

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

J & J SPORTS PRODUCTIONS, INC., )

Case No.: 5:10-CV-05131 EJD

Plaintiff, )

**ORDER GRANTING MOTION FOR  
DEFAULT JUDGMENT**

v. )

PEDRO SALVADOR SAUCEDO, )

Defendant. )

Plaintiff J & J Sports Productions, Inc. (“Plaintiff”) moves for entry of default judgment in the amount of \$112,200.00 against Defendant Pedro Salvador Saucedo a/k/a Pedro S. Salvador, individually and d/b/a/ Mariscos El Pilar De Nayarit (“Defendant”). Plaintiff seeks damages stemming from Defendant’s alleged violation of 47 U.S.C. § 605(a) and conversion of Plaintiff’s property. The court has considered the moving papers and the oral argument of Plaintiff’s counsel presented at the hearing on September 23, 2011. For the reasons discussed below, the motion will be GRANTED.

**I. BACKGROUND**

**A. Procedural history**

Plaintiff filed the instant action on November 12, 2010. After Defendant was served with process and failed to respond (Docket No. 9) Plaintiff moved for entry of default and served the motion by mail. (Docket No. 15). The clerk entered default on June 9, 2011. (Docket No. 19). Plaintiff moved for default judgment on June 21, 2011, and has provided proof of service

1 indicating that a copy of the notice and application for default judgment were mailed to Defendant.  
2 (Docket No. 20). Defendant did not appear at the hearing.

3 **B. Factual history**

4 Plaintiff is a distributor of sports and entertainment programming. It purchased the rights to  
5 broadcast a November 14, 2009 fight between Manny Pacquiao and Miguel Cotto, together with  
6 undercard bouts, televised replay, and color commentary (collectively, the “Program”). It then  
7 entered into sublicenses with third parties such as casinos, bars, and social clubs, allowing the  
8 sublicensees to exhibit the Program to their patrons. The Program was broadcast in interstate  
9 commerce by means of an encrypted transmission, and only Plaintiff's sublicensees were entitled to  
10 decrypt that transmission.

11 On the day of the broadcast, Nathan Tate (“Tate”), an investigator hired by Plaintiff,  
12 observed an exhibition of the Program in Mariscos El Pilar De Nayarit. Defendant was not a  
13 sublicensee entitled to exhibit the Program. Tate entered the premises without paying a cover  
14 charge and observed the Program on a television. (Decl. of Affiant at 2). Between 9:10 p.m. and  
15 9:15 p.m., he performed three headcounts, noting the presence of ten, ten, and ten people by each  
16 respective count. (*Id.* at 2-3). The declaration indicates the capacity of Mariscos El Pilar De Nayarit  
17 as seventy-five and that Tate did not observe either a satellite dish or a cable box. (*Id.* at 2).

18 **II. DISCUSSION**

19 Plaintiff seeks \$10,000 in statutory damages pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(II),  
20 \$100,000 in enhanced damages pursuant to 47 U.S.C. § 605(e)(3)(C)(ii), and \$2,200 in damages  
21 for conversion. Plaintiff also alleges that Defendant has violated 47 U.S.C. § 553(a), which  
22 provides for statutory damages pursuant to subsection (c)(3)(A)(ii) and enhanced damages pursuant  
23 to subsection (c)(3)(B).

24 **A. Whether to apply 47 U.S.C. § 605 or 47 U.S.C § 553**

25 “[U]pon default the factual allegations of the complaint, except those relating to the  
26 amount of damages, will be taken as true.” *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th  
27 Cir. 1977) (citing *Pope v. United States*, 323 U.S. 1 (1944); *Flaks v. Koegel*, 504 F.2d 702, 707 (2d  
28 Cir. 1974)). Plaintiff seeks damages pursuant to § 605, which “requires proof that a defendant has

1 ‘(1) intercepted or aided the interception of, and (2) divulged or published, or aided the divulging  
2 or publishing of, a communication transmitted by the plaintiff.’” California Satellite Systems v.  
3 Seimon, 767 F.2d 1364, 1366 (9th Cir. 1985) (citing National Subscription Television v. S & H  
4 TV, 644 F.2d 820, 826 (9th Cir. 1981)). Plaintiff alleges in its complaint that it transmitted the  
5 Program, that Defendant unlawfully intercepted the Program, and that Defendant exhibited the  
6 Program. (Compl. ¶¶ 9-13).

7 However, § 605 applies only to intercepted “radio” communications or broadcasts through  
8 the air, such as satellite broadcasts. J & J Sports Productions, Inc. v. Man Thi Doan, No. C-08-  
9 00324 RMW, 2008 WL 4911223, at \*2 (N.D. Cal. Nov. 13, 2008) (citing United States v. Norris,  
10 88 F.3d 462 (7th Cir. 1996)). The pleadings do not allege that Defendant intercepted a satellite  
11 broadcast, and Tate does not state that he observed a satellite dish at Mariscos El Pilar De Nayarit.  
12 (Decl. of Affiant). Plaintiff contends that it has been unable to ascertain whether Defendant utilized  
13 a satellite dish only because Defendant has refused to answer and appear in the instant case.  
14 Nonetheless, the Court may not enter default judgment if the factual allegations in the pleadings are  
15 insufficient to establish liability.

16 However, the complaint also asserts a claim under 47 U.S.C. § 553, which “prohibits a  
17 person from ‘intercept[ing] or receiv[ing] or assist[ing] in intercepting or receiving any  
18 communications service offered over a cable system.’” Man Thi Doan, 2008 WL 4911223 at \*2  
19 (quoting 47 U.S.C. § 553(a)(1)) (alterations in the original). While Tate does not state that he  
20 observed a cable box, (Decl. of Affiant), it is undisputed that Defendant intercepted the broadcast  
21 by some means, and a cable box is hidden more easily than a satellite dish. Accord J & J Sports  
22 Productions, Inc. v. Guzman et al., 3:08-cv-05469-MHP, 2009 WL 1034218, at \*2 (N.D. Cal. April  
23 16, 2009). Accordingly, Plaintiff’s allegations are sufficient for present purposes to establish  
24 Defendant’s liability under § 553(a)(1).

25 **1. Statutory damages pursuant to 47 U.S.C. § 553(c)(3)(A)(ii)**

26 An aggrieved party may recover either actual damages pursuant to § 553(c)(3)(A)(i) or  
27 statutory damages pursuant to § 553(c)(3) (A)(ii). A court may award statutory damages of “not  
28 less than \$250 or more than \$10,000 as the court considers just.” 47 U.S.C. § 553(c)(3)(A)(ii).

1 While the violation in the instant case does not appear to be particularly egregious, Plaintiff  
2 requests the statutory maximum. Plaintiff contends that the maximum award against Defendant is  
3 necessary to deter future violations.

4 Plaintiff has presented evidence of the capacity of the establishment as seventy-five. The  
5 establishment served ten persons during each of Tate's headcounts, and the Program was shown  
6 only on one television. These factors suggest that maximum damages are unwarranted. The Court  
7 finds that an award of \$250 is sufficient under the circumstances.

8 **2. Enhanced damages pursuant to 47 U.S.C. § 553(c)(3)(B)**

9 47 U.S.C. § 553(c)(3)(B) provides that in the case of a willful violation for purposes of  
10 commercial advantage or private gain, “the court in its discretion may increase the award of  
11 damages . . . by an amount of not more than \$50,000.” Plaintiff alleges that Defendants'  
12 interception of the program was willful and for purposes of commercial advantage or private gain.  
13 (Compl. ¶ 13). Facts alleged in the pleadings are binding upon the defaulting party. Geddes, 559  
14 F.2d at 560.

15 However, while Mariscos El Pilar De Nayarit is a commercial establishment, it is not at all  
16 clear that it is “a business where certain events, such as boxing matches, would be shown to the  
17 public.” American Cablevision of Queens v. McGinn, 817 F.Supp. 317, 320 (E.D.N.Y.1993). In  
18 light of the fact that Tate observed only ten people present, the Program was shown on only one  
19 television, and there was no cover charge, the Court concludes that this is not an appropriate  
20 situation for the Court to exercise its discretionary authority to impose enhanced damages.

21 **B. Damages for conversion**

22 As a result of Defendant's default, the facts alleged in the pleadings are sufficient to  
23 establish that Defendant wrongfully denied Plaintiff ownership of the right to control the exhibition  
24 the Program and therefore are sufficient to establish that Defendant is liable for the tort of  
25 conversion. See Culp v. Signal Van & Storage, 142 Cal. App. 2d Supp. 859, 862 (Cal. App. Dep't  
26 Super. Ct. 1956). Pursuant to Cal. Civ. Code § 3336, Defendant is liable for the value of the  
27 property at the time of the conversion. Accordingly, Plaintiff is entitled to recover the sublicensing  
28 fee of \$2,200.

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**III. CONCLUSION**

Plaintiff's motion is granted. Plaintiff shall recover \$250 in statutory damages pursuant to 47 U.S.C. § 553(c)(3)(A)(ii) and \$2,200 pursuant to Cal. Civ. Code § 3336.

IT IS SO ORDERED.

Dated:

