

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JOE HAND PROMOTIONS, INC.,  
Plaintiff,

v.

VITA GLOVER and PHOENIX CIGARS, LLC  
d/b/a PHOENIX CIGAR LOUNGE,  
Defendants.

Civil Action No.  
1:20-cv-02119-SDG

**OPINION AND ORDER**

Before the Court is Plaintiff's Application for Default Judgment Against Defendants [ECF 30]. For the following reasons, the motion is **GRANTED**.

**I. Background**

Plaintiff Joe Hand Promotions, Inc. (Joe Hand) initiated this action on May 18, 2020, against Defendants Bernard Hamilton, Vita Glover, and Phoenix Cigars, LLC.<sup>1</sup> On June 23, 2020, Defendants moved to dismiss.<sup>2</sup> On January 25, 2021, the Court entered an order granting the motion in part and denying it in part.<sup>3</sup> It dismissed the claims against Hamilton, but declined to dismiss the claims against

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<sup>1</sup> ECF 1.

<sup>2</sup> ECF 13.

<sup>3</sup> ECF 22.

the other two Defendants.<sup>4</sup> The Court directed them to respond to the Complaint, and gave Joe Hand leave to file an amended pleading.<sup>5</sup>

On January 29, 2021, Joe Hand filed its Amended Complaint.<sup>6</sup> Joe Hand specializes in distributing and licensing sporting events to commercial and non-residential establishments.<sup>7</sup> It had exclusive rights to commercially license the audio-visual broadcast of the fight *Manny Pacquiao v. Keith Thurman* on July 20, 2019 (the Program).<sup>8</sup> Defendant Vita Glover is the controlling manager of Defendant Phoenix Cigars, LLC d/b/a Phoenix Cigar Lounge (the Lounge).<sup>9</sup> Glover and the Lounge purportedly took steps to avoid licensing the Program, instead obtaining it “through an unauthorized cable signal, satellite signal, and/or internet stream” for broadcast at the Lounge.<sup>10</sup> Glover was allegedly serving

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<sup>4</sup> *Id.* at 12–13.

<sup>5</sup> *Id.*

<sup>6</sup> ECF 24.

<sup>7</sup> *Id.* ¶ 4.

<sup>8</sup> *Id.* ¶ 5.

<sup>9</sup> *Id.* ¶ 7.

<sup>10</sup> *Id.* ¶ 11. *See also id.* ¶¶ 14–16.

customers during the illicit display.<sup>11</sup> Joe Hand contends that Glover “had the right and ability to supervise the display” and financially benefited from it.<sup>12</sup>

Joe Hand asserts causes of action for cable and satellite piracy in violation of 47 U.S.C. §§ 553 and 605 (Count I); and copyright infringement in violation of 17 U.S.C. §§ 106 and 501 (Count II).<sup>13</sup> It seeks statutory damages and attorneys’ fees, interest, and costs.<sup>14</sup> On February 10, 2021, Defendants again moved to dismiss.<sup>15</sup> On June 17, the Court denied the motion, directed Glover to answer the Amended Complaint, and directed the Lounge to appear through counsel and answer the amended pleading.<sup>16</sup> Glover and the Lounge did none of these things, so Joe Hand moved for a clerk’s entry of default on July 9.<sup>17</sup> The clerk entered the default the same day,<sup>18</sup> and Joe Hand moved for default judgment on August 3.<sup>19</sup> It seeks damages in the amount of \$260,000.00, as well as attorneys’ fees of

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<sup>11</sup> *Id.* ¶ 20.

<sup>12</sup> *Id.* ¶¶ 8–9, 20.

<sup>13</sup> ECF 24, at 6–8.

<sup>14</sup> *Id.* at 8.

<sup>15</sup> ECF 25.

<sup>16</sup> ECF 28.

<sup>17</sup> ECF 29.

<sup>18</sup> July 9, 2021 D.E.

<sup>19</sup> ECF 30.

\$4,232.50 and costs.<sup>20</sup> Glover and the Lounge belatedly opposed the motion on August 27, with Glover again purporting to represent the Lounge.<sup>21</sup>

## II. Applicable Law

### a. Default Judgments

Rule 55 governs default judgments. When a defendant “has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a); *Nishimatsu Constr. Co., Ltd., v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (entry of default judgment in favor of plaintiff warranted only if there exists “a sufficient basis in the pleadings for the judgment entered”).

A default entered pursuant to Rule 55(a) constitutes an admission of all well pleaded factual allegations contained in a complaint. *Beringer v. Hearshe, Kemp, LLC*, No. 1:10-cv-1399-WSD-ECS, 2011 WL 3444347, at \*2 (N.D. Ga. Aug. 8, 2011) (citing *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005)) (additional citations omitted). When considering a motion for the entry of default judgment, “a court must investigate the legal sufficiency of the allegations and ensure that the complaint states a plausible claim for relief.” *Functional Prod.*

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<sup>20</sup> *Id.* ¶¶ 5–6; ECF 30-1, ¶ 7.

<sup>21</sup> ECF 31.

*Trading, S.A. v. JITC, LLC*, No. 1:12-cv-0355-WSD, 2014 WL 3749213, at \*3 (N.D. Ga. July 29, 2014). See also *Tyco Fire & Sec., LLC v. Alcocer*, 218 F. App'x 860, 863 (11th Cir. 2007). This includes a review of any affidavit or declaration submitted by the plaintiff. *Frazier v. Absolute Collection Serv., Inc.*, 767 F. Supp. 2d 1354, 1362 (N.D. Ga. 2011). Further, a defendant in default does not admit allegations relating to the amount of damages. *Id.* at 1365. But when the amount is “for a sum certain or a sum that can be made certain by computation,” the Court need not conduct a hearing before awarding damages. Fed. R. Civ. P. 55(b).

**b. Joe Hand's Claims**

Federal law prohibits intercepting or receiving (or assisting in intercepting or receiving) a “service offered over a cable system, unless specifically authorized to do so.” 47 U.S.C. § 553(a)(1). It also generally prohibits the unauthorized interception and publication of radio communications, and unauthorized receipt of such communications for one's own benefit. *Id.* § 605(a). Private rights of action exist for violations of these laws. *Id.* §§ 553(c), 605(e). The owner of a copyrighted work has the exclusive ability to authorize its public display. 17 U.S.C. § 106(5). The holder of that exclusive right can sue for infringement. *Id.* § 501(b).

In addition to this primary liability, in *BUC International Corp. v. International Yacht Council Ltd.*, the Eleventh Circuit indicated that there can be secondary

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