

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>PURPLE RABBIT MUSIC, et al.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>NO. 3:18-cv-00520</b>
<b>v.</b>	)	
	)	<b>JUDGE CAMPBELL</b>
<b>JCJ PRODUCTIONS, L.L.C., JACOB</b>	)	<b>MAGISTRATE JUDGE</b>
<b>TUCKER, and BRANDON TUCKER,</b>	)	<b>HOLMES</b>
	)	
<b>Defendants.</b>	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Plaintiffs Purple Rabbit Music, U Rule Music, Divine Pimp Publishing, Key Club Music, and Lellow Productions, Inc., filed this suit against Defendants JCJ Productions, LLC, Jacob Tucker and Brandon Tucker, on June 5, 2018. (Doc. 1). The Court granted default judgment on September 9, 2019. (Doc. 45). Plaintiffs filed an application for monetary judgment on November 8, 2019. (Doc. 50). A hearing on Plaintiffs’ application was held on November 15, 2019, and none of the Defendants, nor anyone on their behalf, appeared at the hearing. (Doc. 51).

For the reasons discussed below, Plaintiffs’ Application for Monetary Judgment (Doc. No. 50) is **GRANTED**.

**I. FINDINGS OF FACT**

1. The Plaintiffs are the owners of the copyrights in the musical works set forth in Schedule A (the “Musical Works”) of the Amended Complaint. (Am. Compl., Doc. 17, ¶ 4 & Schedule A, Doc. 17-1).

2. Defendant JCJ Productions, LLC (“JCJP”) is a limited liability company organized under the laws of Tennessee, with a principal place of business located at 1530 Demonbreun Street, Nashville, Tennessee 37203. (Doc. 17, ¶5).

3. All times relevant to this lawsuit, JCJP owned, controlled, managed, operated, and/or maintained a place of business for public entertainment, accommodation, amusement, and refreshment known as Frisky Frogs located at 1530 Demonbreun Street, Nashville, Tennessee 37203. (*Id.*, ¶ 6).

4. Musical compositions were publicly performed at Frisky Frogs. (*Id.*, ¶ 7).

5. At all times relevant to this lawsuit, Defendants Jacob Tucker and Brandon Tucker were members and/or principals of JCJP. (*Id.*, ¶ 10).

6. At all times relevant to this lawsuit, Defendants Jacob Tucker and Brandon Tucker were responsible for the control, management, operation, and maintenance of the affairs of JCJP. (*Id.*, ¶ 11).

7. Until its ultimate closure, and at all times relevant to this litigation, Defendants jointly owned and operated Frisky Frogs. (*see* Defs.' Resp. Req. Admis., Doc. 27-5, ¶ 6).

8. Until its ultimate closure, and at all times relevant to this litigation, Defendant Jacob Tucker, as specifically admitted to by Defendants in response to requests for admission, had the right and ability to supervise and control the public performance of musical compositions and to determine the music policy at Frisky Frogs. (*Id.*, ¶ 23; *see also* Doc. 17, ¶ 12).

9. Until its ultimate closure, and at all times relevant to this litigation, Defendant Brandon Tucker, as specifically admitted to by Defendants in response to requests for admission, had the right and ability to supervise and control the public performance of musical compositions and to determine the music policy at Frisky Frogs. (Doc. 27-5, ¶ 24; *see also* Doc. 17, ¶ 12).

10. Each Defendant derived a direct financial benefit from the public performance of musical compositions at Frisky Frogs. (*Id.*, ¶ 13).

11. The Plaintiffs are all members of the American Society of Composers, Authors,

and Publishers (“ASCAP”), a membership association that represents, licenses, and protects the public performance rights of its members. (Decl. of John Johnson, Doc. 50-2, ¶ 4).

12. Each ASCAP member grants to ASCAP a non-exclusive right to license the right of public performance in that member’s copyrighted musical compositions. (Doc. 17, ¶ 15).

13. On behalf of all of its members, ASCAP licenses the right to perform publicly all of the millions of copyrighted songs in the ASCAP repertory, which includes the Musical Works, collects license fees associated with those performances, and distributes royalties to its members, less ASCAP’s operating expenses. (Doc. 50-2, ¶ 5).

14. ASCAP licensing representatives attempt to license all restaurants, bars, nightclubs, and similar such establishments pursuant to ASCAP’s form “General License Agreement – Restaurants, Bars, Nightclubs, and Similar Establishments” (the “Form License Agreement”). (*Id.*, ¶ 10; Ex. 2<sup>1</sup>).

15. A form “Rate Schedule and Statement of Operating Policy” (the “Rate Schedule”)<sup>22</sup> is annexed to, and incorporated by reference into, the Form License Agreement. (*Id.*).

16. The Rate Schedule is updated on an annual basis to account for increases in the Consumer Price Index, All Urban Consumers, and sets forth the various factors upon which annual license fees for each licensed establishment are calculated. (*Id.*, ¶ 11).

17. The Form License Agreement for restaurants, nightclubs, and similar establishments is a “blanket license” authorizing the licensee to play any and/or all of the works

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<sup>1</sup> The Form License Agreement is authenticated by a qualified witness pursuant to Fed. R. Evid. 901(b)(1) and is a record of regularly conducted activity pursuant to Fed. R. Evid. 803(6). (*See* Doc 50-2).

<sup>2</sup> The Rate Schedules for 2016, 2017, and 2018 are attached to the Declaration of John Johnson as Exhibits 3 through 5, are authenticated by a qualified witness pursuant to Fed. R. Evid. 901(b)(1) and are a record of regularly conducted activity pursuant to Fed. R. Evid. 803(6). (*See* Doc. 50-2).

in the ASCAP's repertory in consideration for payment of an annual license fee. (*Id.*, ¶ 12).

18. ASCAP's dealings with the Defendants began in December 2016. (Doc. 17, ¶ 16; see also Doc 50-2, ¶ 153).

19. Since December 2016, ASCAP licensing representatives repeatedly warned Defendants about the consequences of performing ASCAP's members' music works without proper authorization and attempted to offer an ASCAP license agreement for Frisky Frogs. (Doc. 17, ¶ 16; Doc. 50-2, ¶ 16; Doc. 27-5, ¶ 7).

20. Since December 2016, ASCAP licensing representatives have made more than eighty (80) attempts to contact the Defendants, their representatives, agents, or employees, to offer an ASCAP license for Frisky Frogs. (Doc. 50-2, ¶ 16). These attempted contacts have been made by telephone, by mail, by email, and in-person. (*Id.*).

21. At all times relevant, the license fees for Frisky Frogs quoted to the Defendants by ASCAP representatives were derived from ASCAP's uniform Rate Schedules used to compute license fees for similarly situated establishments. (*Id.*, ¶ 19 & Exs. 3, 4, 5).

22. After multiple telephone contacts, Defendant Jacob Tucker agreed to an in-person meeting with an ASCAP representative on the morning of March 6, 2017, but he failed to show up for the scheduled meeting. (*Id.*, ¶ 16 & Ex. 6).

23. Over the ensuing six (6) months after Defendant Jacob Tucker failed to appear for the scheduled meeting, eighteen (18) telephone calls were made to Frisky Frogs, which included telephone conversations with Frisky Frogs representatives including Defendant Jacob Tucker and consistently resulted in unreturned phone calls or general avoidance efforts. (*Id.*).

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<sup>3</sup> Factual findings regarding ASCAP's dealings with Defendants that are set forth in the Declaration of John Johnson (Doc. 50-2) are based on information contained in a file on Frisky Frogs which was created and is maintained by ASCAP. The file is authenticated by a qualified witness pursuant to Fed. R. Evid. 901(b)(1) and is a record of regularly conducted activity pursuant to Fed. R. Evid. 803(6). (*See* Doc 50-2).

24. On February 3, 2018, an independent investigator was hired by ASCAP to visit Frisky Frogs to take notes regarding the musical entertainment at Frisky Frogs and the songs performed during the visit. (*Id.*, ¶ 22).

25. According to the investigator's report, the songs performed at Frisky Frogs on February 3, 2018, included the Musical Works. (*Id.*, ¶ 22 & Ex. 8<sup>4</sup>).

26. On February 3, 2018, there were three forms of musical entertainment performed at Frisky Frogs: a live band, piped in music, and a disc jockey. (*Id.*; *see also* Doc. 27-5, ¶¶ 13, 14).

27. On February 3, 2018, Defendants did not have an ASCAP license for Frisky Frogs. (Doc. 27-5, ¶ 11).

28. Frisky Frogs was open to the public on February 3, 2018. (*Id.*, ¶ 12).

29. Frisky Frogs is believed to have ceased operations in or around December 2018. (Doc. 50-2; Doc. 50-3, ¶ 8).

30. Despite repeated reminders of their liability under the United States Copyright Law, Defendants continued to present public performances of the copyrighted musical compositions of ASCAP members at Frisky Frogs, without permission, for the entertainment of their patrons. (Doc. 50-2, ¶ 18).

31. Based on the Rate Schedule, the prorated license fees "saved" or "avoided" by Defendants is \$9,297.33. (Doc. 50-2, ¶¶ 20 through 23).

32. Plaintiffs commenced this action on June 5, 2018. (*see* Doc. 1).

33. Defendants failed to answer the Complaint by the deadline to do so, and Plaintiffs accordingly filed a motion for default on July 18, 2018. (Docs. 9-11).

34. Defendants eventually answered the Complaint on July 31, 2018. (Doc. 14).

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<sup>4</sup> The investigator's report is authenticated by a qualified witness pursuant to Fed. R. Evid. 901(b)(1), and is a record of regularly conducted activity pursuant to Fed. R. Evid. 803(6). (*See* Doc. 50-2).

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