IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ZUFFA, LLC d/b/a ULTIMATE FIGHTING CHAMPIONSHIP, *

Plaintiff, *

v. * Civ. Action No. 8:20-cv-0273-PX

RICK RIVEIRA FERRELL, *et al.*, *

Defendants. *

***

MEMORANDUM OPINION

Pending before the Court is Plaintiff Zuffa, LLC's ("Zuffa's") Motion for Default Judgement. ECF No. 13. Defendants Gumbo Ya Ya to Geaux LLC ("Gumbo Ya Ya") and Rick Riveira Ferrell ("Ferrell") have not responded to the Complaint or this motion, and the time for doing so has passed. *See* Loc. R. 105.2.a. The matter has been briefed, and no hearing is necessary. *See* Loc. R. 105.6. For the following reasons, the Court GRANTS default judgment as to Gumbo Ya Ya but DENIES the motion as to Ferrell. ECF No. 13.

I. Background

Plaintiff Zuffa is the copyright owner of "UFC 232," a mixed martial arts event that was produced by the Ultimate Fighting Championship on December 29, 2018 (the "Fight"). ECF No. 1 ¶¶ 6, 38–39; ECF No. 13-2. Defendant Gumbo Ya Ya advertised and broadcasted the Fight at its commercial establishment without first obtaining the proper license from Zuffa. ECF No. 1 ¶¶ 13, 23–25; ECF No. 1-1; ECF No. 13-7. On the night of the Fight, Zuffa's private investigator visited Gumbo Ya Ya and watched the Fight on one of the TVs behind the bar. ECF

No. 13-1 at 4; ECF No. 13-6 at 1. He did not pay a cover charge for entry. ECF No. 13-6 at 1. He approximates the establishment seats 51-100 patrons. *Id.* at 2. According to Zuffa, the licensing fee that it charged to broadcast the Fight for an establishment of that size was $998. ECF No. 13-4.

Zuffa filed suit on January 31, 2020 against Gumbo Ya Ya and Ferrell, who on "information and belief" is Gumbo Ya Ya's "officer, director, shareholder, and/or principal." ECF No. 1 ¶ 8. Zuffa asserts that Defendants violated the Communications Act of 1934, as amended, 47 U.S.C. § 605 ("Communications Act"); the Cable and Television Consumer Protection and Competition Act of 1992, as amended, 47 U.S.C. § 553 ("Cable Act"); and the Copyright Act, 17 U.S.C. § 501. *Id.* ¶¶ 28, 35, 44.

Zuffa properly served Defendants on March 6, 2020. *See* ECF Nos. 6 & 7. Thereafter, Defendants made no effort to participate in this litigation. The clerk entered default on September 18, 2020, pursuant to Federal Rule of Civil Procedure 55(a).[1] ECF Nos. 8 & 9. On December 2, 2020, Zuffa filed this motion seeking default judgment as to both Defendants. ECF No. 13.

II. Standard of Review

Rule 55(a) provides that "[w]hen a party against whom a judgement for affirmative relief is sought 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). A defendant's default does not automatically entitle the plaintiff to the entry of a default judgment; rather, that decision

[1] In Zuffa's request for notice of default, it included Defendants' last known addresses, as required under Local Rule 108.2. ECF Nos. 8 & 8-3. The Clerk mailed the notice of default to Ferrell and Gumbo Ya Ya, but the notice to Gumbo Ya Ya was returned as undeliverable. ECF Nos. 10, 11, & 12. Also, although not required, Zuffa sent written notice to Gumbo Ya Ya and Ferrell of its motion for default judgment. *See* ECF No. 13-9; Fed. R. Civ. P. 55(b)(2); Fed. R. Civ. P. 5(a)(2), (b)(2)(C); *see also Koho v. CIT Group/Consumer Finance*, No. RLV-AJB-09-2096, 2010 WL 11647645, at *2 n.2 (N.D. Ga. Apr. 23, 2010).

is left to the discretion of the court. *S.E.C. v. Lawbaugh*, 359 F. Supp. 2d 418, 421 (D. Md. 2005); *Joe Hand Promotions, Inc. v. Luz, LLC*, No. DKC-18-3501, 2020 WL 374463, at *1 (D. Md. Jan. 23, 2020). While the Fourth Circuit maintains a "strong policy that cases be decided on the merits," default judgement may be appropriate where a party is unresponsive. *Lawbaugh*, 359 F. Supp. 2d at 421 (internal quotation marks omitted) (quoting *Dow v. Jones*, 232 F. Supp. 2d 491, 494–95 (D. Md. 2002) (citing *United States v. Shaffer Equip. Co.*, 11 F.3d 450, 453 (4th Cir. 1993))).

When considering a motion for default judgement, the court accepts as true all well-pleaded factual allegations, other than those pertaining to damages. *Ryan v. Homecomings Fin. Network*, 253 F.3d 778, 780 (4th Cir. 2001) ("The defendant, by his default, admits the plaintiff's well-pleaded allegations of fact … [but] [t]he defendant is not held … to admit conclusions of law") (citation and internal quotation marks omitted); *Disney Enter., Inc. v. Delane*, 446 F. Supp. 2d 402, 406 (D. Md. 2006). District courts analyzing default judgments have applied the standards articulated by the Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to determine whether the allegations are well-pleaded. *See, e.g.*, *Balt. Line Handling Co. v. Brophy*, 771 F. Supp. 2d 531, 544 (D. Md. 2011); *Russell v. Railey*, No. DKC-08-2468, 2012 WL 1190972, at *2–3 (D. Md. Apr. 9, 2012); *United States v. Nazarian*, No. DKC-10-2962, 2011 WL 5149832, at *2–3 (D. Md. Oct. 27, 2011). Where a complaint offers only "labels and conclusions" or "naked assertion[s] devoid of further factual enhancement," the allegations are not well-pleaded and, consistent with the Court's discretion to grant default judgment, relief should be denied. *Balt. Line Handling*, 771 F. Supp. 2d at 544 ("The record lacks any specific allegations of fact that 'show' why those conclusions are warranted."); *see also Basba v. Xuejie*, No. PX-19-380, 2021 WL 242495, at *3

(D. Md. Jan. 25, 2021). In this respect, "a default is not treated as an absolute confession by the defendant of his liability and of the plaintiff's right to recover." *Balt. Line Handling*, 771 F. Supp. 2d at 540 (internal quotation marks omitted). Rather, the Court must decide whether the "well-pleaded allegations in [the plaintiff's] complaint support the relief sought." *Ryan*, 253 F.3d at 780.

Once liability is established, the Court cannot rely solely on the Complaint to assess damages. *See Lawbaugh*, 359 F. Supp. 2d at 422; *Trs. of the Elec. Welfare Trust Fund v. MH Passa Elec. Contracting, Inc.*, No. DKC-08-2805, 2009 WL 2982951, at *1 (D. Md. Sept. 14, 2009). The Court may either conduct a hearing or rely on affidavits and documentary evidence in the record to determine what damages, if any, are warranted. *See Monge v. Portofino Ristorante*, 751 F. Supp. 2d 789, 795 (D. Md. 2010) (citation omitted).

III. Analysis

Zuffa seeks default judgment as to Defendants' violations of the Communications Act, 47 U.S.C. § 605 (Count I), and the Copyright Act, 17 U.S.C. § 501 (Count III).[2] ECF No. 13. Because the same averred facts support both claims, the Court considers them together.

A. Liability

Section 605 of the Communications Act "prohibits the unauthorized interception or receipt of 'digital satellite television transmissions.'" *J & J Sports Prods., Inc. v. Beer 4 U, Inc.*, No. TDC-18-2602, 2019 WL 5864499, at *3 (D. Md. Nov. 8, 2019) (quoting *J & J Sports Prods., Inc. v. MayrealII, LLC*, 849 F. Supp. 2d 586, 588 n.3 (D. Md. 2012)); *see also That's*

[2] Presumably, Zuffa is not seeking default judgment for its Cable Act claims because it cannot recover under both the Communications and Cable Acts, and the Communications Act provides for greater recovery. *See Joe Hand Promotions, Inc. v. Aguilar*, No. TDC-19-0458, 2019 WL 4071776, at *2 (D. Md. Aug. 29, 2019) (citing *J & J Sports Prods., Inc. v. Royster*, No. RWT-11-1597, 2014 WL 992779, at *2 (D. Md. Mar. 13, 2014)). Accordingly, the Court dismisses without prejudice the Cable Act claim.

Ent., Inc. v. J.P.T., Inc., 843 F. Supp. 995, 999 (D. Md. 1993) (prohibiting the interception or "unauthorized divulgence" of satellite communications and cable television services "which have been received legally for certain purposes" (quotation omitted)). It provides that "[n]o person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person." 47 U.S.C. § 605(a). To establish liability, Zuffa need only show that "it had the exclusive commercial distribution rights" to the Fight, and that Gumbo Ya Ya and Ferrell exhibited the Fight "without authorization." *Beer 4 U*, 2019 WL 5864499, at *3; *see also Aguilar*, 2019 WL 4071776, at *2 (same).

The Copyright Act provides, in some sense, broader protections. The Copyright Act "grants the copyright holder 'exclusive' rights to . . . his work . . . including reproduction of the copyrighted work in copies." *CoStar Grp., Inc. v. LoopNet, Inc.*, 373 F.3d 544, 549 (4th Cir. 2004) (quoting *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417, 432–33 (1984)). Under the Act, "[a]nyone who violates any of the exclusive rights of the copyright owner . . . is an infringer of the copyright." 17 U.S.C. § 501. For a copyright infringement claim, a plaintiff must show: (1) ownership of a valid copyright; and (2) encroachment upon one of the exclusive rights afforded by the copyright. *Avtec Sys., Inc. v. Peiffer*, 21 F.3d 568, 571 (4th Cir. 1994). These rights include the right to "perform" and "display the copyrighted work publicly." 17 U.S.C. § 106(4)-(5); *see also id.* § 101 ("To perform . . . a work 'publicly' means [among other things] to transmit . . . a performance . . . of the work . . . to the public."). Thus, "[t]he unauthorized broadcast of copyrighted programs to the public constitutes copyright infringement." *Zuffa, LLC v. Roldan*, No PDB-14-795, 2015 WL 12862924, at *6 (M.D. Fla. Aug. 13, 2015) (citing *Prostar v. Massachi*, 239 F.3d 669, 677 (5th Cir. 2001); *Nat'l Football*

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