge Chen. (ys, ) (Entered: 08/16/2002)

PACER Service Center			
Transaction Receipt			
06/02/2005 09:43:29			
PACER Login:	tr0120	Client Code:	Los Tres Cachorros 3.19.05
Description:	Docket Report	Search Criteria:	3:01-cv-03877
Billable Pages:	2	Cost:	0.16

ADRMOP, CLOSED, E-Filing

**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:01-cv-04219**

Joe Hand Promotions, Inc. v. Dailey  
Assigned to: Hon. Charles R. Breyer  
Demand: \$130000  
Cause: 28:1331 Fed Question: Fed Communications Act of 1

Date Filed: 11/13/2001  
Jury Demand: None  
Nature of Suit: 890 Other Statutory  
Actions  
Jurisdiction: Federal Question

**Plaintiff****Joe Hand Promotions, Inc.**

represented by **Ruth Elin Auerbach**  
Glassberg, Pollak & Associates  
425 California Street  
Suite 850  
San Francisco, CA 94104  
415 291-8320  
Fax: 415 291-8111  
Email: reauerbach@glassberg-  
pollak.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**James A. Dailey**  
*individually*  
*doing business as*  
Golden Bear Sports Bar

<b>Date Entered</b>	<b>#</b>	<b>Docket Text</b>
11/14/2001	1	COMPLAINT against James A. Dailey (Filing fee \$150 receipt number 3328094). Filed by Joe Hand Promotions, Inc.. (hdj, ) (Entered: 11/14/2001)
11/14/2001	2	ADR SCHEDULING ORDER:Case Management Statement due by 3/7/2002. Case Management Conference set for 3/14/2002 at 10:00 AM. (hdj) (Entered: 11/14/2001)
11/14/2001		Summons Issued as to James A. Dailey (hdj, ) (Entered: 11/14/2001)
12/13/2001	3	SUMMONS Returned Executed, by Joe Hand Promotions, Inc.. James A. Dailey (hdj, ) (Entered: 12/13/2001)
02/08/2002	4	MOTION for Entry of Default filed by Joe Hand Promotions, Inc.. (hdj, )

		(Entered: 02/08/2002)
03/13/2002	5	ORDER Vacating Thursday, March 14, 2002 Case Management Conference. Signed by Judge Maria-Elena James on 3/12/02. (hdj, ) (Entered: 03/13/2002)
03/13/2002		Set/Reset Scheduling Order Deadlines: (hdj, ) (Entered: 03/13/2002)
03/14/2002	6	NOTICE re [5] of <i>Entry of Order</i> by Joe Hand Promotions, Inc.. (hdj, ) (Entered: 03/14/2002)
03/20/2002		Clerk's Notice ENTRY OF DEFAULT. (hdj, ) (Entered: 03/20/2002)
06/14/2002	7	MOTION for Default Judgment as to filed by Joe Hand Promotions, Inc.. Motion Hearing set for 7/25/2002 10:00 AM. (ga, ) (Entered: 06/14/2002)
06/14/2002	8	NOTICE re [7] by Joe Hand Promotions, Inc.. (ga, ) (Entered: 06/14/2002)
06/14/2002	9	MEMORANDUM in Support re [7] filed by Joe Hand Promotions, Inc.. (Related document(s)[7]) (ga, ) (Entered: 06/14/2002)
07/25/2002	10	ORDER Impending Reassignment . Signed by Judge Maria-Elena James on 7/24/02. (ga, ) (Entered: 07/25/2002)
07/25/2002	11	ORDER REASSIGNING CASE. Case reassigned to Judge Charles R. Breyer and Charles R. Breyer for all further proceedings. Judge Maria-Elena James no longer assigned to case. Signed by Executive Committee on 7/24/02. (ga, ) (Entered: 07/25/2002)
07/25/2002		CASE DESIGNATED for Electronic Filing. Packet mailed to parties (ga, ) (Entered: 07/25/2002)
08/08/2002	12	CLERK'S NOTICE Case Management Conference set for 9/13/2002 at 08:30 AM. (be, ) (Entered: 08/08/2002)
09/03/2002	13	Renotice motion hearing <i>Motion for Default Judgment</i> filed by Joe Hand Promotions, Inc.. Motion Hearing set for 10/11/2002 10:00 AM. (Auerbach, Ruth) (Entered: 09/03/2002)
09/03/2002	14	CASE MANAGEMENT STATEMENT <i>and Request to Continue CMC</i> filed by Joe Hand Promotions, Inc.. (Auerbach, Ruth) (Entered: 09/03/2002)
09/12/2002	15	ORDER vacating hearing on case management conference; default damages hearing set for 10/11/02 . Signed by Judge Charles R. Breyer on 09/06/02. (be, ) (Entered: 09/12/2002)
09/12/2002		Set/Reset Hearings: Default Damages Hearing set for 10/11/2002 10:00 AM. (be, ) (Entered: 09/12/2002)
10/29/2002	16	Letter dated 10/23/02 from Ruth Elin Auerbach to Judge Breyer re rescheduling of hearing on plaintiff's motion for default judgment. (mcl, ) (Entered: 10/29/2002)

03/13/2003	17	ORDER by Judge Charles R. Breyer granting [7] Motion for Default Judgment (crblc1, ) (Entered: 03/13/2003)
03/13/2003	18	JUDGMENT in favor of Plaintiff against Defendant Signed by Judge Charles R. Breyer on March 12, 2003. (crblc1, ) (Entered: 03/13/2003)
03/24/2003		WRIT of Execution issued against James A. Dailey in the amount of \$8,963.50 (mcl, ) (Entered: 03/24/2003)
03/24/2003		ABSTRACT of Judgment issued against James A. Dailey in the amount of \$8,963.50 (mcl, ) (Entered: 03/24/2003)
07/23/2003	19	Acknowledgment of SATISFACTION OF JUDGMENT re 18 as to James A. Dailey, individually and dba Golden Bear Sports Bar by Joe Hand Promotions, Inc.. (mcl, ) (Entered: 07/23/2003)

PACER Service Center			
Transaction Receipt			
06/02/2005 09:44:13			
PACER Login:	tr0120	Client Code:	Los Tres Cachorros 3.19.05
Description:	Docket Report	Search Criteria:	3:01-cv-04219
Billable Pages:	2	Cost:	0.16

ADRMOP, E-Filing

**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:04-cv-04074-WHA**

King Vision Pay-Per-View, Ltd. v. Dailey  
Assigned to: Hon. William H. Alsup  
Demand: \$160000  
Cause: 28:1331 Fed. Question

Date Filed: 09/27/2004  
Jury Demand: None  
Nature of Suit: 890 Other Statutory  
Actions  
Jurisdiction: Federal Question

**Plaintiff****King Vision Pay-Per-View, Ltd.**

represented by **Thomas P. Riley**  
Law Offices of Thomas P. Riley, P.C.  
One California Plaza  
300 South Grand Avenue  
Suite 2670  
Los Angeles, CA 90071  
213-229-9292  
Fax: 213-229-9295  
Email: tprla@att.net  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**James A. Dailey**  
*doing business as*  
Golden Bear Sport Bar

represented by **George Holland, Sr.**  
Law Offices of George Holland  
1970 Broadway  
Suite 900  
Oakland, CA 94612  
510/465-4100  
Email: logh@aol.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Terry R. Collins**  
Law Offices of George Holland  
1970 Broadway  
Suite 1250  
Oakland, CA 94612-2221  
510-465-4100  
Fax: 510-465-4747  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

Date Entered	#	Docket Text
09/27/2004	<u>1</u>	COMPLAINT for Damages against James A. Dailey (Filing fee \$ 150.00, receipt number 3364405.). Filed by King Vision Pay-Per-View, Ltd. (gba, COURT STAFF) (Filed on 9/27/2004) Additional attachment(s) added on 10/14/2004 (gbaS, COURT STAFF). (Entered: 09/27/2004)
09/27/2004	2	ADR SCHEDULING ORDER: Case Management Statement due by 1/21/2005. Case Management Conference set for 1/28/2005 01:30 PM. (Attachments: # <u>1</u> Standing Order)(gba, COURT STAFF) (Filed on 9/27/2004) (Entered: 09/27/2004)
09/27/2004	<u>3</u>	Certificate of Interested Entities filed by King Vision (gba, COURT STAFF) (Filed on 9/27/2004) Additional attachment(s) added on 10/14/2004 (gbaS, COURT STAFF). (Entered: 09/27/2004)
09/27/2004	6	Summons Issued as to James A. Dailey. (gba, COURT STAFF) (Filed on 9/27/2004) Additional attachment(s) added on 10/14/2004 (gbaS, COURT STAFF). (Entered: 09/27/2004)
09/27/2004		CASE DESIGNATED for Electronic Filing. (gba, COURT STAFF) (Filed on 9/27/2004) (Entered: 09/27/2004)
09/30/2004	<u>4</u>	CLERK'S NOTICE TO PLAINTIFF RE: Consent to Proceed before a U.S. Magistrate Judge. Form due by OCTOBER 14, 2004. (klh, COURT STAFF) (Filed on 9/30/2004) (Entered: 09/30/2004)
10/14/2004	<u>5</u>	CLERK'S NOTICE re: Failure to E-File and/or Failure to Register as an E-Filer re: 1 & 3 (gba, COURT STAFF) (Filed on 10/14/2004) (Entered: 10/14/2004)
11/12/2004	<u>7</u>	CLERK'S SECOND NOTICE TO PLAINTIFF RE: Consent to Proceed before a U.S. Magistrate Judge. Form due by NOV. 24, 2004. (klh, COURT STAFF) (Filed on 11/12/2004) (Entered: 11/12/2004)
12/02/2004	<u>8</u>	CLERK'S THIRD NOTICE TO PLAINTIFF RE: Consent to Proceed before a U.S. Magistrate Judge. Form due by DEC. 15, 2004. (klh, COURT STAFF) (Filed on 12/2/2004) (Entered: 12/02/2004)
12/06/2004	<u>9</u>	Declination to Proceed Before a U.S. Magistrate Judge by King Vision Pay-Per-View, Ltd.. (Riley, Thomas) (Filed on 12/6/2004) (Entered: 12/06/2004)
12/07/2004	<u>10</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (klh, COURT STAFF) (Filed on 12/7/2004) (Entered: 12/07/2004)
12/07/2004	<u>11</u>	ORDER REASSIGNING CASE. Case reassigned to Judge William H. Alsup for all further proceedings. Judge Joseph C. Spero no longer assigned to case. Signed by Executive Committee on 12/07/04. (mab, COURT STAFF) (Filed on 12/7/2004) (Entered: 12/07/2004)
12/22/2004	<u>12</u>	CLERK'S NOTICE Scheduling Initial Case Management Conference on Reassignment set for 2/10/2005 11:00 AM. Case Management Statement due by 1/27/2005. (dt, COURT STAFF) (Filed on 12/22/2004) (Entered: 12/22/2004)

		12/22/2004)
01/04/2005	<u>13</u>	MOTION for Entry of Default filed by King Vision Pay-Per-View, Ltd.. (Riley, Thomas) (Filed on 1/4/2005) (Entered: 01/04/2005)
01/04/2005	<u>14</u>	AFFIDAVIT of Plaintiff's Counsel in Support of Plaintiff's Request to Enter Default by King Vision Pay-Per-View, Ltd.. (Riley, Thomas) (Filed on 1/4/2005) (Entered: 01/04/2005)
01/07/2005	<u>15</u>	Clerk's Notice ENTRY OF DEFAULT (sis, COURT STAFF) (Filed on 1/7/2005) (Entered: 01/07/2005)
01/14/2005	<u>16</u>	CASE MANAGEMENT STATEMENT filed by King Vision Pay-Per-View, Ltd.. (Riley, Thomas) (Filed on 1/14/2005) (Entered: 01/14/2005)
01/19/2005	<u>17</u>	CASE MANAGEMENT STATEMENT (AMENDED) filed by King Vision Pay-Per-View, Ltd.. (Riley, Thomas) (Filed on 1/19/2005) (Entered: 01/19/2005)
01/19/2005	<u>18</u>	Ex Parte Application for an Order Vacating Case Management Conference, and Order (Proposed) filed by King Vision Pay-Per-View, Ltd.. (Riley, Thomas) (Filed on 1/19/2005) (Entered: 01/19/2005)
01/21/2005	<u>19</u>	ORDER DENYING EX PARTE REQUEST TO VACATE CASE MANAGEMENT CONFERENCE [re <u>18</u> Ex Parte Application for an Order Vacating Case Management Conference, and Order (Proposed) filed by King Vision Pay-Per-View, Ltd.]. Signed by Judge William Alsup on 1/21/2005. (whasec, COURT STAFF) (Filed on 1/21/2005) (Entered: 01/21/2005)
01/25/2005	<u>20</u>	CERTIFICATE OF SERVICE by King Vision Pay-Per-View, Ltd. re <u>19</u> Order, (sis, COURT STAFF) (Filed on 1/24/2005) (Entered: 01/25/2005)
02/10/2005	<u>21</u>	Minute Entry: Initial Case Management Conference held on 2/10/2005 before William Alsup (Date Filed: 2/10/2005). Plaintiff shall file a motion for default judgment and serve defendant by mail. (Court Reporter Sahar McVickar.) (dt, COURT STAFF) (Date Filed: 2/10/2005) (Entered: 02/10/2005)
02/24/2005	<u>22</u>	NOTICE OF DEFENDANT'S Ex Parte Application and Declaration for Order re <u>15</u> Clerks Notice of Entry of Default, MOTION to Set Aside Entry of Default filed by James A. Dailey. Motion Hearing set for 3/10/2005 08:00 AM. (sis, COURT STAFF) (Filed on 2/23/2005) Additional attachment(s) added on 3/4/2005 (sis, COURT STAFF). (Entered: 02/24/2005)
02/24/2005	<u>23</u>	Declaration of James Dailey in Support of <u>22</u> Ex Parte Application re <u>15</u> Clerks Notice of Entry of Default MOTION to Set Aside Default filed by James A. Dailey. (Related document(s) <u>22</u> ) (sis, COURT STAFF) (Filed on 2/23/2005) (Entered: 02/24/2005)
02/24/2005	<u>24</u>	CLERK'S NOTICE re: Failure to E-File and/or Failure to Register as an E-Filer (sis, COURT STAFF) (Filed on 2/24/2005) Additional attachment(s) added on 2/24/2005 (sis, COURT STAFF). (Entered: 02/24/2005)

		02/24/2005)
03/02/2005	<u>25</u>	ORDER by Judge William H. Alsup denying without prejudice <u>22</u> Ex Parte Application to set aside entry of default. (tl, COURT STAFF) (Filed on 3/2/2005) Additional attachment(s) added on 3/2/2005 (tl, COURT STAFF). (Entered: 03/02/2005)
03/28/2005	<u>26</u>	NOTICE OF MOTION AND MOTION to Set Aside Default; Memorandum of Points and Authorities in Support; Declaration of Terry R. Collins in Support; Proposed Order filed by James A. Dailey. Motion Hearing set for 4/28/2025 09:00 AM in Courtroom 9, 19th Floor, San Francisco. (Holland, George) (Filed on 3/28/2005) Modified on 3/29/2005 (sis, COURT STAFF). (Entered: 03/28/2005)
03/28/2005	<u>27</u>	*** FILED IN ERROR - SEE DOC. 26 *** MOTION to Set Aside Default filed by James A. Dailey. (Holland, George) (Filed on 3/28/2005) Modified on 3/29/2005 (sis, COURT STAFF). (Entered: 03/28/2005)
03/28/2005	<u>28</u>	*** FILED IN ERROR - SEE DOC. 26 *** Declaration in Support of <u>27</u> MOTION to Set Aside Default filed by James A. Dailey. (Related document(s) <u>27</u> ) (Holland, George) (Filed on 3/28/2005) Modified on 3/29/2005 (sis, COURT STAFF). (Entered: 03/28/2005)
03/28/2005	<u>29</u>	*** FILED IN ERROR - SEE DOC. 26 *** MEMORANDUM in Support re <u>28</u> Declaration in Support filed by James A. Dailey. (Related document(s) <u>28</u> ) (Holland, George) (Filed on 3/28/2005) Modified on 3/29/2005 (sis, COURT STAFF). (Entered: 03/28/2005)
03/28/2005	<u>30</u>	*** FILED IN ERROR - SEE DOC. 26 *** Proposed Order re <u>29</u> Memorandum in Support by James A. Dailey. (Holland, George) (Filed on 3/28/2005) Modified on 3/29/2005 (sis, COURT STAFF). (Entered: 03/28/2005)
03/28/2005	<u>31</u>	*** FILED IN ERROR - SEE DOC. 26 *** Declaration in Support of <u>30</u> Proposed Order filed by James A. Dailey. (Related document(s) <u>30</u> ) (Holland, George) (Filed on 3/28/2005) Modified on 3/29/2005 (sis, COURT STAFF). (Entered: 03/28/2005)
03/28/2005	<u>32</u>	*** FILED IN ERROR - SEE DOC. 26 *** MOTION to Set Aside Default filed by James A. Dailey. (Holland, George) (Filed on 3/28/2005) Modified on 3/29/2005 (sis, COURT STAFF). (Entered: 03/28/2005)
04/05/2005	<u>33</u>	Letter from Plaintiff's Counsel Thomas P. Riley to Defense Counsel George Holland. (Riley, Thomas) (Filed on 4/5/2005) (Entered: 04/05/2005)
04/07/2005	<u>34</u>	Letter from Plaintiff's Counsel Thomas P. Riley to Defense Counsel George Holland.. (Riley, Thomas) (Filed on 4/7/2005) (Entered: 04/07/2005)
04/08/2005		Set/Reset Hearings: Motion Hearing set for 4/28/2005 09:00 AM in Courtroom 9, 19th Floor, San Francisco. (sis, COURT STAFF) (Filed on 4/8/2005) (Entered: 04/08/2005)

04/08/2005	<u>35</u>	MOTION to Withdraw Set/Reset Hearings filed by James A. Dailey. (Holland, George) (Filed on 4/8/2005) (Entered: 04/08/2005)
04/13/2005	<u>36</u>	ORDER REGARDING WITHDRAWAL OF EX PARTE APPLICATION SETTING ASIDE ENTRY OF DEFAULT. Signed by Judge William Alsup on 4/12/1005. (whasec, COURT STAFF) (Filed on 4/13/2005) (Entered: 04/13/2005)
05/13/2005	<u>37</u>	MOTION to Set Aside Default filed by James A. Dailey. Motion Hearing set for 6/23/2005 08:00 AM in Courtroom 9, 19th Floor, San Francisco. (Holland, George) (Filed on 5/13/2005) (Entered: 05/13/2005)
05/13/2005	<u>38</u>	MEMORANDUM in Support re <u>37</u> MOTION to Set Aside Default filed by James A. Dailey. (Related document(s) <u>37</u> ) (Holland, George) (Filed on 5/13/2005) (Entered: 05/13/2005)
05/13/2005	<u>39</u>	Declaration of James Dailey in Support of <u>37</u> MOTION to Set Aside Default filed by James A. Dailey. (Related document(s) <u>37</u> ) (Holland, George) (Filed on 5/13/2005) Modified on 5/17/2005 (rcs, COURT STAFF). (Entered: 05/13/2005)
05/13/2005	<u>40</u>	Declaration of Terry Collins in Support of <u>37</u> MOTION to Set Aside Default filed by James A. Dailey. (Related document(s) <u>37</u> ) (Holland, George) (Filed on 5/13/2005) Modified on 5/17/2005 (rcs, COURT STAFF). (Entered: 05/13/2005)
05/24/2005	<u>41</u>	Letter from Plaintiff's counsel Thomas P. Riley dated 5/24/05 to Defense counsel Terry Collins. (Riley, Thomas) (Filed on 5/24/2005) (Entered: 05/24/2005)
05/26/2005	<u>42</u>	Letter from Plaintiff's Counsel to Defense Counsel Regarding Meet and Confer Dated 5/26/05. (Riley, Thomas) (Filed on 5/26/2005) (Entered: 05/26/2005)

PACER Service Center			
Transaction Receipt			
06/02/2005 09:43:52			
PACER Login:	tr0120	Client Code:	Los Tres Cachorros 3.19.05
Description:	Docket Report	Search Criteria:	3:04-cv-04074-WHA
Billable Pages:	3	Cost:	0.24

1 **PROOF OF SERVICE (SERVICE BY MAIL)**

2  
3 I declare that:

4  
5 I am employed in the County of Los Angeles, California. I am over the age of eighteen  
6 years and not a party to the within cause; my business address is One California Plaza, 300 South  
7 Grand Avenue, Suite 2670, Los Angeles, CA 90071. I am readily familiar with this law firm's  
8 practice for collection and processing of correspondence/documents for mail in the ordinary course  
9 of business.

10 On June 2, 2005, I served:

11 **NOTICE OF PLAINTIFF'S OPPOSITION; PLAINTIFF'S OPPOSITION TO**  
12 **DEFENDANT JAMES A. DAILEY'S MOTION FOR ORDER SETTING ASIDE**  
13 **ENTRY OF DEFAULT; AND MEMORANDUM OF POINTS AND AUTHORITIES**  
14 **IN SUPPORT THEREOF [FRCP Rule 60(b)]**

15 On all parties referenced by enclosing a true copy thereof in a sealed envelope with postage  
16 prepaid and following ordinary business practices, said envelope was duly mailed and addressed to:

17 Mr. Terry Collins, Esquire  
18 Law Offices of George Holland  
19 1970 Broadway, Suite 94612-2221  
20 Oakland, CA 94612

Attorney for Defendant  
James A. Dailey

21 I declare under the penalty of perjury pursuant to the laws of the United States that the  
22 foregoing is true and correct and that this declaration was executed on June 2, 2005, at Los Angeles,  
23 California.

24  
25 Dated: June 2, 2005

26   
27 \_\_\_\_\_  
28 **INESA MAMIDJANYAN**