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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOE HAND PROMOTIONS, INC.,

CASE NO. 13-CV-2183 W (WVG)

Plaintiff,

**ORDER DENYING MOTION TO
ALTER JUDGMENT [DOC. 11]**

vs.

HUNDEEL ASIF KHAN, et al.,

Defendant.

Pending before the Court is Plaintiff Joe Hand Promotions, Inc.'s Motion to Alter Judgment. Plaintiff argues that the Court erred in awarding \$1,750 in damages, comprised of \$750.00 in conversion damages and the statutory minimum of \$1,000 under 47 U.S.C. § 605(e) (e) (3) (c) (i) (II). Plaintiff contends that enhanced statutory damages should have also been awarded.

The question of whether to award enhanced damages is within the court's discretion. See Kingvision Pay Per View, LTD v. Ortega, 2002 WL 31855367, *2 (N.D.Cal. 2002) (reasoning that in evaluating whether to award enhanced damages, courts can consider factors such as repeated violations, the intent to profit and actual

1 profit derived from the violations). Here, Plaintiff contends enhanced damages are
2 warranted for two reasons.

3 First, Plaintiff relies on other cases that awarded enhanced damages. But those
4 cases are factually distinguishable. In Kingvision v. Lake Alice Bar, 168 F.3d 347(9th
5 Cir. 1999), the \$80,400 award was based on the bar’s “repeated willful violations.” Id.
6 at 350. Therefore, a higher damage award was warranted to deter defendant from future
7 violations. In contrast, here Defendant was a first time offender, and there is no
8 evidence suggesting a higher damage award is necessary to deter Defendant from
9 committing future violations. Moreover, in Kingvision, the Ninth Circuit remanded the
10 case “so that both sides [could] be heard on the appropriate amount of any reduction
11 in the judgment.” Id. at 352. The remand suggests that the damage award was too high.

12 Plaintiff also cites J & J Sports Productions Inc. v. Olivares, 2011 WL 587466
13 (E.D.Cal. Feb 9, 2011), where more than 60 patrons were viewing the program. In
14 contrast, Defendant’s establishment had far fewer patrons during the program.
15 Additionally, because Defendant did not charge an entrance fee or advertise the
16 program, there is no evidence suggesting that Defendant intended to profit and actually
17 profited from the violation.

18 Next, Plaintiff argues that the award focused too heavily on specific deterrence
19 at the expense of general deterrence. But as explained in the order, under the
20 circumstances of this case, the Court is mindful that a larger award might put
21 Defendant out of business. See Lake Alice Bar, 168 F.3d at 350 (reasoning that,
22 “[d]epending on the circumstances, a low five figure judgment may be a stiff fine that
23 deters, while a high five figure judgment puts a bar out of business”). Therefore, the
24 Court finds that the damage award of \$1,750 is reasonable.

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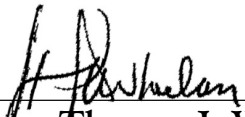
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For these reasons, Plaintiff's motion to alter judgment is **DENIED** [Doc. 11].¹
IT IS SO ORDERED.

DATED: August 6, 2014



Hon. Thomas J. Whelan
United States District Judge

¹Although the hearing date is set for August 25, 2014, Defendant has never appeared and Plaintiff is requesting reconsideration of an unopposed motion. Accordingly, the Court believes it is appropriate to issue this order before the hearing date.