

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

G & G CLOSED CIRCUIT EVENTS, LLC,)
)
 Plaintiff,)
 v.)
 THAO XUAN VO and YOUNG NG NGUYEN,)
 individually and d/b/a Vong Cat,)
 Defendant.)

Case No. 5:10-CV-05718-EJD

**ORDER GRANTING PLAINTIFF'S
MOTION TO ALTER OR AMEND
JUDGMENT.**

Plaintiff G & G Closed Circuit Events, LLC (“Plaintiff”) brought the instant action for conversion and unlawful interception of a telecast against Defendant Dian Thao Nguyen,¹ individually and d/b/a Cafe Da Thao a/k/a Da Thao Deli. Defendants did not respond to the complaint, and default was entered against them.

On March 15, 2012, the Court granted default judgment in favor of Plaintiff, awarding \$5,400 in statutory damages pursuant to 47 U.S.C. § 605(e)(3)(C)(i). Plaintiff now moves to alter or amend the judgment, claiming that the Court committed clear error by not awarding enhanced damages sufficient to deter future violations under the relevant statute, and that damages for conversion should have been granted. Defendant(s) have not filed any documents to oppose Plaintiff’s motion.

¹ In this Order, all instances of the singular form of the word ‘Defendant’ refer to Dian Thao Nguyen.

1 **I. BACKGROUND**

2 **A. Factual History**

3 Plaintiff is a distributor of sports and entertainment programming. It purchased the rights to
4 broadcast a December 19, 2009 fight between Cung Le and Scott Smith, together with undercard
5 bouts, televised replay, and color commentary (collectively, the “Program”). Plaintiff then entered
6 into sublicenses with third parties such as casinos, bars, and social clubs, allowing the sublicensees
7 to exhibit the Program to their patrons. The Program was broadcast in interstate commerce by
8 means of an encrypted transmission, and only Plaintiff’s sublicensees were entitled to decrypt that
9 transmission.

10 On the day of the broadcast, Gary Gravelyn, an investigator hired by Plaintiff, observed an
11 exhibition of the Program in Cafe Da Thao. Defendants had not obtained a sublicense, so they were
12 not entitled to exhibit the Program. Gravelyn entered the premises without paying a cover charge
13 and observed the Program on eight televisions. See, Decl. of Affiant at 2, May 17, 2011, ECF No.
14 20 attachment no. 3. Between 9:15 p.m. and 9:17 p.m., he performed three headcounts, noting the
15 presence of sixty-two, sixty-five, and sixty-five people by each respective count. Id. at 2-3. The
16 declaration indicated that the capacity of Cafe Da Thao was 200 persons. Gravelyn observed a
17 satellite dish but no cable box. Id. at 2.

18 **B. Procedural History**

19 Plaintiff filed the instant action on December 15, 2010. After Defendant Dian Thao Nguyen
20 was served with process and failed to respond in a timely manner, ECF No. 10, Plaintiff moved for
21 entry of default and served the motion by mail. ECF No. 12. The clerk entered default on April 6,
22 2011. ECF No. 13. Plaintiff moved for default judgment on May 17, 2011, which was granted on
23 March 15, 2012 (‘Order’).

24 **II. DISCUSSION**

25 Federal Rule of Civil Procedure 59(e) provides that a motion to alter or amend judgment
26 may be granted if “the district court is presented with newly discovered evidence, committed clear
27 error, or if there is an intervening change in the controlling law.” 389 Orange St. Partners v.
28 Arnold, 179 F.3d 656, 665 (9th Cir.1999). Rule 59(e) “offers an extraordinary remedy, to be used

1 sparingly in the interests of finality and conservation of judicial resources.” Kona Enters., Inc. v.
2 Estate of Bishop, 229 F.3d 877, 890 (9th Cir.2000).

3 Plaintiff now moves to alter or amend the judgment, claiming that the Court committed
4 clear error with respect to damages under the various heads discussed below.

5 **A. Damages awarded under 47 U.S.C. § 605 are not insufficient, nor should such**
6 **damages be enhanced**

7 This Court awarded Plaintiff \$5,400 in statutory damages under 47 U.S.C. § 605. In the
8 present motion, Plaintiff argues: (1) that this statutory amount (\$5,400) is insufficient, and (2) that
9 the Court should have awarded ‘enhanced damages’ (which it did not).

10 Plaintiff made arguments on both (1) and (2) in its motion for default judgment. An oral
11 hearing was also afforded to Plaintiff to address these arguments.

12 Accordingly, the Court finds that there is no clear error because the arguments raised at the
13 default motion on December 16, 2011 are those also now before the Court in the present motion to
14 alter or amend judgment. They need not be addressed again. As such, and in the interests of
15 “finality and conservation of judicial resources,” the Court rejects Plaintiff’s arguments under 47
16 U.S.C. § 605. See generally, Kona Enters., Inc. F.3d 877, 890 (9th Cir.2000).

17 **B. Damages For Conversion**

18 Plaintiff raises a further argument with respect to conversion. That is, that any additional
19 damages for conversion would not constitute double recovery. In reviewing this argument, the
20 Court observes the following judgments, J & J Sports Productions, Inc. v. Wood, No. C 11–1160
21 PJH, 2012 WL 33258 (N.D.Cal. Jan. 6, 2012) (awarding \$2,000 in statutory damages, \$5,000 in
22 enhanced damages and \$2,000 for conversion); Joe Hand Promotions, Inc. v. Dang, 2011 WL
23 6294289 2011 WL 6294289 (N.D.Cal. Dec. 14, 2011) (awarding \$1,100 in conversion damages in
24 addition to \$7,000 in statutory damages and \$1,000 in enhanced statutory damages); J & J Sports
25 Productions, Inc. v. Paolilli, No. 1:11–cv–00680 LJO GSA, 2012 WL 87183 (E.D.Cal., Jan. 9,
26 2012) (awarding \$6,200 in conversion damages in addition to \$10,000 in statutory damages and
27 \$30,000 in enhanced damages); Theme Promotions, Inc. v. News America Marketing FSI, 546
28 F.3d 991, 1005-06 (9th Cir. 2008) (upholding an award of compensatory damages for federal

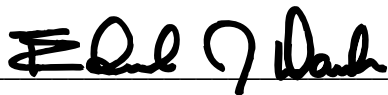
1 antitrust violations and California tort law), and Nintendo of Am., Inc. v. Dragon Pac. Int'l, 40 F.3d
2 1007, 1010 (9th Cir. 1994), cert. denied sub nom. Sheng v. Nintendo of Am., Inc., 115 S. Ct. 2256
3 (1995) (awarding both Lanham Act actual damages and Copyright Act statutory damages.)

4 The Court observes that these cases were not cited, nor appear to have been argued at the
5 oral hearing for motion for default judgment. However, since the two Northern District of
6 California decisions were handed down after Plaintiff's motion for default judgment was filed –
7 and not argued before this Court by Plaintiff in the motion for default motion – the Court amends
8 the award with respect to conversion damages, and finds that Plaintiff should be awarded \$1,800.

9 **III. CONCLUSION**

10 IT IS HEREBY ORDERED that Plaintiff's motion is GRANTED IN PART. Plaintiff shall
11 be entitled to recover damages for conversion to the sum of \$1,800. The Court shall file an
12 amended judgment reflecting the modification.

13
14 Dated: August 22, 2012

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16 _____
17 EDWARD J. DAVILA
18 United States District Judge