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8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **San Jose Division**

11 -----X
 12 JOE HAND PROMOTIONS, INC.,
 13 Plaintiff,

Case No.: CDC-01333-LHK

14 vs.

15 PETE BE, Individually, and as an officer,
 16 director, shareholder, and/or principal of
 17 DA KINE CAFÉ, INC. d/b/a
 18 DA KINE CAFÉ
 19 153 E. Fremont Avenue
 20 Sunnyvale, CA 94087,

21 **MEMORANDUM OF**
 22 **POINTS AND AUTHORITIES**
 23 **IN SUPPORT OF PLAINTIFF'S**
 24 **APPLICATION FOR DEFAULT**

25 Defendants.
 26 -----X

27 Plaintiff, Joe Hand Promotions, by and through its attorney of record, David J. Davoli,
 28 Esq., files the instant Memorandum of Points and Authorities in support of Plaintiff's
 29 Application for Default Judgment against Defendants, Pete Be and Da Kine Cafe, Inc. d/b/a Da
 30 Kine Café, ("Defendants"), and in support thereof avers as follows:

31 **A. INTRODUCTION**

32 This is an "Anti-Piracy" case involving the Federal Communications Act of 1934, as
 amended (the "Communications Act"). The Communications Act protects against the piracy of
 radio and television signals. See 47 U.S.C. §§ 553¹ and 605.² In the case *sub judice*, the

¹ 47 U.S.C. § 553 provides, *inter alia*, that:

No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law.

1 averments that Defendants, Pete Be and Da Kine Cafe, Inc. d/b/a Da Kine Cafe (“Defendants”),
2 illegally intercepted the closed-circuit telecast of “UFC 119: Mir v. Cro Cop” Broadcast,
3 including all undercard bouts and the entire television broadcast, scheduled for September 25,
4 2010, (hereinafter referred to as the “Broadcast”), and exhibited the Event in Defendants’
5 Establishment, “Da Kine Café” (the “Establishment”), without paying the licensing fee to
6 Plaintiff, are deemed admitted.
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9 **B. PROCEDURAL HISTORY**

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11 This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 47 U.S.C. §§ 553 and 605
12 and venue is proper pursuant to 28 U.S.C. § 1391(b). On March 21, 2011, Plaintiff filed the
13 Complaint against Defendant.³ For service on Defendants, Plaintiff refers the Court to Doc.
14 Nos. 5, 6 and 7. Defendants’ answer or other responsive pleadings were due before April 6,
15 2011. No response of any kind was filed by Defendants in this matter.
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18 Plaintiff filed a Request for Entry of Default on Defendant on June 13, 2011. Thereafter,
19 on June 17, 2011 the Court entered a Default. Plaintiff now files the instant Application for
20 Default Judgment.
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24 ² 47 U.S.C. § 605 provides, *inter alia*, that:

25 [n]o person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence,
26 contents, substance, purport, effect or meaning of such intercepted communication to any person. No person not being entitled
27 thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any
28 information therein contained) for his own benefit or for the benefit of another not entitled thereto.

29 ³ Unless otherwise noted, Plaintiff requests that the Court take judicial notice of the matters set out in this Procedural History
30 section, pursuant to FED. R. EVID. 201. See Kinnett Dairies, Inc. v. Farrow, 580 F.2d 1260, 1277 (5th Cir. 1978) (“Courts are
31 particularly apt to take notice of material in court files.”) (citing WEINSTEIN & BERGER, WEINSTEIN’S EVIDENCE 48
32 (Supp. 1977)); Walker v. Blackwell, 360 F.2d 66, 71 (5th Cir. 1966) (Coleman, J., dissenting) (“It is elemental that we are
entitled to take judicial notice of our own records and files.”); Huddleston v. Nelson Bunker Hunt Trust Estate, 102 B.R. 71, 73
(N.D. Tex. 1989) (noting that district court may judicially notice its own files and records) (citing Aloe Crème Laboratories, Inc.
v. Francine Co., 425 F.2d 1295, 1296 (5th Cir. 1970)); Thomas v. Esquivel, 959 F. Supp. 396, 398 (N.D. Tex. 1997) (Fish, J.)
(stating that the court can take judicial notice of its own records); accord Van Woudenberg v. Gibson, 211 F.3d 560, 568 (10th
Cir. 2000) (“[T]he court is permitted to take judicial notice of its own files and records, as well as facts which are a matter of
public record.”).

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C. UNDISPUTED EVIDENCE

Plaintiff provides the following evidence to support a Final Default Judgment against Defendant:

Exhibit "A": Attached as Exhibit "A" is the Affidavit of Joe Hand, Jr., President of Joe Hand Promotions, Inc., forming the basis for an award of statutory damages under the Communications Act. Additionally, the Affidavit includes the following exhibits:

1. A copy of the Distributorship Agreement (redacted) between Plaintiff and the promoter of the Event, providing Plaintiff with the exclusive right to license the exhibition of the Event to commercial establishments such as Defendant's Establishment;
2. A copy of the Affidavit of Tad Whitaker ("Plaintiff's Investigator") an eye-witness, who after viewing an advertisement of the Event, entered into Defendant's Establishment on the night of the Event and observed the Event being exhibited to approximately thirty two (32) patrons at Defendant's Establishment on 3 large screen televisions; and
3. Rate Card for the Event

Exhibit "B": Attached as Exhibit "B" is the Affidavit of David J. Davoli establishing the reasonable and necessary attorneys' fees for prosecution of this action, as well as contingent awards of attorney's fees for post-trial, appellate, and collection legal services.

D. UNDISPUTED FACTS

Pursuant to *Plaintiff's Original Complaint*⁴ and the evidence presented, the following facts are established:

⁴ By Defendant's default, the Court should accept the well pleaded allegations of facts in the Complaint. See e.g., Nishimatsu Constr. Co. v. Houston Nat'l Bank, 515 F.2d 1200 (5th Cir. 1975); Kingvision Pay-Per-View, Ltd. v. Guerra, 2007 U.S. Dist. LEXIS 98667 at *3 (S.D. Tex. Oct. 12, 2007) (Miller, J.) ("Given the defendant's failure to answer the complaint in a timely manner, the court has the authority to accept all well-pleaded facts in plaintiff's complaint as true and to award the relief sought by the plaintiff in this action."); See also, J&J Sports Prods. v. Alvarez, 2009 U.S. Dist. LEXIS 89602 at * 3, f n. 1 (S.D.N.Y. Sept. 10, 2009) (Allegations in the complaint on liability "must be taken as true.").

- 1 1. Defendant operated the Establishment on the night of the Event. See Plaintiff's
2 Original Complaint (Doc. 1) at ¶ 4- ¶14.
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- 4 2. Plaintiff is in the business of marketing and licensing commercial exhibitions of pay-
5 per-view prizefight events. See Exhibit "A" at ¶3.
- 6 3. Plaintiff possessed the proprietary rights to exhibit and sublicense the right to exhibit
7 the Event. See id.
- 8 4. Through a licensing agreement with the promoter of the Event, Plaintiff was licensed
9 to exhibit the Event at closed circuit locations, such as theaters, arenas, clubs,
10 lounges, restaurants and other commercial establishments throughout the State of
11 California. See Exhibit "A-1".
- 12 5. In California, the Event was legally available to commercial establishments only
13 through an agreement with Plaintiff. See Exhibit "A" at ¶3.
- 14 6. In order to safeguard against the unauthorized interception or receipt of the Event, the
15 interstate satellite transmission of the Event was electronically coded or scrambled
16 and was not available to or intended for the use of the general public. If a commercial
17 establishment was authorized by Plaintiff to receive the respective Event, the
18 establishment was provided with the electronic decoding equipment and the satellite
19 coordinates necessary to receive the signal or the establishment's cable or satellite
20 provider would be notified to unscramble the reception, depending upon the
21 establishment's equipment and provider. See id. at ¶9.
- 22 7. Authorized commercial establishments which contracted with Plaintiff were required
23 to pay to Plaintiff a sublicense fee to receive the Event. This sublicense fee is
24 typically based on the capacity of the establishment. Here, Defendant's Establishment
25 had an occupancy code of approximately 90 people, which based on the rate card
26 results in a fee of \$1,100.00 See id. at ¶8
- 27 8. On the date of the Event, without authorization, Defendant intercepted and received
28 or assisted in the interception and receipt of the transmission of the Event, and
29 broadcast or assisted in the broadcast of the Event to the patrons of the Defendant's
30 Establishment. On the night of the Event, Plaintiff's Investigator, who observed the
31 Event being telecast to at least 38 patrons at Defendant's Establishment on five large
32 screen televisions. See id.; Exhibit "A-2".
9. Defendant could not have obtained the transmission of the Event had Defendant not
undertaken specific wrongful actions to intercept, receive and/or exhibit the telecast
of the Event. See Exhibit "A" at ¶9.

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3 **E. ARGUMENTS & AUTHORITIES**

4 **1. THE COMMUNICATIONS ACT**

5 The unauthorized interception and broadcast of either satellite or cable transmissions
6 violate both 47 U.S.C. §§ 553 and 605.5. Accordingly, all acts of unlawful interception, receipt
7 and broadcast of the signal of the Event were a blatant violation of the Federal Communications
8 Act. An opinion from the Southern District of Texas outlines the Congressional intent to protect
9 against unauthorized telecasts⁵:
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12 As an amendment and supplement to the Federal Communications Act, „Congress
13 enacted the Cable Communications Policy Act of 1984 to address „a problem
14 which is increasingly plaguing the cable industry—the theft of cable service.“ The
15 legislative history associated with section 553 and the amendments to section 605
16 reveals [sic] that one of Congress’s principal objectives was to discourage theft of
17 cable services. Thus, Congress enacted a variety of penalties and remedies to
18 „protect the revenue of television cable companies from unauthorized reception of
19 their transmissions.“

20 Garden City Boxing Club, Inc. v. Al-Waha Enterprises, Inc., 219 F. Supp. 2d 769,
21 773 (S.D. Tex. 2002) (citations omitted).
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24 ⁵ See, e.g.:

25 • International Cablevision, Inc. v. Sykes, 75 F.3d 123, 131-33 (2d Cir.), cert. denied, 519 U.S. 929 (1996) (holding that
26 claims of unauthorized broadcasts of cable television transmissions may be brought under both 47 U.S.C. §§ 553 and 605);
27 • KingVision Pay-Per-View, Ltd. v. Jasper Grocery, 152 F. Supp. 2d 438, 442 (S.D.N.Y. 2001) (“[C]ourts in this
28 district have regularly recognized that the telecasts licensed by the plaintiff are covered by the provisions of Section 605”);
29 • Entertainment by J & J, Inc. v. Nina’s Rest. & Catering, 2002 U.S. Dist. LEXIS 8908, 2002 WL 1000286, at *2-3 (S.D.N.Y.
30 May 9, 2002) (determining that defendant’s unauthorized interception and broadcast of a boxing match violated Sections 553 and
31 605 of the Federal Communications Act);
32 • KingVision Pay-Per-View, Ltd v. 2182 La Caridad Rest., Inc., 2002 U.S. Dist. LEXIS 6934, at *8 (S.D.N.Y. April 18, 2002)
(holding that defendant’s unauthorized interception and broadcast of a boxing match violated Sections 553 and 605 of the Federal
Communications Act);
• Time Warner Cable of N.Y. City v. Taco Rapido Rest., 988 F. Supp. 107, 110 (E.D.N.Y. 1997) (determining that both
provisions applied when Defendants illegally intercepted and broadcast a pay-per-view boxing event); and
• Home Box Office v. Gee-Co, Inc., 838 F. Supp. 436, 439 (E.D. Mo. 1993) (finding that defendant’s unauthorized interception of
cable communications services violated Section 553 and its unauthorized display of a satellite broadcast boxing event violated
Section 605, where both violations were committed through the use of a satellite receiver with a “pirate chip” installed).

1 In an effort to deter the unlawful and unauthorized telecasts of events such as that in the
2 instant matter, Congress specifically drafted the Communications Act to provide “both
3 prosecutor[s] and civil plaintiffs [with] the legal tools they need to bring piracy under control.”
4 See TRADEMARK & SATELLITE ACTS, Pub.L. No. 100-667, 1988 U.S.C.C.A.N. (102 Stat.),
5 5577, 5658; see also United States v. Scott, 783 F. Supp. 280, 281 (N.D. Miss. 1992). As a
6 result, the Communications Act provides for severe penalties, both civil and criminal,⁶ for those
7 who intercept, receive and/or broadcast protected communications. See Scott, 783 F. Supp. at
8 281. Moreover, Congress has equated a violation of the Communications Act to theft of service.
9 See TRADEMARK & SATELLITE ACTS, supra at 5642-43. In 1988, in an effort to further
10 deter theft, Congress amended the Communications Act to provide for more severe penalties for
11 violations. See id. at 5657.

12 Accordingly, a party aggrieved under the Communications Act⁷ may recover for violation
13 of Section 605.8 See 47 U.S.C. § 553(c)(3)(A)(ii) and 47 U.S.C. § 605(e)(3)(C)(i)(II).

14 ⁸Moreover, if the Court finds that the violation of the Communications Act was committed
15 “willfully and for purposes of direct or indirect commercial advantage or private financial
16 gain...,” the Court may award additional damages of up to \$100,000.00 for each violation under
17 47 U.S.C. § 605(e)(3)(C)(ii) and \$50,000.00 under § 553(c)(3)(B). Furthermore, pursuant to 47
18 U.S.C. § 605(e)(3)(B)(iii), a Court *shall* award full costs, including reasonably attorneys’ fees.

19 Defendants owned and managed the Establishment and therefore could not have obtained
20 the transmission of the Event absent specific wrongful actions to intercept and/or receive and
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22 ⁶ The criminal penalties include fines and imprisonment. See 47 U.S.C. §§ 553(b)(1) and (2); 47 U.S.C. § 605(e)(1) and (2).

23 ⁷ See 47 U.S.C. § 553(C)(1) and 47 U.S.C § 605(D)(6) (both statutes permit any person aggrieved by a violation of the statute to
24 bring a civil action to recover damages).

25 ⁸ Spencer Promotions, Inc. v. 5th Quarter Enterprises, Inc., No. C 94-0988 CW, 1996 U.S. Dist. LEXIS 8686, at *19 (N.D. Ca.
26 Feb. 21, 1996) (Section 553 not meant to disturb the remedies under Section 605); See also Don King Productions/KingVision v.
27 Maldonado, No. C-97-3550 WHO MED, 1998 U.S. Dist. LEXIS 20165, at *4-6 (N.D. Ca. Dec. 11, 1998); HBO v. Gee-Co., Inc.,
28 838 F. Supp. 436 (E.D. Mo. 1993). Case 4:09-cv-03734 Document 10 Filed in TXSD on 03/19/10 Page 8 of 22

1 broadcast the telecast. In order for an unauthorized commercial establishment to receive a
2 broadcast such as the Event, there must be some wrongful action, such as using an unauthorized
3 decoder, obtaining cable or satellite service and illegally altering the cable or satellite service to
4 bring the signal of the Event into the establishment or moving an unauthorized decoder or
5 satellite card from its authorized location to the establishment. See Exhibit “B” the Affidavit of
6 David J. Davoli at ¶¶ 7 and 10; See Exhibit “A” Affidavit of Joe Hand Jr., at ¶ 9; See also, e.g.,
7 KingVision Pay-Per-View, Ltd. v. Jasper Grocery, 152 F. Supp. 2d 438, 442 (S.D.N.Y. 2001) (In
8 order to access the telecast, it would have been necessary to use an unauthorized decoder, to
9 illegally divert cable service or improperly relocate an authorized decoder. “In any of the these
10 scenarios, the illegality of the action would have been apparent to the perpetrator”); see also
11 Time Warner Cable v. Googies Luncheonette, Inc., 77 F. Supp. 2d 485, 490 (S.D.N.Y. 1999)
12 (when finding willfulness the court stated, “There can be no doubt that the violations were
13 willful and committed for purposes of commercial advantage and private gain. Signals do not
14 descramble spontaneously, nor do television sets connect themselves to cable distribution
15 systems”).

16 To establish liability, all Plaintiff must show is that the Event was shown in Defendants’
17 Establishment and that such exhibition was not authorized by Plaintiff. See KingVision Pay-Per-
18 View, Ltd. v. Lake Alice Bar, 168 F.3d 347, 349 (9th Cir. 1999) (A finding that the bar showed a
19 portion of an event was “the only finding that matters. It compels judgments in favor of
20 KingVision”). Given the deemed admission of Plaintiff’s Complaint allegations, coupled with
21 the evidence of the broadcast, it is clear that Plaintiff has met its burden with respect to liability
22 in this matter.

1 **2. STATUTORY DAMAGES UNDER 47 U.S.C. § 605(E)(3)(C)(I)(II)**

2 As its first basis for relief, Plaintiff requests statutory damages pursuant to 47 U.S.C. §
3 605(e)(3)(C)(i)(II). See Cable/Home Communication Corp. v. Network Productions, Inc., 902
4 F.2d 829, 850 (11th Cir. 1990).⁹ Pursuant to the Communications Act, the amount of statutory
5 damages to which Plaintiff is entitled for the violation shall be not less than \$1,000.00 and not
6 more than \$10,000.00. For the reasons set forth herein, Plaintiff seeks statutory damages
7 pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(II) against Defendant in the amount of \$10,000.00 for
8 Defendant's violation of the Communications Act.
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12 As stated above, and supported by the Affidavits attached hereto, on date of the Event,
13 Defendants or Defendants' agents, servants and/or employees intercepted and received or
14 assisted in the interception and receipt of the live telecast of the Event. Defendants then
15 broadcast or assisted in the broadcast of the Event to the patrons at Defendants' Establishment
16 for viewing therein. The patrons at Defendant's Establishment purchased meals and/or drinks
17 while viewing the Event. See the Affidavit of Tad Whitaker, Exhibit "A-2". The Defendants
18 broadcast the Event to the patrons at Defendants' Establishment without paying any sublicense
19 fees to Plaintiff.
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23 Statutory damages are appropriate where actual damages are difficult to prove. See
24 Lauratex Textile Corp. v. Allton Knitting Mills, Inc., 519 F. Supp. 730, 732 (S.D.N.Y. 1981);
25 Lottie Jonlin Thomas Trust v. Crown Publishers, Inc., 592 F.2d 651, 657 (2d Cir. 1978). The
26 lack of adequate proof of any particular element causes the Court to rely, within its discretion, on
27 the statutory limitations. See F.W. Woolworth Co. v. Contemporary Arts, Inc., 344 U.S. 228, 233
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31 ⁹ It is in the Plaintiff's discretion whether to elect to receive actual or statutory damages. Id. See also, Garden City
32 Boxing Club, Inc. v. Al-Waha Enterprises, Inc., Civil Action No. H-01-2514, 2002 U.S. Dist. LEXIS 16247, at *17 (S.D. Tex.
July 24, 2002) ("A majority of the courts that have dealt with a violation of both sections of the FCA award damages only under
Section 605 because that provision allows for greater recovery for plaintiffs.") (citations omitted).

1 (1952). In the instant case, as more fully discussed below, it would be impossible to determine
2 the full extent of the profits lost by Plaintiff and the additional damages sustained by Plaintiff as
3 a result of Defendant's unlawful actions. Accordingly, Plaintiff elects to receive statutory
4 damages.
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6 As indicated above, the amount of statutory damages to which Plaintiff is entitled for
7 each violation of this section shall be no less than \$1,000.00 nor more than \$10,000.00 for each
8 violation. Id. Plaintiff respectfully requests that this Court award up to the maximum \$10,000.00
9 permissible under the statute.
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11 Before addressing cases that have awarded damages under this section, it is important to
12 note the specific facts of this case. As noted by the uncontroverted Affidavit of Tad Whitaker,
13 Defendant broadcasted the Event on 3 large screen televisions. See Exhibit "A-2." The capacity
14 of Defendant's establishment was approximately 75 people, and three separate head counts
15 while Mr. Whitaker was present revealed the total number of patrons (at various times) to be
16 approximately 32 people. Da Kine Café did not require a cover charge to enter the establishment.
17 Id. Even in such cases of commercial signal piracy where there has been no egregious
18 circumstances noted, the court has the discretion to award significant damages.
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20 For instance, in the case of Joe Hand Promotions, Inc. v. Tidmarsh, 2009 WL 1845090
21 (E.D.Cal. 2009) the Court awarded damages under both sections 605 and 553. While Plaintiff
22 agrees that the Tidmarsh Court did not undertake an analysis of the viability of awarding
23 damages under both sections, Plaintiff does however request that, to the extent possible, this
24 Court look to the award made under section 605 in that case to take into account the aggregate
25 award as representative of an appropriate punishment (While bearing in mind of course, that this
26 Court may not award more than \$10,000.00 per statutory violation). In Tidmarsh:
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1 [T]he summons and complaint were properly served upon
2 Defendant, her default was properly entered, and the complaint is
3 sufficiently well-pled. By her default, Defendant has admitted to
4 willfully violating the referenced statutes for purposes of
5 commercial advantage. Although deterrence of future violations
6 are important objectives of the statutes, the facts before the Court
7 indicate that Defendant's establishment was not large, with a
8 maximum capacity of approximately 50 people. . . . Plaintiff's
9 investigator . . . noted it contained . . . a large television on one
10 side of the establishment and a second, much smaller, television on
11 the opposite side. [He] conducted three head counts while he was
12 present: 23/27/29. He viewed the program on one television, a 55"
13 screen located in the right corner of the establishment. Given the
14 relatively small impact of Defendant's actions, the Court finds that
15 the amount of requested damages should be reduced.

16 *Id.* at *3.

17 Even though the Tidmarsh court found a “small impact,” it nonetheless awarded the
18 \$10,000.00 maximum allowed under section 605(e)(3)(c)(i)(II). *Id.* The Tidmarsh Court also
19 awarded an additional \$10,000.00 in enhanced damages (the Court did not specify a division of
20 this award between sections 605 and 553). *Id.*

21 A similar analysis, leading to a similar result, was utilized in J & J Sports Productions,
22 Inc. v. Esquivel, 2008 WL 4657741 (E.D.Cal. 2008), where the district court found:

23 Here, the summons and complaint were properly served upon
24 Defendant, her default was properly entered, and the complaint is
25 sufficiently well-pled. By her default, Defendant has admitted to
26 willfully violating the referenced statutes for purposes of
27 commercial advantage. Although deterrence of future violations
28 are important objectives of the statutes, the facts before the Court
29 indicate that Defendant's establishment was not large, with a
30 maximum capacity of 75 people. . . . Plaintiff's investigator . . .
31 conducted three head counts while he was there, which were
32 35/35/35. He viewed the program on one television, a 27" screen
located on a wall of the restaurant. Given the relatively small
impact of Defendant's actions, the Court finds that the amount of
requested damages should be reduced.

Id. at 3 (emphasis added).

1 Like Tidmarsh, the Esquivel court awarded total damages of \$30,000.00, \$10,000.00
2 under both sections 553 and 605 and an additional \$10,000.00 in enhanced damages (the Court
3 did not specify a division among the statutes). *Id.*

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5 Another case in which a “minor” violation led to a maximum statutory damages award
6 was J & J Sports Productions, Inc. v. Flores, 2009 WL 1860520, *2 (E.D.Cal. 2009). In Flores,
7 there was no cover charge, no proof that the Defendants profited from their actions, and the three
8 head counts were 35/35/35. Once again, this is comparable to the situation involving Plaintiff
9 herein (no cover charge and three head counts of 35, 37 and 39); see also J & J Sports
10 Productions, Inc. v. George, 2008 WL 4224616 (E.D.Cal. 2008) (Maximum statutory damages
11 awarded where establishment had thirty person capacity and no more than 20 people watching
12 event at any given time; event was broadcast on one 27” television, and there was no cover
13 charge).
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17 Other district courts in the United States have awarded the statutory maximum under
18 section 605 without regard to the underlying facts, but simply because of the unlawful
19 interception and the need for significant deterrence. For example, in Kingvision Pay-Per-View,
20 Ltd. v. Dosani, 2006 WL 3316988 (S.D.Tex. 2006), the court held:
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23 Several factors present in this case favor granting the maximum
24 statutory damages of \$10,000.00, as requested. The record
25 establishes that defendant broadcast the event and failed to appear
26 in this suit. The record establishes the use of an unlawful device,
27 making the violations willful. These factors, the difficulty in
28 detecting unlawful interception, the widespread problem of piracy,
29 the projected loss to plaintiff, and the need for an award sufficient
30 to deter future piracy by defendant and others, weigh in favor of
31 granting maximum statutory damages. Plaintiff has shown the
32 basis for an award of \$10,000.00 in damages under section
605(e)(3)(C)(i)(II).

Id. at 2.2

1 The same factors that led the Dosani Court to award \$10,000.00 in statutory damages are
2 present here. *See also J & J Sports Productions, Inc. v. Lopez*, 2008 WL 2915109, *4 (E.D.Cal.
3 2008) (“The Court also recognizes that deterrence of future violations is a significant objective of
4 §§ 553 and 605. Accordingly, the Court will recommend that Plaintiff’s application be granted
5 and that damages in the sum of \$30,000.00 be awarded to Plaintiff.”); J & J Sports Productions,
6 Inc. v. Rubio, 2008 WL 4360883, *2 (S.D.Tex. 2008) (“Several factors . . . the difficulty in
7 detecting unlawful interception, the widespread problem of piracy, the projected loss to Plaintiff,
8 and the need for an award sufficient to deter future piracy by Defendant and others, weigh in
9 favor of granting maximum statutory damages. The Plaintiff has shown the basis for an award of
10 \$10,000.00 in damages under section 605(e)(3)(C)(i)(II)”); Kingvision Pay-Per-View Ltd. v.
11 Gadson, 2007 WL 2746780, *2-3 (M.D.N.C. 2007) (Awarding \$10,000.00 in statutory damages
12 and \$10,000.00 in enhanced damages against a commercial establishment with a seating capacity
13 of 40, 27 patrons viewing the event on 1 large screen television, and a five dollar cover charge.).
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19 In Kingvision, the “establishment contained seating for approximately 200 people,
20 approximately 34 people were present, and each paid a cover charge of \$3.00.” *Id.* at 2. These
21 factors, however, were not relevant to the Court’s award of statutory damages but, rather, as
22 discussed below, the award of enhanced damages.”
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24 The above cases establish that even where the violations do not appear particularly
25 egregious, maximum statutory damages may be awarded. Plaintiff respectfully requests that this
26 Court consider these cases when determining whether to award Plaintiff up to the maximum
27 permissible under statute.
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1 **3. “ENHANCED DAMAGES” UNDER 47 U.S.C. § 605(E)(3)(C)(II)**

2 Next, Plaintiff respectfully and additionally requests enhanced damages pursuant to
3 section 605(e)(3)(C)(ii). Section 605(e)(3)(C)(ii) permits this Court, in its discretion, to award up
4 to \$100,000.00 in additional damages where “the violation was committed willfully and for the
5 purposes of direct or indirect commercial advantage or private financial gain” 47 U.S.C. §
6 605(e)(3)(C)(ii).
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9 The conclusion that the actions of defendant in cases such as these are “willful” has been
10 clearly established. See Entertainment By J & J, Inc. v. Al-Waha Enterprises, Inc., 219
11 F.Supp.2d 769, 776 (S.D. Tex. 2002) (“Based on the limited methods of intercepting closed-
12 circuit broadcasting of pay-per-view events and the low probability that a commercial
13 establishment could intercept such a broadcast merely by chance” courts have held the
14 unauthorized display of such an event willful); *see also* Garden City Boxing Club, Inc. v.
15 Paquita's Café, Inc., 2007 WL 2783190 at *5 (S.D.N.Y. 2007); J & J Sports Productions, Inc. v.
16 Garcia, 2009 WL 2567891, *4 (S.D.Tex. 2009) (“The Defendant must have engaged in a
17 deliberate act since signals do not descramble spontaneously, nor do television sets connect
18 themselves to cable distribution systems.”) quoting Time-Warner Cable of N.Y. v. Googies
19 Luncheonette, Inc., 77 F.Supp.2d 485, 490 (S.D.N.Y. 1999); Joe Hand Promotions, Inc. v.
20 Martinez, 2008 WL 4619855, *6 (S.D.N.Y. 2008) (“The acquisition of an encrypted signal by
21 defendant undoubtedly required some affirmative action that imply both a degree of technical
22 sophistication and a desire to obtain a benefit to which defendant was not entitled.”).
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28 In addition, the fact that such an interception is done for commercial advantage is also
29 firmly decided. “A defendant who intercepts signals and broadcasts programming without
30 authorization, in a place of business where certain events are shown to the public” is generally
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1 held to have acted willfully and for purposes of commercial advantage.” Garden City Boxing
2 Club, Inc. v. Batista, 2007 WL 4276836, *5 (E.D.N.Y. 2007); citing Am. Cablevision of Queens
3 v. McGinn, 817 F.Supp. 317, 320 (E.D.N.Y. 1993) (further citation omitted); see also Joe Hand
4 Promotions, Inc. v. Garcia, 546 F.Supp.2d 383, 386 (W.D.Tex. 2008) (“Because of the extreme
5 unlikelihood that Defendant could inadvertently have acquired the signal to display the fight,
6 coupled with its failure to file an answer denying Plaintiff’s allegations on this issue, the Court
7 finds that Defendant [acted] willfully and for purposes of direct or indirect commercial
8 advantage.”) (statutory citation omitted).
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11

12 Finally, “the court may draw an inference of willfulness from a defendant’s failure to
13 appear and defend an action in which the plaintiff demands increased statutory damages based on
14 allegations of willful conduct.” Garden City Boxing Club, Inc. v. Frezza, 476 F.Supp.2d 135,
15 138 (D. Conn. 2007); quoting J & J Sports Productions, Inc. v. Drake, 2006 WL 2927163, *5
16 (E.D.N.Y. 2006).
17
18

19 With respect to the proper amount of enhanced damages, the case of Joe Hand
20 Promotions, Inc. v. Haddock, 2009 WL 2136117 (E.D.Cal. 2009) is instructive. In Haddock, the
21 district court awarded a total of \$50,000.00 in damages to Plaintiff. *Id.* at 2. The court awarded
22 \$25,000.00 under both sections 553 and 605; while not specifically broken down, at a minimum,
23 the enhanced damages must have been \$15,000.00. *See* 47 U.S.C. § 605(e)(3)(c)(i)(II) (setting
24 maximum statutory award at \$10,000). In Haddock, the Court found that because the television
25 was broadcast on five televisions and because the establishment was located in a “relatively
26 urban city” with a population in excess of 100,000, the impact was more than minimal. *Id.* Here,
27 the Event was being displayed on two 50 inch televisions when Martin Dante, Plaintiff’s
28 investigator, was present.
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1 Next, the case of Kingvision Pay-Per-View, Ltd. v. Gutierrez, 544 F.Supp.2d 1179
2 (D.Colo. 2008), also provides a good analogy. In Gutierrez there were 24 patrons in the
3 establishment and the court awarded \$5,000.00 in statutory damages under section
4 605(e)(3)(c)(i)(II). *Id.* at 1184. In determining the appropriate enhanced damages award, the
5 district court noted that the actions of defendant were willful, the problems of piracy were
6 pervasive, and that the award needed to serve as a deterrent. *Id.* at 1185. The Court, however,
7 also found certain factors *did not* support a substantial damages award. *Id.* (emphasis added).
8
9 The Court observed that, “Plaintiff presents no evidence of prior violations; Plaintiff provides no
10 evidence of significant earnings by Defendant that night; Plaintiff’s loss of revenue for one
11 establishment is not significant; there is no evidence of advertising to entice a larger crowd; the
12 restaurant did not have a cover charge; and there is no evidence that the restaurant charged a
13 premium for food and drinks that night.” *Id.* After taking all of these factors that militate against
14 enhanced damages into account, the court still awarded an additional \$15,000.00. *Id.*

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19 In Garden City Boxing Club, Inc. v. Frezza, 476 F.Supp.2d 135 (D. Conn. 2007), the
20 district court noted that the violations were not particularly egregious. There was only one illegal
21 interception, only 33 people were present in the establishment and only a minimal profit was
22 made by the defendant. *Id.* at 139. In addition, it was not established that defendant had ample
23 financial resources. *Id.* Even under these circumstances, however, the court noted:

24
25
26 plaintiff has established knowing and willful violation, for
27 commercial advantage and/or private financial gain, and explains
28 the loss in revenue and detrimental effect upon lawful residential
29 and commercial cable customers as a result of signal piracy, which
30 interest and concomitant need for deterrence other courts have
31 recognized . . . Accordingly, taking into account awards granted by
32 other courts in this district under similar circumstances, the Court
will award \$5,000 in statutory damages, plus an additional \$10,000
for the willful nature of defendant’s violation, done for
commercial advantage and/or private financial gain.

1 *Id.* at 139-40 (emphasis added) (internal citation omitted).

2
3 In Kingvision Pay-Per-View, Ltd. v. Dosani, *supra*, with respect to enhanced damages
4 under section 605(e)(3)(C)(ii) (called “punitive damages” by the court) the court noted:

5
6 The record shows that defendant showed the Event for the purpose of increasing
7 the business, customers, and sales revenue. The record does not indicate the
8 amount of profit, if any, defendant derived from unlawfully broadcasting the
9 Event. The record does show that the defendant’s establishment contained seating
10 for approximately 200 people, approximately 34 people were present, and each
11 paid a cover charge of \$3.00. Based on the affidavit showing an intentional
12 violation, this court finds that the record supports a finding of a willful violation
13 an award of \$25,000.00 additional damages beyond the \$10,000.00.

14 *Id.* at *2 (emphasis added).

15 Dosani is also similar to the case herein. While the Defendant did not charge a cover, and
16 the establishment in Dosani was equivalent, the number of people present was comparable and it
17 is clear that in both cases the event was shown for the purpose of increasing business, customers
18 and sales revenue.

19 Other cases that awarded substantial enhanced damages in a default situation have
20 included KingVision Pay-Per-View, Ltd. v. Guerra, 2007 WL 3001659 (S.D. Tex. 2007)
21 (awarding statutory damages of \$10,000.00 and enhanced damages of \$50,000.00)3; Joe Hand
22 Promotions Inc. v. Chapa, 2009 WL 2215124 (S.D. Tex. 2009) (finding requested damages of
23 \$10,000.00 under section (i)(II) and \$50,000.00 under section (ii) to be reasonable)4; Rubio,
24 *supra*, (awarding \$25,000.00 in enhanced damages under section 605(e)(3)(C)(ii)). The Guerra
25 Court did not address the underlying specific facts of the case.

26 Chapa was not a default case. The defendants originally had Answered and the case was
27 conditionally dismissed while the parties worked on a settlement. *Id.* at *1. When the parties
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1 were unable to reach an agreement, Plaintiff moved to reinstate the case. *Id.* The Defendants took
2 no further action and, ultimately, summary judgment was granted in Plaintiff's favor. *Id.*
3
4 In Innovative Sports Marketing v. Medeles, 2008 WL 1758886 (S.D.Tex. 2008), with respect to
5 enhanced damages under section 605(e)(3)(C)(ii) the court noted that, "Because the defendant
6 has not contested the allegations of willfulness, and default judgment has been granted, the court
7 considers the defendant's actions to be willful and for the purpose of commercial advantage." *Id.*
8
9 at 2. The court awarded an increase in damages of \$50,000.00, "because the defendant is
10 considered to have admitted willfulness, and to deter future violations of § 605(a)." *Id.*; *citing*
11 Al-Waha, 219 F.Supp.2d at 716 for ("The deterrence of future violations ... is one of the
12 objectives of the statute."); *see also* Garden City Boxing Club, Inc. v. Batista, 2007 WL
13 4276836, 4 (E.D.N.Y. 2007) ("In exercising [its] discretion [to award enhanced damages], courts
14 should be mindful of the difficulty in detecting such violations and the widespread problem of
15 piracy The court should therefore grant damages in an amount which achieves the deterrent
16 purposes of the statute.").

17
18
19
20 Next, while it may be rare, district courts have awarded the statutory maximums in piracy
21 cases. In fact, a district court in California also has awarded the "maximum" under section 605.
22
23 See J & J Sports Productions, Inc. v. Ferreyra, 2008 WL 4104315 (E.D.Cal. 2008). Plaintiff
24 calls attention to the fact that Ferreyra involved a repeat offender and that the district court took
25 that fact into account in making its award. *See id.* In that regard, this case is similar given the
26 continued advertisement of the UFC events.
27

28
29 Plaintiff respectfully requests that this Court consider the foregoing cases when
30 determining an appropriate enhanced award to Plaintiff.
31
32

1 **4. NOMINAL DAMAGES HAVE PROVEN INSUFFICIENT TO COMBAT PIRACY**

2 Finally, Plaintiff would like to address those cases that have awarded more nominal
3 damages. *See e.g. J & J Sports Productions, Inc. v. Medinarios*, 2008 WL 4412240 (N.D.Cal.
4 2008) (Awarding \$1,000.00 in statutory damages and \$5,000.00 in enhanced statutory damages);
5 *J & J Sports Productions, Inc. v. Manzano*, 2008 WL 4542962 (N.D.Cal. 2008) (Awarding \$250
6 in total damages); *J & J Sports Productions, Inc. v. Man Thi Doan*, 2008 WL 4911223 (N.D.Cal.
7 2008) (Awarding \$2,500.00 in total damages). As the Court is aware, and as a simple Lexis or
8 Westlaw search reveals, there are hundreds of these types of cases throughout the nation.

9 Plaintiff respectfully submits that those cases that award nominal damages are a major
10 reason why there have been little to no decrease in piracy.

11 As noted in *J & J Sports Productions, Inc. v. Castrillon*, 2009 WL 1033364, *3 (E.D.N.Y.
12 2009), “Absent substantial financial penalties, the defendant will likely continue to illegally
13 display the plaintiff’s programming and other such establishments will follow suit. The plaintiff
14 cannot practicably investigate all these infractions, nor should they be expected to do so.” *Id.*
15 (internal citation omitted). “In order to preserve the plaintiff’s livelihood, the Defendant must be
16 held accountable for an amount significant enough to deter such conduct. Absent such a
17 deterrent, the defendant and other potential infringers will be encouraged to violate the law, as
18 infringement would be more cost effective than contracting with the plaintiff.” *Id.*

19 As willful violators of the applicable statutes, the Defendants must be held accountable
20 for a substantial amount above the market value of the sublicense fee to broadcast the Event.
21 Otherwise, other commercial establishments “would be encouraged to violate the law knowing
22 the full extent of their liability would not exceed what they would have to pay for a license on
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1 the open market.” Fallaci v. New Gazette Literary Corp., 568 F.Supp. 1172, 1174 (S.D.N.Y.
2 1983).

3 **5. DAMAGES FOR CONVERSION**

4
5 Finally, with respect to the conversion claim, damages for conversion are based on the
6 value of the property at the time of the conversion (plus interest). Cal. Civ. Code § 3336; *see*
7 Krueger v. Bank of America (1983) 145 Cal.App.3d 204, 215, 193 Cal.Rptr. 322. In addition, the
8 plaintiff in a conversion action is entitled to, “A fair compensation for the time and money
9 properly expended in pursuit of the property.” Cal. Civ. Code § 3336. In this case, Plaintiff seeks
10 \$1,800.00 in conversion damages, the amount Defendant would have been required to pay had
11 he ordered the *Event* from Plaintiff.
12
13

14 **6. ATTORNEYS FEES AND COSTS**

15
16 Plaintiff requests an award of attorneys’ fees and costs pursuant to 47 U.S.C. §§
17 553(c)(2)(C) and 605(e)(3)(B)(iii). Under Sections 553(c)(2)(C) and 605(e)(3)(B)(iii), the award
18 of attorney’s fees is mandatory. According to Section 605(e)(3)(B)(iii), “[t]he Court... *shall*
19 direct the recovery of full costs, including awarding reasonable attorneys’ fees...”
20

21
22 Plaintiff seeks an award of attorneys fees in the amount of Three Thousand Nine Hundred
23 Sixty Two Dollars and Fifty Cents (\$3,962.50) for the prosecution of this action through the final
24 Judgment requested. See Exhibit “B” the Affidavit of David J. Davoli. In addition, Plaintiff also
25 seeks a contingent award of attorney’s fees in the event certain post-trial, pre-appeal and
26 appellate services are rendered and do not lead to the a reversal of the Judgment as provided in
27 the Affidavit of David J. Davoli.
28

29
30 Plaintiff is also entitled under the applicable statute to his costs. In the instant matter,
31 Plaintiff has incurred the following costs:
32

1	1.	Investigator:	\$500.00
2	2.	Filing of Complaint:	\$350.00
3	3.	Process Server:	\$188.98
4			
5		TOTAL	\$1038.98

6
7 Plaintiff is entitled to recover his full costs pursuant to the applicable statutes, and respectfully
8 requests an award reflecting same.

9
10 **F. CONCLUSION**

11 Plaintiff respectfully requests that the Court sign and cause to be entered a judgment for
12 Plaintiff against Defendant awarding Plaintiff:

13 (1) Statutory damages pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(II) from Defendant in
14 the amount of \$10,000.00;

15 (2) Additional damages pursuant to 47 U.S.C. § 605(e)(3)(C)(ii) from Defendant in
16 the amount of \$100,000.00;

17 (3) Attorneys' fees from Defendant, in the amount of Three Thousand Nine Hundred
18 Sixty Two Dollars and Fifty Cents (\$3,962.50) a breakdown of which is presented in the
19 Affidavit of David J. Davoli (for prosecution of this case through default judgment); along with
20 attorney's fees for post-trial and appellate services;

21 (4) Costs relating to the prosecution of this matter in the amount of \$1,038.98;

22 (5) A permanent injunction that enjoins Defendant from ever intercepting or
23 exhibiting an unauthorized program in violation of the Federal Communications Act;

24 (6) Costs and post-judgment interest at the highest lawful rate; and
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1 (7) Such other and further relief to which Plaintiff is entitled.

2 Respectfully submitted,

3
4 /s/ David J. Davoli

5
6 _____
7 David J. Davoli, Esq. (DD-9073)
8 DAVOLI LAW FIRM
9 207 West 25th Street, Suite 400
10 New York, NY 10001
11 Tel: 212.929.1649
12 Fax: 212.206.7996
13 E-mail: david@davolilaw.com

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15 Attorney for Plaintiff
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EXHIBIT "A"

1 “Broadcast”) . Our company thereafter marketed the sub-licensing (commercial exhibition)
2 rights in the *Program* to our company’s commercial customers (i.e., casinos, racetracks, bars,
3 restaurants, and nightclubs). A true and correct copy of the Agreement is attached to Plaintiff’s
4 Motion for Default as Exhibit “A-1”.

5
6 4. Simultaneously with the advent of pay-per-view programming, we began to
7 experience serious erosion in the sales of our own proprietary programming to our commercial
8 customers throughout the United States of America. To protect ourselves, we endeavored to find
9 out what was the basis for the erosion and determined from our customers that the cause of the
10 erosion of our customer base was the rampant piracy of our broadcasts by unauthorized and
11 unlicensed establishments (signal pirates).
12

13 5. In response, we embarked upon a nationwide program to police our signals for the
14 purpose of identifying and prosecuting commercial establishments which pirate our
15 programming (including the Mir and Cro Cop event, the subject programs involved in this
16 lawsuit).
17

18 6. Specifically, JOE HAND PROMOTIONS, INC. retained, at considerable
19 expense, auditors and law enforcement personnel to detect and identify signal pirates. To ensure
20 that only illegal locations were visited by the auditors, our company compiled our confidential
21 list of customers (authorized and legal locations) who paid the required license fee to broadcast
22 the *Program*, and this list was distributed to participating auditing and law enforcement agencies
23 in strict confidence.
24

25 7. The above-referenced *Broadcast* contained several televised under-card bouts and
26 color commentary, along with the main event prizefight between Mir and Cro Cop. As set forth
27 within the sworn Affidavit of Tad Whitaker, it was the undercard fight between Serra and Lytle
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1 which Mr. Whitaker observed as being *unlawfully* exhibited by the establishment doing business
2 as “Da Kine Café” on Saturday, September 25, 2010 (as at no time did this establishment ever
3 lawfully license the *Program* from our company for such a purpose). A true and correct copy of
4 the Affidavit of Tad Whitaker is attached Hereto as exhibit “A-2.”

5
6 8. Domestic commercial establishments, which contract with us, were required to
7 pay my company a commercial sublicense fee to broadcast the *Program*. This sublicense fee for
8 the *Program* was based on the capacity of the establishment and varies for each event. For
9 example, for this particular event, if a commercial establishment had a maximum fire code
10 occupancy of 75 persons, the commercial sublicense fee would have been \$1,100.00 A true and
11 correct copy of the Rate Card is attached hereto as Exhibit “A-3.”

12
13 9. It is essential that I communicate to the Court that to the best of my knowledge
14 our programming is *not* and cannot be mistakenly, innocently, or accidentally intercepted. Some
15 methods that a signal pirate can unlawfully intercept and broadcast our programming are as
16 follows without limitation:

17
18 A. The use of a “blackbox,” “hotbox,” or “pancake box” which is purchased
19 for a fee and when installed on a cable TV line will allow for the descrambled reception of a pay-
20 per-view broadcast, or

21
22 B. The use of a “smartcard” or “test card” or “programming card” which is
23 purchased for a fee and when installed on a DSS satellite receiver line will allow for the
24 descrambled reception of a pay-per-view broadcast, or

25
26 C. The purposeful misrepresentation of a commercial establishment as a
27 residential property to allow the fraudulent purchase of a pay-per-view (or prohibited)
28 programming at the residential rate, or

1 D. The use of illegal cable drop or splice from an apartment or home adjacent
2 to the commercial establishment premises (which would purchase the broadcast at a residential
3 price and divert the program to the commercial establishment), and/or
4

5 E. The purchase of other illegal unencryption devices, and the purchase of
6 illegal satellite authorization codes which are readily available on the internet, in trade
7 publications, and through “word of mouth.”

8 10. Turning these facts to the matter before the Court I have been advised by counsel
9 that the Court has wide discretion in the awarding of statutory damages for nefarious, illegal and
10 debilitating activities of signal pirates which are injurious to our company and our lawful
11 customers.

12 11. It is respectfully submitted to this Honorable Court that the unchecked activity of
13 signal piracy not only has resulted in our company’s loss of several millions of dollars of
14 revenue, but also has a detrimental effect upon lawful residential and commercial customers of
15 cable and satellite broadcasting whose costs of service are increased significantly by these illegal
16 activities, including the deprivation of tax revenue to the communities where our potential
17 customers reside, and the denial of benefits such tax revenue would provide the residents of such
18 communities.

19 12. We, at JOE HAND PROMOTIONS, INC., believe that the persistent signal
20 piracy of our programming costs our company, our customers, and their communities millions of
21 dollars annually resulting in part, from the perceived lack of consequences (including nominal or
22 minimal damage awards by the Courts who hear our cases).

23 13. For these reasons I ask this Honorable Court to grant a substantial allowance for
24 statutory damages due to the fact that such actions are *per se* intentional and do not and cannot
25

1 occur without the willful and intentional modification of electronic equipment, the willful and
2 fraudulent misrepresentation of a commercial establishment as a residential one, the removal of
3 cable traps or devices designed to prevent such unauthorized exhibits, or other willful and/or
4 international acts purposely designed to obtain our programming unlawfully.
5

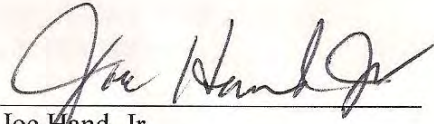
6 14. I am also troubled by the fact that the Courts have placed undue weight upon
7 whether the *promotion* of programming by the signal pirates (rather than the *exhibition* of the
8 programming itself) was done willfully and/or for commercial benefit. I would ask the Court to
9 recognize that the willful and purposeful acts necessary to intercept and exhibit the programming
10 precede whatever steps are, or are not taken, by the pirate establishment to promote our
11 programming to their customers.
12

13 15. I would also ask the Court to recognize that the pirates do not generally advertise
14 the fact that they intend to exhibit our programming unlawfully to the public for the practical
15 reason that they wish to avoid the unessential risk of detection. This of course does not preclude
16 the very real possibility fact that the unlawful exhibition may well have been promoted by word
17 of mouth or advertising that went undetected by the auditors, to their own customers to increase
18 their financial gain on the night our programs are broadcast at their establishment.
19

20 16. In addition, it is extremely unlikely that a pirate establishment would increase the
21 costs of food or drink on the evening they are broadcasting one of our programs unlawfully. In
22 my personal experience gained through many years in the promotion industry, it is most
23 uncommon that even our legal locations would employ such a method to recover some of our
24 commercial license fee back from their own customers. I would point out however that since our
25 auditors do not benchmark the prices charged for food or drink at the pirate locations subsequent
26 to conducting the field surveillance on the evening our programming is broadcast, it is
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Further, Affiant sayeth not.



Joe Hand, Jr.

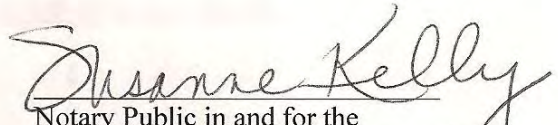
STATE OF PENNSYLVANIA

§
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COUNTY OF BUCKS

This instrument was acknowledged before me on the 17th day of August, 2011.





Notary Public in and for the
State of Pennsylvania
My commission expires: 10/9/13.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
SUSANNE KELLY, Notary Public
Lower Southampton Twp., Bucks County
My Commission Expires October 9, 2013

EXHIBIT "A-1"

DISTRIBUTORSHIP AGREEMENT

This Distributorship Agreement ("Agreement") is made and entered into effective as of December 1, 2007, by and between Zuffa, LLC d/b/a the Ultimate Fighting Championship® ("UFC") organized under the laws of the State of Nevada, with its principal place of business located at 2960 West Sahara, Suite 100, Las Vegas, Nevada 89102 ("ZUFFA"), and Joe Hand Promotions, Inc., a corporation chartered in the State of Pennsylvania with its principal place of business located at 407 E. Pennsylvania Boulevard, Feasterville, Pennsylvania 19053 ("JHP").

RECITALS

WHEREAS, ZUFFA produces a variety of entertainment events, centered around live pay-per-view broadcasts of UFC events of mixed martial arts competitions; (hereinafter referred to as the "Event(s)")¹;

WHEREAS, JHP is engaged in the business of promoting and distributing commercial closed-circuit events;

WHEREAS, ZUFFA desires to show its Events on closed circuit television and JHP desires to promote and distribute all pay-per-view Events on closed circuit television in continental United States, Alaska, Hawaii, and Puerto Rico (the "Market Territory");

NOW THEREFORE, in consideration of the above and for other valuable consideration ZUFFA and JHP agree as follows:

APPOINTMENT AND NATURE OF JHP

1. **Appointment of JHP.** Subject to the terms and conditions set forth in this Agreement, ZUFFA hereby grants JHP the exclusive right during the Term (defined below) to distribute the Events through the Distribution Channel (defined below) in the Market Territory, and JHP agrees fully and faithfully to perform and discharge the duties, obligations, and responsibilities provided for in this Agreement. ZUFFA represents that it has no other such agreements with any other distributor in the Market Territory. Permitting distribution of the Events by any other entity in the Market Territory by another distributor shall be considered a breach of this Agreement.

2. **Distribution Channel.** JHP shall be the exclusive distributor of commercial closed circuit television of the Events and may only distribute the Events through closed circuit television only to commercial outlets (the

¹ JHP understands that ZUFFA produces other UFC Events for broadcast of free television, such as Spike TV and potentially other television outlets, and JHP acknowledges and agrees that the rights described herein have no control over such other UFC television programming.

"Distribution Channel".) Unless prior written approval by ZUFFA is received, closed circuit television as defined herein does not include (i) closed circuit television locations or establishments located in Clark County, Nevada; (ii) closed circuit television locations or establishments located within thirty (30) miles of the Event site; and (iii) closed circuit located at any hotel-casino within a twenty (20) mile radius from the Event site or any affiliate hotel-casino of the Event host hotel-casino or Event host sponsor(s). Additionally, nothing herein shall in anyway limit or restrict ZUFFA's absolute rights to show the Events to residences, hotel rooms, dormitories, military base residential living, and all similar locations, via any and all means and modes of pay-per-view television, Internet, wireless, broadband, and all other means or modes now known or hereafter developed.

3. **Authority and Capacity.** JHP is an independent contractor, is not an agent of ZUFFA, and is not authorized to waive any right or to incur, assume or create any debt, obligation contract or release of any kind in the name of or on behalf of ZUFFA. Nothing herein shall be construed so as to create an employer-employee, agency, partnership, or joint venture relationship between the parties hereto.

4. **Scope of Event.** JHP agrees that it will not electronically distribute directly or indirectly, through itself or others, any other non-boxing-affiliated fighting contests, including mixed-martial arts contests ("MMA"), in the Market Territory during the term of this Agreement or any extensions thereof. For purposes of this section, MMA shall be defined as unarmed combat involving the use of a combination of techniques from different disciplines of the martial arts, including, without limitation, grappling, kicking and striking. It is understood that this provision does not include World Wrestling Entertainment. Regulated boxing matches undertaken under the auspices of a recognized boxing federation and/or a state boxing commission shall not be considered a competing Event for the purpose of this Agreement.

5. **Term.** Th

[REDACTED]

6. **Estimated Number of Events.**

it [REDACTED] or

JHP OBLIGATIONS

7. **Best Efforts to Market.** JHP shall exercise its best efforts to advertise, promote and market the Event and to promote the goodwill of ZUFFA and the market reputation of the Event. JHP shall conduct its activities related to the marketing of the Event in a professional manner and in accordance with the reasonable policies and procedures of ZUFFA and the terms of this Agreement.

7.1



8. **Promotional Materials Accounting.**



9. **Advertising.** JHP shall advertise the Event in a manner that will develop customer interest and confidence in ZUFFA and in the Event. JHP shall be entitled, during the term of this distributorship created by this Agreement to advertise and hold itself out as an authorized distributor of the Event through the Distribution Channel. JHP shall submit examples of all proposed advertisements and other promotional materials of the Event to ZUFFA for inspection and JHP shall not use any such advertisements or promotional materials without having received the prior written consent of ZUFFA to do so. JHP shall not, pursuant to

this Agreement or otherwise, have or acquire any right, title or interest in or to ZUFFA's Trademarks.

9.1 JHP shall prepare all documentation necessary to meet the legal requirements of the closed-circuit distribution, including but not limited to: (i) preparation of licenses and technical documentation for each location, (ii) distribution of marketing and promotional materials, and (iii) collection of all funds and preparation of sales and revenue reports in a timely fashion.

9.2 JHP shall provide direct marketing, such as mailing pieces and other forms of advertising to create awareness of the program. Such direct marketing shall comply with all Federal, State and local laws.

9.3 With approval by ZUFFA, JHP may utilize the services of other regional closed-circuit distributors to maximize the sales and distribution efforts on this program. Any such company shall be bound under the same terms and conditions listed in any contract between JHP and ZUFFA. ZUFFA shall not be subject to any double commissions and JHP agrees to be solely responsible for any and all commissions, fees and other amounts that may be due to any sub-distributors. JHP shall indemnify, defend and hold ZUFFA, its officers, directors, members, employees and agents harmless from and against all claims of other regional closed-circuit distributors.

10. **Security.** JHP shall make a concentrated effort to discourage theft of service. Upon written demand, JHP shall provide ZUFFA with a complete list of verifiable customers. In an effort to protect the closed-circuit broadcast rights, JHP will coordinate and finance its own piracy program. [REDACTED]

11. **Event Casino Fees.** [REDACTED]

ZUFFA OBLIGATIONS

12. ZUFFA hereby grants JHP permission to enter into agreements with DirecTV, Dish Network, other DBS satellite providers and individual cable system operators, which shall act as authorization sources for their commercial customers utilizing that technology to broadcast the event. If necessary, JHP shall ask ZUFFA and ZUFFA shall cooperate to assist in its negotiations with these digital authorization sources in order to reach an agreement on terms for

authorizing the requested commercial account. JHP shall use its best efforts to obtain the most favorable terms and fees from all such providers.

FINANCIAL

13. [REDACTED]

13.1 [REDACTED]

13.2 [REDACTED]

N [REDACTED]

CP [REDACTED]

the [REDACTED]

at [REDACTED]

14. [REDACTED]

INTELLECTUAL PROPERTY AND INDEMNIFICATION

15. *Proprietary Rights.* [REDACTED]

territory

15.1 J

[REDACTED]

15.2 V

[REDACTED]

16. **Unauthorized Use.** JHP agrees to give ZUFFA prompt written notice of any unlicensed use by third parties of ZUFFA's trademarks or tradenames and that JHP will not, without ZUFFA's written consent, bring or cause to be brought any criminal prosecution, lawsuit, or administrative action for infringement, interference with or violation of any rights to trademarks or tradenames. JHP

agrees to cooperate with ZUFFA, and, if necessary, to be named by ZUFFA as a sole complainant or co-complainant in any action against an infringer of the ZUFFA's trademarks or tradenames, and notwithstanding any right of JHP to recover same, legal or otherwise, JHP agrees to pay ZUFFA, and hereby waives all claims to, all damages or other monetary relief recovered in such action by reason of a judgment or settlement whether or not such damages or other monetary relief, or any part thereof, represent or are intended to represent injury sustained by JHP as a distributor hereunder; in any such action against infringer, ZUFFA agrees to reimburse JHP for reasonable expenses incurred at ZUFFA's request, including reasonable attorney's fees if ZUFFA has requested JHP to retain separate counsel, or has approved the retention of separate counsel. JHP shall have the right but not the obligation to assert any independent claims it may have against an alleged infringer and, in such case, any damages awarded to JHP on its independent claims shall be the sole property of JHP. To the extent that independent claims are asserted but no allocation of damages is made then all such damages shall be allocated as though they were revenue.

17. **Confidentiality.** JHP

[REDACTED]

INDEMNIFICATION

18. ZUFFA shall indemnify defend and hold JHP harmless from and against all claims, damages, costs and expenses, including reasonable attorney's fees, that may be asserted against or incurred by JHP in connection with the performance of its obligations under this Agreement, including but not limited to the obligations of confidentiality.

19.

20.

21.

22.

23

[REDACTED]

23

[REDACTED]

23.6

[REDACTED]

days

24.

[REDACTED]

ent:

24.1

[REDACTED]

24.2

[REDACTED]

25. **Remedies.**



26. **Regulatory Termination.** In the event that a Regulatory Problem (as hereinafter defined) arises at any time as a result of this Agreement or the underlying relationship between the ZUFFA and JHP (or any of their affiliates, members or subsidiaries), ZUFFA shall take all action deemed reasonably necessary by its officers, members, managers or advisors, including, without limitation, amending or terminating this Agreement, in order to eliminate such Regulatory Problem. For purposes of this Section, "Regulatory Problem" means any circumstances such that ZUFFA's continued affiliation or contractual relationship with JHP (or any affiliate thereof), is deemed likely, in the reasonable judgment of ZUFFA, based on a verbal or written inquiry or verifiable information or information received from any gaming or athletic authority, to preclude or materially delay, impede, jeopardize or impair the ability of ZUFFA or any of its officers, owners, members, managers, employees or affiliates to obtain or retain any gaming or athletic license, or such as may result in the imposition of materially burdensome terms and conditions on any such gaming or athletic license, or such as could subject ZUFFA or any of its officers, owners, members, managers, employees or affiliates to any disciplinary proceedings by any gaming or athletic authority, or such as would constitute a violation of the gaming or athletic laws.

FORCE MAJEURE AND COMPLIANCE WITH LAWS

27. **Force Majeure.** If either party is delayed, or interrupted in, or prevented from the performance of its obligations hereunder by reason of an act of God, fire, flood, war, public disaster, strikes or labor difficulties, governmental enactment, regulation or order, or any other cause beyond its control, and if such party has given the other party prompt notice hereof and, on request, such confirmatory documentation as the other party may reasonably request and has in good faith kept the other party apprised of when the delay, interruption or prevention is expected to be resolved, the time for the performance of the party's obligations shall thereupon be extended for a period equal to the duration of the contingency that occasioned the delay, interruption or prevention, but not exceeding sixty (60) days unless otherwise mutually agreed. If the force majeure condition continues for more than sixty (60) days, either party may terminate this Agreement upon written notice to the other party.

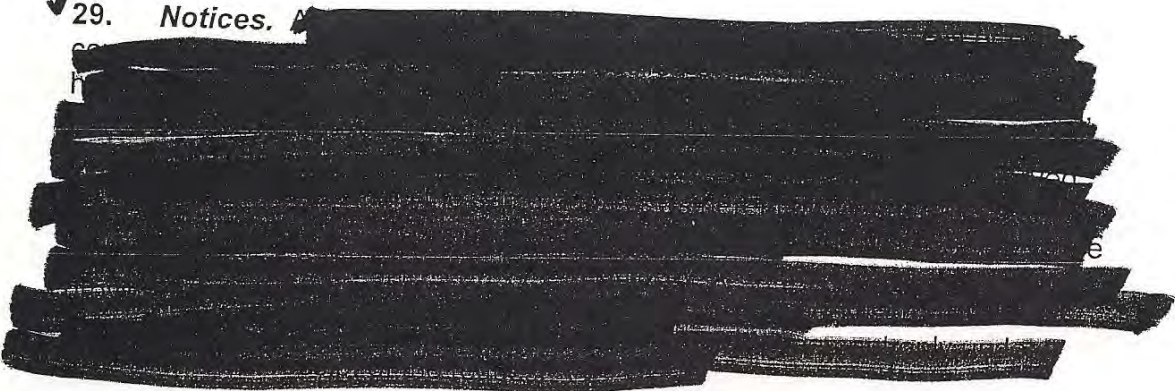
28. **Compliance with United States Laws and Regulations.** It is understood that imports and sales of the Event by JHP may require approvals pursuant to and in compliance with federal and state laws and regulations of the

Market Territory. In order to assure that imports and sales of the Event made pursuant to this Agreement do not violate any applicable laws or regulations, the parties agree as follows:

28.1 JHP shall promptly provide to ZUFFA information on laws, rules, and regulations of the Territory or of any state or political sub-division thereof insofar as such laws, rules, or regulations affect or are likely to affect (i) JHP's rights to distribute or sell the Event; or (ii) ZUFFA's rights under this Agreement.

28.2 JHP shall at all times comply with, and shall require its dealers at all times to comply with, all applicable laws, rules and regulations of the Territory or of any State or political subdivision thereof that affect or impact this Agreement and each party's rights and obligations hereunder or that affect or regulate the manufacture of the Event or their importation into the Market Territory.

GENERAL PROVISIONS

✓ 29. **Notices.** 

30. **Counterpart.** This Agreement may be executed in counterparts, each shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

31. **Governing Law; Forum Selection; Consent to Jurisdiction.** This Agreement and its incorporated Exhibits have been delivered at and shall be deemed to have been made and entered into in Las Vegas, Nevada. Accordingly, the rights and liabilities of the parties shall be determined in accordance with the laws of the State of Nevada, without regard to its principles of conflicts of laws. The parties agree that the exclusive jurisdiction and venue for the resolution of any dispute arising from or relating to this Agreement shall lie in the United States District Court, District of Nevada, sitting in Las Vegas, Nevada. Each party irrevocably consents to the service of process in any such dispute if served in accordance with the notice provisions contained herein.

- 32. Remedies Cumulative.** Unless otherwise provided for under this Agreement, all rights of termination or cancellation, or other remedies set forth in this Agreement, are cumulative and are not intended to be exclusive of other remedies to which the injured party may be entitled by law or equity in case of any breach or threatened breach by the other party of any provision in this Agreement. Use of one or more remedies shall not bar use of any other remedy for the purpose of enforcing any provision of this Agreement. JHP's sole remedy for breach of this Agreement by ZUFFA shall be an action for money damages and in no event shall JHP be entitled to injunctive or other equitable relief. However, ZUFFA may seek equitable relief against JHP under this Agreement, including but not limited to injunctive relief.
- 33. Entire Agreement.** The terms of this Agreement are intended by the parties as a final expression of their Agreement with respect to such terms as are included in this Agreement and may not be contradicted by evidence of any prior contemporaneous agreement. The parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding, if any, involving this Agreement.
- 34. Modification and Amendments.** This Agreement may not be modified, changed or supplemented, nor may any obligations hereunder be waived or extensions of time for performance be granted, except by written instrument signed by the party to be charged or by its duly authorized agent or as otherwise expressly permitted herein.
- 35. Waivers and Extensions.** No waiver or breach of any Agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts.
- 36. Titles and Headings.** Titles and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provisions of this Agreement.
- 37. Schedules.** Each of the Schedules referred to herein and attached hereto is an integral part of this Agreement and is incorporated herein by reference.
- 38. Consents and Approvals.** Whenever consent or approval of either party is provided for in this Agreement, such consent or approval shall be given in writing to the requesting party.
- 39. Further Assurances.** The parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as

the other may reasonably require to consummate, evidence or confirm the agreements contained herein in the manner contemplated hereby.

40. Assignments and Sublicenses. The services to be provided by JHP hereunder are peculiar and special in nature. Therefore, neither JHP nor ZUFFA shall assign this Agreement in whole or in part without the prior written consent of the other party. Notwithstanding the foregoing, either ZUFFA or JHP may assign this Agreement or any of its rights hereunder, without the other's consent, to any entity with which it may be merged or consolidated or which acquires all or substantially all of its assets, provided that such an entity agrees in writing to assume all applicable obligations under this Agreement. Any purported assignment or transfer by either party of any of its rights or obligations under this Agreement other than in accordance with the provisions of this Section shall be void, unless otherwise approved by the parties. JHP agrees it shall maintain a consistent level of integrity, quality and exposure level of the Event during the entire Term of this Agreement to ZUFFA's satisfaction. However, either party shall have the right to assign this Agreement to a subsidiary. This Agreement will bind and inure to the benefit of the respective successors and permitted assigns of JHP or ZUFFA.

41. Partial Validity. If any provision of this Agreement is found to be invalid by any court, the invalidity of such provisions shall not affect the validity of the remaining provisions hereof.

42. Survivability. The respective obligations of the parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, including but not limited to indemnification, audit rights and piracy settlement payments, shall survive termination, cancellation or expiration of this Agreement.

43. Audit Rights. JHP shall keep full, clear and accurate books of account and records with respect to all financial terms, including and not limited to gross license fees, Net License Fees, authorization fees, credit card fees and any miscellaneous event license taxes pursuant to this Agreement. The books and records shall be maintained in such a manner that the quarterly reports required herein shall be readily verifiable. ZUFFA, and ZUFFA's designated agent (designated in writing by the ZUFFA), shall have the right to examine and audit JHP's records at JHP's business premises upon reasonable prior notice to JHP and during normal business hours. ZUFFA shall be entitled to examine and audit JHP's records once in any calendar year unless a prior audit by ZUFFA in that year revealed a deficiency. If ZUFFA's audit reveals an overpayment in any payments due to ZUFFA pursuant to this Agreement, such amounts will be credited against the quarterly payments next due. If ZUFFA's audit reveals a deficiency in any payment due under this Agreement, JHP shall remit the amount of the deficiency within 10 days after demand therefore together with interest at a rate of seven percent (7%) per annum. If any such audit shows a deficiency of

greater than five percent (5%) with respect to the amounts that should have been paid to ZUFFA, the reasonable cost of such audit shall be paid by JHP. After twelve (12) months from the date of any quarterly report and corresponding payment, that quarterly report shall be deemed final and binding and ZUFFA shall have no further right to contest the report or payment of ZUFFA's revenue share as specified therein. Notwithstanding the foregoing, if JHP disagrees with the results of an audit by ZUFFA, JHP and the ZUFFA shall mutually agree upon a third party accounting firm to review ZUFFA's audit and the results thereof shall be binding on ZUFFA and JHP.

44. Corporate Authority. Each individual executing this Agreement on behalf of any corporation which is a party to this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation, and that this Agreement is binding upon said corporation on accordance with its terms.

45. Language. This Agreement has been negotiated and written in English. The English text shall be the only controlling text.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the first written above.

"ZUFFA, LLC"

By: 

Printed Name: KIRK D. HENDRICK

Title: CHIEF OPERATING OFFICER

"JHP"

By: 

Printed Name: JOE HAND JR

Title: President

ADDENDUM TO DISTRIBUTORSHIP AGREEMENT

This Addendum ("Addendum") to the existing Distributorship Agreement between the parties hereto is made and entered into effective July 16, 2009, by and between Zuffa LLC d/b/a the Ultimate Fighting Championship® ("UFC") organized under the laws of the State of Nevada, with its principal place of business located at 2960 West Sahara, Las Vegas, Nevada 89102 ("ZUFFA"), and Joe Hand Promotions, Inc., a corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business located at 407 E. Pennsylvania Boulevard, Feasterville, Pennsylvania 19053 ("JHP"), both of whom are referred to collectively herein as the "Parties".

RECITALS

WHEREAS, the Parties entered into a Distributorship Agreement effective as of December 1, 2007 (the "Agreement"), the terms of which are incorporated herein by reference;

WHEREAS, the original Term of the Agreement extended until December 31, 2009;

WHEREAS, the Parties have negotiated an extension of the Agreement as contemplated by paragraph 5 ("Term") of the Agreement;

NOW THEREFORE, in consideration of the foregoing and the additional promises and consideration set forth herein, and intending to be legally bound, ZUFFA and JHP agree to modify the Agreement as provided for in paragraph 34 ("Modifications and Amendments") as follows:

1. **EXTENSION OF TERM.** The term of the Agreement is hereby extended up to and including June 30, 2012.

✓ 2. **SPECIAL FINANCIAL TERMS FOR UFC 100.** 



✓ 3. **FINANCIAL.** 



13.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. **PROMOTIONAL MATERIALS ACCOUNTING.**

[REDACTED]

5. **TERMINATION.**

[REDACTED]

[REDACTED]

6. **EFFECT ON OTHER PROVISIONS.** All other provisions of the Agreement not modified by this Addendum remain in full force and effect.

[This space has been intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the first written above.

"ZUFFA, LLC"

By: 

Printed Name: KIRK D. HENDRICK

Title: CHIEF OPERATING OFFICER

"JHP"

By: 

Printed Name: JOE HAND JR

Title: President

EXHIBIT "A-2"

1 David J. Davoli, Esq. (DD-9073)
2 DAVOLI LAW FIRM
3 207 West 25th Street, Suite 400
4 New York, NY 10001
5 Tel: 212.929.1649
6 Fax: 212.206.7996
7 E-mail: david@davolilaw.com

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **San Jose Division**

11 -----X
12 JOE HAND PROMOTIONS, INC.,
13 Plaintiff,

Case No.: CDC-01333-LHK

14 vs.

15 PETE BE, Individually, and as an officer,
16 director, shareholder, and/or principal of
17 DA KINE CAFÉ, INC. d/b/a
18 DA KINE CAFÉ
19 153 E. Fremont Avenue
20 Sunnyvale, CA 94087,

**DECLARATION OF AFFIANT
IN SUPPORT OF PLAINTIFF'S
APPLICATION FOR DEFAULT
JUDGMENT**

21 Defendants.
22 -----X

23 **TO THE CLERK OF THE COURT:**

24 A true and correct copy of the Declaration of Affiant is attached hereto and made part hereof.

25 Respectfully submitted,

26 Dated: August 17, 2011

27 /s/ David J. Davoli

28 _____
29 DAVOLI LAW FIRM
30 David J. Davoli, Esq.
31 Attorney for the Plaintiff
32

UFC PIRACY AFFIDAVIT

STATE OF : CALIFORNIA
:
COUNTY OF : ALAMEDA

I, the undersigned, being duly sworn according to law, deposes and says, that on 09/25/2010, I entered the commercial establishment known as Da Kine Cafe, located at **153 East Fremont Avenue, Sunnyvale, California**, at approximately 8:11 pm. This establishment is described as a one-story building with no apartment(s) on top of the establishment. I did not observe a satellite dish on the premises.

I paid the sum of \$0 cover charge to enter the establishment. The doorperson is described as: There was no door person, only a cashier.

I ordered three cookies for \$2 from the cashier, whose name was unknown and is described as a friendly teenager with short black hair who "loves UFC", wearing a black T-shirt.

I observed **three** television sets, which are described as: **30-ish inch flat-panel LGs**, each of which is located in the following position within the establishment: **side by side mounted near the ceiling directly above the counter in full view of the entire seating area.**

On the television sets, I observed the **intro and opening round** of the match between the following undercard fighters: Matt Serra vs. Chris Lytle.

Serra was wearing **white** trunks and **Lytle** was wearing **blue** trunks.

I also observed **the following action in the ring:**

Opening of the fight, initial sparring and commentators saying, "Chris loves to dip that shoulder" and "Lytle, a former professional boxer..."

I also observed the following logo(s) on the screen: UFC and UFC 119.

I **was not** able to see the cable box or the channel that the televisions were tuned to.

The inside of the establishment can be described as follows: The establishment is in a strip mall. All the lights were turned off above the seating area and it was quite dark. The floor is white tile, the tables and chairs appeared to be dark wood or plastic, and a hip-high bar for seating ran along the wall on the right side upon entering the door. There is a broad counter across the back of the establishment with a cookie case on it, an espresso machine behind the counter on the right side and the cash register on the left side of the counter. There are large industrial sinks behind the counter. The restrooms appeared to be down a hallway to the left of the counter.

In my opinion, the approximate capacity of this establishment is 75 people. At the time I was in the establishment, I took three head counts. I counted approximately 30 people on the first count, 30 people on the second count, and 32 people on the third count.

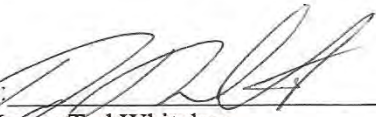
I left the establishment at approximately **8:20 pm.**

I took three pictures of the outside of the above described establishment on 09/25/10 at approximately 8:11-8:20 pm and three pictures of the inside of the above described establishment on 09/25/10 at approximately 8:15-8:20 pm which are attached hereto and made a part hereof and are intended to substantiate and verify the location of my observations as described herein.

There was a parking lot adjacent to the establishment in which I noted the following vehicles by their make/model/ color and license plates :

Blue Mini Cooper CA 5AXF661 _____
Black GMC Denali CA 5EUA457 _____

Dated: 9/27, 2010

Signed: 
Print Name: Tad Whitaker
Agency: Whitaker Research & Investigations
Address: 740-A 14th Street, Box 146
City/State/Zip: San Francisco, CA 94114
Phone/fax: (415) 602-8468 & (415) 626-8347
PI # 26458

State of California

County of San Francisco ss. co

On the 27th day of sep, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared, Tad Whitaker, ~~personally known to me or~~ proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

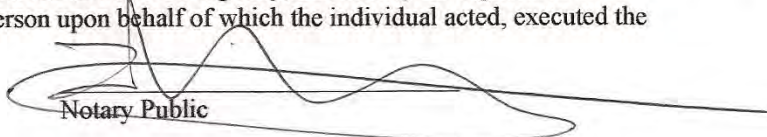

Notary Public



EXHIBIT "A-3"

JOE HAND PROMOTIONS INC.

407 E. Pennsylvania Blvd., Feasterville, PA 19053

Phone: (215):364-9000

FAX: (215):364-5474

ULTIMATE FIGHTING CHAMPIONSHIP



RATE CARD

0-50	\$ 900.00
51-100	\$1100.00
101-150	\$1200.00
151-200	\$1,300.00
201-250	\$1,600.00
251-300	\$1,800.00
301-350	\$2,100.00
351-400	\$2,500.00
401-450	\$3,000.00
451-500	\$3,500.00
501+	Call to discuss
Casinos	Call to discuss

★ Please note, the ratecard prices are inclusive of the \$200.00 technical fees.
Rates are based on FCO NOT EVO ★

For more information, call your Joe Hand Promotions representative at:

800-557-4263

If you received this fax in error, please call 800-557-4263 to be removed from our fax list.

EXHIBIT “B”

1 David J. Davoli, Esq. (DD-9073)
2 DAVOLI LAW FIRM
3 207 West 25th Street, Suite 400
4 New York, NY 10001
5 Tel: 212.929.1649
6 Fax: 212.206.7996
7 E-mail: david@davolilaw.com

8 Attorneys for Plaintiff

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **San Jose Division**

12 -----x
13 JOE HAND PROMOTIONS, INC.,

14 Plaintiff,

15 Case No.: CDC-01333-LHK

16 vs.

17 **DECLARATION OF PLAINTIFF'S**
18 **COUNSEL RE ATTORNEYS FEES**

19 PETE BE, Individually, and as an officer,
20 director, shareholder, and/or principal of
21 DA KINE CAFÉ, INC. d/b/a
22 DA KINE CAFÉ
23 153 E. Fremont Avenue
24 Sunnyvale, CA 94087,

25 Defendants.

26 -----x

27 **I, David J. Davoli, declare as follows:**

28 1. I am counsel of record for Plaintiff, Joe Hand Promotions, Inc., in this action. I have
29 personal knowledge of the following facts except those stated on information and belief, and as
30 to those facts, I believe them to be true.

31 2. On March 21, 2011, Plaintiff filed suit against Defendants Pete Be and Da Kine Cafe,
32 Inc. d/b/a Da Kine Cafe ("Defendants"), in the United States District Court. The cost of filing
the Complaint in the above-entitled action was Three Hundred Fifty Dollars (\$350.00).

1 3. The cost of serving the named defendants with initiating suit papers was two hundred ten
2 dollars (\$188.98). A true and correct copy of the relevant proofs of service are attached hereto as
3 Exhibit "B-1".
4

5 4. Prior to the filing of the lawsuit, Plaintiff incurred Five Hundred Dollars (\$500.00) in
6 investigative costs in this matter prior to the institution of suit.
7

8 5. I am a member in good standing of both the New York and California State Bars; The
9 Southern, Central, Northern and Eastern Districts of California; and the United States Supreme
10 Court.
11

12 6. In conjunction with myself, an associate attorney and a paralegal have performed work
13 on this matter. My firm routinely handles the civil prosecution of commercial signal piracy
14 claims on behalf of Joe Hand Promotions. This particular case has required the involvement of
15 myself, an associate attorney, one (1) paralegal, and an administrative assistant.
16

17 7. My billable rate for attorneys in matters such as the instant litigation is three hundred
18 dollars (\$300.00) per hour. We bill administrative assistant time at (\$75.00) per hour and
19 paralegal time at (\$150.00) per hour.
20

21 8. We do not use computerized time sheets or electronic legal billing software. Billable
22 hours for legal services rendered are reconstructed by way of a thorough review of the files
23 themselves. In light of our routine handling of these types of matters, we are extremely capable
24 of reconstructing an accurate outline of our billable time on this file. Our rates for legal,
25 administrative, and paralegal time are well within the guidelines of the prevailing market rates
26 within Los Angeles County and the United States. A true and correct copy of Laffey Matrix
27 Salary Information is attached hereto as Exhibit "B-2".
28
29
30
31
32

9. A complete outline of the billable time spent on this case is set forth below. Unless otherwise designated, the legal services rendered referencing more than one staff member means both members of the staff participated on the legal task jointly or participated in completing the task independently for the same amount of billable hours referenced.

Item	Date	Legal Services Rendered	Billable Hours	Staff
1	10/22/2010	Initial File Review and File preparation	0.300	Attorney
2	10/22/2010	Preparation and service of initial demand letter to Defendant Christopher J. Trimble	0.200	Attorney
3	10/31/2010	Review certified mail receipt indicating return of service	0.100	Admin. Assistant
4	2/7/2011	Preparation of second demand letter	0.200	Attorney
5	2/7/2011	Preparation of draft Complaint	0.900	Paralegal
	3/21/2011	Preparation, Filing, and Service of Initiating Suit Papers (Complaint, Summons, Certification as to Interested Parties, Civil Cover Sheet)	0.800	Paralegal
6	4/28/2011	Review Clerk's Notice	0.100	Paralegal
7	6/2/2011	Preparation and filing of Notice of Change of Address for Attorney	N/C	Admin. Assistant
8	6/13/2011	Preparation, filing and Service of Request for Default	0.400	Attorney
9	6/17/2011	Preparation and Filing of Motion to Amend/Correct Request for Default	N/C	Attorney
10	6/18/2011	Review Court's Entry of Default	0.200	Attorney
11	8/11/2011	Preparation, Filing, and Service of Application for Default Judgment by the Court (including Memorandum of Law, Declaration of Affiant, Declaration of Plaintiff's Counsel, and Proposed Order)	6.000	Attorney
12	8/15/2011	Preparation, Filing, and Service of Plaintiff's Affidavit in Support of Plaintiff's Application for Default Judgment	0.300	Paralegal
13	8/16/2011	Preparation of Declaration of Plaintiff's Counsel re: Attorneys' Fees and Costs	1.5	Attorney

1 10. As such, Plaintiff's total costs in this matter to date, amount to ***One Thousand Thirty***
2 ***Eight Dollars and Thirty Eight Cents (\$1038.98)*** (\$500.00 (investigative costs) + \$350.00
3 (complaint filing fee) + \$188.98 (service of process charges)).

4
5 11. Plaintiff's billable attorneys' fees in this matter to date amount ***Three Thousand Nine***
6 ***Hundred Sixty Two Dollars and Fifty Cents (\$3,962.50)***. The breakdown is as follows:

- 7
8 a. Attorney = 8.8 hours at \$300.00 per hour = \$2640.00
9 b. Paralegal = 2.1 hours at \$150.00 per hour = \$315.00
10 c. Administrative Assistant = 0.1 hours at \$75.00 per hour = \$7.50

11
12 12. It is also my opinion that the following attorneys' fees are reasonable for each of the
13 following:¹

- 14 a. Ten Thousand Dollars (\$10,000.00) in the event Defendant files a motion to
15 vacate, Rule 60 motion, motion for new trial, motion for reconsideration or other
16 post-judgment, pre-appeal motion that does not result in a reversal of the
17 Judgment obtained in this action;
- 18 b. Fifteen Thousand Dollars (\$15,000.00) in the event Defendant files an appeal to
19 the Fifth Circuit Court of Appeals that does not result in a reversal of the
20 Judgment obtained in this action;
- 21 c. Five Thousand Dollars (\$5,000.00) for making and/or responding to a petition for
22 certiorari to the U.S. Supreme Court that does not result in a reversal of the
23 Judgment obtained in this action;
- 24 d. Ten Thousand Dollars (\$10,000.00) for an appeal to the United States Supreme
25 Court in the event a petition for certiorari review is granted and does not result in
26 a reversal of the Judgment obtained in this action; and
- 27 e. Two Thousand Five Hundred Dollars (\$2,500.00) for collection of the Judgment

28
29
30 ¹ The Court may award fees for appellate work on a contingent basis. See *Lyn-Lea Travel Corp.*
31 *v. American Airlines, Inc.*, Civil Action No. 3:96-CV-2068, 2000 U.S. Dist. LEXIS 14487, at * 33 (N.D.
32 Tex. September 29, 2000) (vacated on other grounds, 283 F.2d 282 (5th Cir. 2002) citing *Norris v.*
Hartmax Specialty Stores, Inc., 913 F.2d 253, 257 (5th Cir. 1990) ("A long and consistent line of Fifth
Circuit precedent allows awards of attorney's fees for both trial and appellate work.") (citations omitted).

1 rendered in this case, should Plaintiff obtain a writ of execution, writ of
2 garnishment, writ of attachment or other process.”

3 I declare under penalty of perjury under the laws of the United States and the State of
4 California that the foregoing is true and correct.

5 Dated: August 17, 2011

6 /s/ David J. Davoli

7 By: _____
8 David J. Davoli, Esq., State Bar No.: 264144
9 DAVOLI LAW FIRM
10 207 West 25th Street, Suite 400
11 New York, NY 10001
12 Tel: 212.929.1649
13 Fax: 212.206.7996
14 E-mail: david@davolilaw.com

EXHIBIT “B-1”

Attorney or Party without Attorney: DAVID J. E. VOLI 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

PROOF OF SERVICE

(THOMAS J. BOWMAN, JR.) DAVOLI 150969

EXHIBIT “B-2”

LAFFEY MATRIX 2003-2010

(2009-10 rates are unchanged from 2008-09 rates)

Years (Rate for June 1 - May 31, based on prior year's CPI-U)

Experience	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11
20+ years	380	390	405	425	440	465	465	475
11-19 years	335	345	360	375	390	410	410	420
8-10 years	270	280	290	305	315	330	330	335
4-7 years	220	225	235	245	255	270	270	275
1-3 years	180	185	195	205	215	225	225	230
Paralegals & Law Clerks	105	110	115	120	125	130	130	135