

1 DAVOLI LAW FIRM
David J. Davoli, Esq. (SB#264144/Fed ID# DD9073)
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5 Attorney for Plaintiff

6 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 -----X
8 JOE HAND PROMOTIONS, INC.,

9 Plaintiff,

Case No: 11-CV-01333 LHK

10 - against -

11 PETE BE

**AMENDMENT TO
DECLARATION OF DAVID
J.DAVOLI IN SUPPORT OF
PLAINTIFF JOE HAND
PROMOTIONS, INC.'S
REQUEST TO ENTER
DEFAULT**

12 and

13 DA KINE CAFÉ, INC. d/b/a DA KINE CAFE,

14 Defendants.
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17 I, David J. Davoli, declare as follows:

18 1. I am an attorney licensed to practice in California and before this Court. I am the
19 sole proprietor of the Davoli Law Firm, and local counsel for Joe Hand Promotions, Inc. ("JHP")
20 in this matter. I submit this declaration in support of JHP's Request for Default. I have personal
21 knowledge of the facts stated herein and, if called as a witness, I could and would testify
22 competently thereto.
23

24 2. Attached hereto as Exhibit A is a true and correct copy of JHP's Complaint
25 against defendants for violation of Title 47 U.S.C. §605, violation of Title 47 U.S.C §553 and
26 conversion. The Complaint was served on defendants JAMES B. JOHRING, JODI ANN
27 MONTES, and BIG JIM'S GRILL on April 21, 2011.
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1 3. Attached hereto as Exhibit B is a true and correct copy of the Summons, also
2 served on defendants JAMES B. JOHRING, JODI ANN MONTES, and BIG JIM'S GRILL on
3 April 21, 2011.

4 4. Attached hereto as Exhibit C are true and correct copies of the Proof of Service of
5 Summons and Complaint on defendant PETE BE, individually, and as an officer, director,
6 shareholder, and/or principal of DA KINE CAFÉ, INC. d/b/a DA KINE CAFÉ, dated March 25,
7 2011, and on defendant DA KINE CAFÉ, INC. d/b/a DA KINE CAFÉ, dated March 28, 2011.

8 5. *Under Rule 12 of the Federal Rules of Civil Procedure*, defendants PETE BE,
9 individually, and as an officer, director, shareholder, and/or principal of DA KINE CAFÉ, INC.
10 d/b/a DA KINE CAFÉ and DA KINE CAFÉ, INC. d/b/a DA KINE CAFÉ were required to
11 respond, answer or otherwise plead to JHP's Complaint by April 12, 2011. None of the
12 defendants nor anyone claiming to represent any of the defendants have contacted anyone at
13 Davoli Law Firm to request an extension to respond to JHP's Complaint.

14 6. To the best of my knowledge, defendant PETE BE is not incompetent, an infant,
15 or in the United States military.

16 7. As of June 17, 2011 none of the defendants have served Davoli Law Firm with a
17 response, answer or pleading to JHP's Complaint.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 EXECUTED this 13th day of June, 2011 at New York, NY.

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Davoli Law Firm
David J. Davoli
Attorney for Plaintiff
JOE HAND PROMOTIONS, INC.

EXHIBIT "A"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Jose Division

ORIGINAL
FILED

2011 MAR 21 A 11:37

-----X
JOE HAND PROMOTIONS, INC.,

COMPLAINT

Plaintiff,

Case No.:

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CA-SAN JOSE

vs.

ADR

PETE BE, Individually, and as an officer,
director, shareholder, and/or principal of
DA KINE CAFÉ, INC. d/b/a DA KINE
CAFÉ, and DA KINE CAFÉ, INC.
d/b/a DA KINE CAFÉ,

CV 11-01333

E-filing

PSG

Defendants.
-----X

Plaintiff, Joe Hand Promotions, Inc., by and through its attorneys, as and for its
Complaint against the Defendants, Pete Be and Da Kine Cafe, Inc. d/b/a Da Kine Cafe, allege as
follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under 28 U.S.C. §1331 (federal questions), as this civil action is brought pursuant to 47 U.S.C. §553 and 605.
2. This court has personal jurisdiction over the parties to this action as a result of Defendants' wrongful act, complained of herein, which violated Plaintiff's rights as the exclusive domestic commercial distributor of the transmission signal of the fight Program as hereinafter set forth in length. Defendants' wrongful acts consisted of the interception, reception, publication, divulgence, display, exhibition and tortuous conversation of Plaintiff's property, while said property was in the Plaintiff's control in the State of California.
3. Upon information and belief, venue is proper in the Northern District of California, San Jose Division, pursuant to 28 U.S. C. §1391(b) because, inter alia, all Defendants

reside within the State of California and/or a substantial part of the events or omissions giving rise to the claim occurred in this District.

THE PARTIES

4. The Plaintiff, Joe Hand Promotions, Inc., is a Pennsylvania corporation with its principal place of business located at 407 East Pennsylvania Avenue, Feasterville, Pennsylvania 19053.

5. Upon information and belief, Defendant, PETE BE, resides in the State of California.

6. Upon information and belief, Defendant, PETE BE, is an officer, director, shareholder and/or principal of DA KINE CAFE, INC. d/b/a DA KINE CAFE.

7. Upon information and belief, Defendant, PETE BE, was the individual with supervisory capacity and control over the activities occurring within the establishment on September 25, 2010.

8. Upon information and belief, Defendant, PETE BE, received a financial benefit from the operations of DA KINE CAFE, INC. d/b/a DA KINE CAFE on September 25, 2010.

9. Upon information and belief, Defendant, DA KINE CAFE, INC. d/b/a DA KINE CAFE, is a business entity, the exact nature of which is unknown, having its principal place of business at 153 E. Fremont Avenue, Sunnyvale, California 94087.

10. Upon information and belief, Defendant, DA KINE CAFE, INC. d/b/a DA KINE CAFE, is a Domestic Corporation, incorporated and licensed to do business in the State of California.

11. Upon information and belief, Defendant, DA KINE CAFE, INC. d/b/a DA KINE CAFE, is a partnership licensed to do business in the State of California.

12. Upon information and belief, Defendant, DA KINE CAFE, INC. d/b/a DA KINE CAFE, is a sole proprietorship licensed to do business in the State of California.

COUNT I

VIOLATION OF TITLE 47 U.S.C. §605

13. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs "1" through "12", inclusive, as though set forth herein at length.

14. By contract, Plaintiff was granted the right to distribute the UFC 119: Mir v. Cro Cop Broadcast, including all undercard bouts and the entire television broadcast, scheduled for September 25, 2010, (hereinafter referred to as the "Broadcast"), via closed circuit television and via encrypted satellite signal. The Broadcast originated via satellite uplink, and was subsequently re-transmitted to cable systems and satellite companies via satellite signal.

15. Pursuant to the contract, Plaintiff entered into subsequent agreements with various entities of the State of California, allowing them to publicly exhibit the Broadcast to their patrons.

16. In consideration of the aforementioned agreements, Plaintiff expended substantial monies to transmit the Broadcast to those entities in the State of California.

17. Upon information and belief, with full knowledge that the Broadcast was not to be received and exhibited by entities unauthorized to do so, Defendants and/or their agents, servants, workmen and/or employees unlawfully intercepted, received and/or de-scrambled said satellite signal, and did exhibit the Broadcast at the above-captioned address and/or addresses at the time of its transmission willfully and for purposes of direct or indirect commercial advantage or private financial gain.

18. Upon information and belief, Defendants and/or their agents, servants, workmen and/or employees used an illegal satellite receiver, intercepted Plaintiff's signal and/or used a device to intercept Plaintiff's Broadcast, which originated via satellite uplink and then re-transmitted via satellite or microwave signal to various cable and satellite systems. There are multiple illegal methods of accessing the Broadcast, including, (1) splicing an additional coaxial cable line or redirecting a wireless signal from an adjacent residence into a business establishment; (2) commercial establishments misusing cable or satellite by registering same as a resident when it is, in fact, a business; or (3) taking a lawfully obtained box or satellite receiver from a private residence into a business. In addition, emerging technologies, such as broadband or internet broadcast, as well as "slingbox" technology (which allows a consumer to literally sling the Broadcast from his personal home cable or satellite systems into his computer), can allow commercial misuse of residential broadcasting feeds through the internet from anywhere in the world. Each of these methods would allow Defendants to access the Broadcast unlawfully. Prior to Discovery, Plaintiff is unable to determine the manner in which Defendants obtained the Broadcast. However, it is logical to conclude that Defendants, either used an illegal satellite receiver, misrepresented its business establishment as a residence, or removed an authorized residential receiver from one location to a different commercial location to intercept Plaintiff's Broadcast.

19. 47 U.S.C. §605 (a) prohibits the unauthorized reception and publication or use of communications such as the transmission herein, to which Plaintiff held the distribution rights.

20. By reason of the aforementioned conduct, Defendants' herein willfully violated 47 U.S.C. §605 (a).

21. By reason of Defendants' violation of 47 U.S.C. §605 (a), Plaintiff has a private right of action pursuant to 47 U.S.C. §605.

22. As a result of Defendants' willful violation of 47 U.S.C. §605 (a), Plaintiff is entitled to damages, in the discretion of this Court, under 47 U.S.C. §605 (e) (3) (C) (i) (II) and (ii), of up to the maximum amount of \$110,000.00 as to each Defendant herein.

23. Pursuant to 47 U.S.C. §605, Plaintiff is also entitled to an award of full costs, interest and reasonable attorney's fees.

COUNT II

VIOLATION OF TITLE 47 U.S.C. §553

24. Plaintiff hereby incorporates paragraphs "1" through "23", inclusive, as though fully set forth herein at length.

25. Upon information and belief, with full knowledge that the Broadcast was not to be received and exhibited by entities unauthorized to do so, Defendants and/or its agents, servants, workmen and or employees did exhibit the Broadcast at the above-captioned address or addresses at the time of its transmission willfully and for purposes of direct or indirect commercial advantage or private financial gain.

26. 47 U.S.C. §553 prohibits the unauthorized reception, interception and exhibition of any communications service offered over a cable system, such as the transmission herein, to which Plaintiff had the distribution rights.

27. Upon information and belief, Defendants individually, willfully and illegally intercepted said Broadcast when it was distributed and shown by cable television systems.

28. By reason of the aforementioned conduct, Defendants herein willfully violated 47 U.S.C. §553, thereby giving rise to a private right of action.

29. As a result of Defendants' violation of 47 U.S.C. §553, Plaintiff is entitled to damages in an amount, in the discretion of this Court, of up to the maximum amount of \$60,000.00, plus the recovery of full costs, interest and reasonable attorney's fees.

30. Without further Discovery from and/or admission by Defendants, Plaintiff cannot determine if Defendants intercepted Plaintiff's signal via a cable system, in violation of 47 U.S.C. §553, or via a satellite transmission, in violation of 47 U.S.C. §605. As such, Plaintiff is alleging two (2) counts in its Complaint. Plaintiff recognizes that Defendants can be liable for only (1) of these statutes.

WHEREFORE, Plaintiff requests that judgment be entered in its favor and against each Defendant herein, granting to Plaintiff the following:

(a) A finding that each Defendant's unauthorized exhibition of the September 25, 2010, UFC 119: Mir v. Cro Cop Broadcast violated the Federal Communications Act and that such violations were committed willfully and for purposes of each Defendant's direct or indirect commercial advantage or for private financial gain; and

(b) On the first cause of action, statutory penalties in an amount, in the discretion of this Court, of up to the maximum amount of \$110,000.00 as to each Defendant for its willful violation of 47 U.S.C. §605 (a).

(c) On the second cause of action, statutory penalties in an amount, in the discretion of this Court, of up to the maximum amount of \$60,000.00 as to each Defendant for its violation of 47 U.S.C. §553; and

(d) Attorney's fees, interest, and costs of suit as to each Defendant pursuant to 47 U.S.C. §605 (e) (3) (B) (iii) or §553 (c) (2) (C), together with such other and further relief as this Court may deem just and proper.

COUNT III

CONVERSION

31. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1-30, inclusive, as though set forth herein at length.

32. By its acts as aforesaid in intercepting, exhibiting, publishing, and divulging the Broadcast at the above-captioned address, the aforementioned Defendants, tortuously obtained possession of the Program and wrongfully converted it to its own use and benefit.

33. The aforesaid acts of the Defendants were willful, malicious, and intentionally designed to harm Plaintiff Joe Hand Promotions, Inc., and to subject said Plaintiff to economic distress.

34. Accordingly, Plaintiff Joe Hand Promotions, Inc. is entitled to both compensatory, as well as punitive damages, from the aforementioned Defendants as the result of the Defendants' egregious conduct and conversion.

WHEREFORE, Plaintiff requests that judgment be entered in its favor and against each Defendant herein, granting to Plaintiff the following:

(a) A finding that each Defendant's unauthorized exhibition of the September 25, 2010, UFC 119: Mir v. Cro Cop Broadcast violated the Federal Communications Act and that such violations were committed willfully and for purposes of each Defendant's direct or indirect commercial advantage or for private financial gain; and

(b) On the first cause of action, statutory penalties in an amount, in the discretion of this Court, of up to the maximum amount of \$110,000.00 as to each Defendant for its willful violation of 47 U.S.C. §605 (a); and

(c) On the second cause of action, statutory penalties in an amount, in the discretion of this Court, of up to the maximum amount of \$60,000.00 as to each Defendant for its violation of 47 U.S.C. §553; and

(d) On the third cause of action, compensatory damages in an amount according to proof against Defendants; and

(e) Attorney's fees, interest, costs of suit as to each Defendant pursuant to statute(s) including 47 U.S.C. §605 (e) (3) (B) (iii) or §553 (c) (2) (C), together with such other and further relief as this Court may deem just and proper.

DATED: New York, New York
March 8, 2011

DAVOLI LAW FIRM

BY: 

David J. Davoli, Esq. (Bar #264144)
45 West 21st Street, Suite 401
New York, NY 10010
Tel: 212-929-1649
Fax: 212-542-8883
Attorney for Plaintiff
Our File No. JHND002

EXHIBIT "B"

UNITED STATES DISTRICT COURT

for the

Northern District of California

ADR

JOE HAND PROMOTIONS, INC.

Plaintiff

v.

PETE BE, et al.

Defendant

Civil Action No.

E-filing

CV 11-01333

PSG

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) DA KINE CAFE INC., d/b/a DA KINE CAFE
153 E. Fremont Ave.
Sunnyvale, CA 94087

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

David J. Davoli, Esq. (Bar #264144)
Davoli Law Firm
45 West 21st Street, Suite 401
New York, NY 10010

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Handwritten signature of Tiffany Salinas-Harwell

Signature of Clerk or Deputy Clerk

Tiffany Salinas-Harwell

Date: 3/21/11

EXHIBIT "C"

Attorney or Party without Attorney: DAVID J. DAVOLI DAVOLI LAW FIRM 45 WEST 21ST STREET, SUITE 401 NEW YORK, NY 10010		Telephone No.: (212) 929-1649 Bar #264144		For Court Use Only	
Attorney for: Plaintiff		Ref. No. or File No.:			
Insert name of Court, and Judicial District and Branch Court: United States District Court Of Northern District Of California					
Plaintiff: JOE HAND PROMOTIONS, INC. Defendant: PETE BE, et al.					
PROOF OF SERVICE (Summons And Complaint)		Hearing Date:	Time:	Dept/Div	Case Number: CV11-01333-PSG

1. At the time of service I was at least 18 Years of age and not a party to this action.
2. I served copies of the:
Summons And Complaint; Civil Cover Sheet, Order Setting Initial Cmc And Adr Deadlines, Welcome To The Usdc Court For The Northern District Of California, Clerk's Office, San Jose Division Package.
3. a. Party Served: PETE BE , INDIVIDUALLY, AND AS AN OFFICER, DIRECTOR, SHAREHOLDER, AND/OR PRINCIPAL OF DA KINE CAFE, INC. D/B/A DA KINE CAFE (Defendant)

 b. Person Served: party in item 3.a.
4. Address where the party was served: 153 E. FREMONT AVENUE
SUNNYVALE, CA 94087
5. I served the party:
 a. by personal service I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Tue, Mar. 22, 2011 (2) at: 2:02PM
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
 a. as an individual defendant.
 b. as the person sued under the fictitious name of: AS AN OFFICER, DIRECTOR, SHAREHOLDER, AND/OR PRINCIPAL OF DA KINE CAFE, INC. D/B/A DA KINE CAFE
7. Person who served the papers:
 a. THOMAS J. BOWMAN, JR.
 b. D & T SERVICES, LTD.
 2146 N. Main Street, Suite A
 P.O. Box 5383
 Walnut Creek, CA 94596
 c. (925) 947-1221

 d. Recoverable Costs Per CCP 1033.5(a)(4)(B)
 The Fee for service was: \$60.00
 e. I am: (3) Registered California process server.
 (i) Independent Contractor
 (ii) Registration No.: 25
 (iii) County: SANTA CLARA

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Mar. 25, 2011

<i>Attorney or Party without Attorney:</i> DAVID J. DAVOLI DAVOLI LAW FIRM 45 WEST 21ST STREET, SUITE 401 NEW YORK, NY 10010		<i>Telephone No.:</i> (212) 929-1649 Bar #264144		<i>For Court Use Only</i>	
<i>Attorney for:</i> Plaintiff		<i>Ref. No. or File No.:</i>			
<i>Insert name of Court, and Judicial District and Branch Court:</i> United States District Court Of Northern District Of California					
<i>Plaintiff:</i> JOE HAND PROMOTIONS, INC. <i>Defendant:</i> PETE BE, et al.					
PROOF OF SERVICE (Summons And Complaint)		<i>Hearing Date:</i>	<i>Time:</i>	<i>Dept/Div</i>	<i>Case Number:</i> CV11-01333-PSG

1. *At the time of service I was at least 18 Years of age and not a party to this action.*
2. *I served copies of the:*
 Summons And Complaint; Civil Cover Sheet, Order Setting Initial Cmc And Adr Deadlines, Welcome To The Usdc Court For The Northern District Of California, Clerk's Office, San Jose Division Package.
3. a. *Party Served:* **DA KINE CAFE, INC. D/B/A DA KINE CAFE (Defendant)**
 b. *Person Served:* **PETE BE, AGENT FOR SERVICE**
4. *Address where the party was served:* **153 E. FREMONT AVENUE
 SUNNYVALE, CA 94087**
5. *I served the party:*
 a. **by personal service** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Tue, Mar. 22, 2011 (2) at: 2:02PM
6. *The "Notice to the Person Served" (on the Summons) was completed as follows:*
 b. as the person sued under the fictitious name of: **D/B/A DA KINE CAFE**
 c. on behalf of: **DA KINE CAFE, INC.**
 Under CCP 416.10 (corporation)
7. *Person who served the papers:*
 a. **THOMAS J. BOWMAN, JR.**
 b. **D & T SERVICES, LTD.**
 2146 N. Main Street, Suite A
 P.O. Box 5383
 Walnut Creek, CA 94596
 c. (925) 947-1221
 d. *The Fee for service was:* **\$60.00**
 e. I am: (3) Registered California process server.
 (i) *Independent Contractor*
 (ii) *Registration No.:* **25**
 (iii) *County:* **SANTA CLARA**
 Recoverable Costs Per CCP 1033.5(a)(4)(B)

8. *I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.*

Date: Mar. 28, 2011

PROOF OF SERVICE

(THOMAS J. BOWMAN, JR.)

DAVOLI.150994