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**Attorneys for Plaintiff
Joe Hand Promotions, Inc.**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

JOE HAND PROMOTIONS, INC.,

Plaintiff,

vs.

**LEE H. HOLMES, individually and d/b/a
HOMER'S RESTAURANT,**

Defendant.

Case No.: 3:13CV1415

COMPLAINT

PLAINTIFF ALLEGES:

JURISDICTION

1. Jurisdiction is founded on the existence of a question arising under particular statutes. This action is brought pursuant to several federal statutes, including the Communications Act of 1934, as amended, Title 47 U.S.C. 605, *et seq.*, and The Cable & Television Consumer Protection and Competition Act of 1992, as amended, Title 47 U.S. Section 553, *et seq.*

2. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. Section 1331, which states that the District Courts shall original jurisdiction of all civil actions arising under the Constitution, laws, or treaties, of the United States. This Court has subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

1 3. This Court has personal jurisdiction over the parties in this action as a result of the
2 Defendant's wrongful acts hereinafter complained of which violated the Plaintiff's rights as the
3 exclusive commercial domestic distributor of the televised fight *Program* hereinafter set forth at
4 length. The Defendant's wrongful acts consisted of the interception, reception, publication,
5 divulgence, display, exhibition, and tortious conversion of said property of Plaintiff within the
6 control of the Plaintiff in the State of Indiana.

7
8 **VENUE**

9 4. Pursuant to Title 47 U.S.C. Section 605, venue is proper in the Northern District of
10 Indiana, because a substantial part of the events or omissions giving rise to the claim occurred in
11 this District.

12 **INTRADISTRICT ASSIGNMENT**

13 5. Assignment to the South Bend Division of the Northern District of Indiana is proper
14 because a substantial part of the events or omissions giving rise to the claim occurred in Miami
15 County and/or the United States District Court for the Northern District of Indiana has decided
16 that suits of this nature, and each of them, are to be heard by the Courts in this particular
17 Division.

18 **THE PARTIES**

19 6. Plaintiff, Joe Hand Promotions, Inc. is, and at all relevant times mentioned was, a
20 Pennsylvania corporation with its principal place of business located at 407 E. Pennsylvania Blvd.,
21 Feasterville, Pennsylvania 19053.

22 7. Defendant Lee H. Holmes owns and operates the commercial establishment
23 doing business as Homer's Restaurant. Homer's Restaurant operates at 421 West Canal Street,
24 Peru, IN 46970.

25 ///

26 8. Defendant Lee H. Holmes is an individual specifically identified on the Alcohol and
27 Tobacco Commission Liquor Permit license issued for Homer's Restaurant (License
28 #RR5295340).

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9. Plaintiff is informed and believes, and alleges thereon that on December 30, 2011 (the night of the *Program* at issue herein, as more specifically defined in paragraph 15), Defendant Lee H. Holmes had the right and ability to supervise the activities of Homer's Restaurant, which included the unlawful interception of Plaintiff's *Program*.

9. Plaintiff is informed and believes, and alleges thereon that on December 30, 2011 (the night of the *Program* at issue herein, as more specifically defined in paragraph 15), Defendant Lee H. Holmes, as an individual specifically identified on the liquor license for Homer's Restaurant, had the obligation to supervise the activities of Homer's Restaurant, which included the unlawful interception of Plaintiff's *Program*, and, among other responsibilities, had the obligation to ensure that the liquor license was not used in violation of law.

10. Plaintiff is informed and believes, and alleges thereon that on December 30, 2011 (the night of the *Program* at issue herein, as more specifically defined in paragraph 15), Defendant Lee H. Holmes, specifically directed the employees of Homer's Restaurant to unlawfully intercept and broadcast Plaintiff's *Program* at Homer's Restaurant or that the actions of the employees of Homer's Restaurant are directly imputable to Defendant Lee H. Holmes by virtue of his acknowledged responsibility for the actions of Homer's Restaurant.

11. Plaintiff is informed and believes, and alleges thereon that on December 30, 2011, Defendant Lee H. Holmes as an individual specifically identified on the liquor license for Homer's Restaurant, had an obvious and direct financial interest in the activities of Homer's Restaurant, which included the unlawful interception of Plaintiff's *Program*.

12. Plaintiff is informed and believes, and alleges thereon that the unlawful broadcast of Plaintiff's *Program*, as supervised and/or authorized by Defendant Lee H. Holmes, resulted in increased profits for Homer's Restaurant.

13. Plaintiff is informed and believed, and alleges thereon that Defendant, Lee H. Holmes is an owner, and/or operator, and/or licensee, and/or permittee, and/or person in charge, and/or an individual with dominion, control, oversight and management of the commercial establishment doing business as Homer's Restaurant operating at 421 West Canal Street, Peru, IN 46970.

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COUNT I

(Violation of Title 47 U.S.C. Section 605)

14. Plaintiff Joe Hand Promotions, Inc., hereby incorporates by reference all of the allegations contained in paragraphs 1-13, inclusive, as though set forth herein at length.

15. Pursuant to contract, Plaintiff Joe Hand Promotions, Inc., was granted the exclusive nationwide commercial distribution (closed-circuit) rights to *Ultimate Fighting Championship 141: Brock Lesnar v. Alistar Overeem*, telecast nationwide on Saturday, December 30, 2011 (this included all under-card bouts and fight commentary encompassed in the television broadcast of the event, hereinafter referred to as the "*Program*").

16. Pursuant to contract, Plaintiff Joe Hand Promotions, Inc., entered into subsequent sublicensing agreements with various commercial entities throughout North America, including entities within the State of Indiana, by which it granted these entities limited sublicensing rights, specifically the rights to publicly exhibit the *Program* within their respective commercial establishments in the hospitality industry (i.e., hotels, racetracks, casinos, bars, taverns, restaurants, social clubs, etc.).

17. As a commercial distributor and licensor of sporting events, including the *Program*, Plaintiff Joe Hand Promotions, Inc., expended substantial monies marketing, advertising, promoting, administering, and transmitting the *Program* to its customers, the aforementioned commercial entities.

18. With full knowledge that the *Program* was not to be intercepted, received, published, divulged, displayed, and/or exhibited by commercial entities unauthorized to do so, the above named Defendant, either through direct action or through actions of employees or agents directly imputable to Defendant (as outlined in paragraphs 7-13 above), did unlawfully intercept, receive, publish, divulge, display, and/or exhibit the *Program* at the time of its transmission at his commercial establishment in Peru, located at 421 West Canal Street, Peru, IN 46970.

19. Said unauthorized interception, reception, publication, exhibition, divulgence, display,

1 and/or exhibition by the Defendant was done willfully and for purposes of direct and/or indirect
2 commercial advantage and/or private financial gain.

3 20. Title 47 U.S.C. Section 605, *et seq.*, prohibits the unauthorized publication or use of
4 communications (such as the transmission of the *Program* for which Plaintiff Joe Hand
5 Promotions, Inc., had the distribution rights thereto).

6
7 21. By reason of the aforesaid mentioned conduct, the aforementioned Defendant, violated
8 Title 47 U.S.C. Section 605, *et seq.*

9 22. By reason of the Defendant's violation of Title 47 U.S.C. Section 605, *et seq.*, Plaintiff Joe
10 Hand Promotions, Inc., has the private right of action pursuant to Title 47 U.S.C. Section 605.

11
12 23. As the result of the aforementioned Defendant's violation of Title 47 U.S.C. Section 605,
13 and pursuant to said Section 605, Plaintiff Joe Hand Promotions, Inc., is entitled to the following
14 Defendant:

- 15 (a) Statutory damages for each willful violation in an amount to
16 \$100,000.00 pursuant to Title 47 U.S.C. 605(e)(3)(C)(ii), and also
17
18 (b) the recovery of full costs, including reasonable attorneys' fees,
19 pursuant to Title 47 U.S.C. Section 605(e)(3)(B)(iii).

20
21 **WHEREFORE, Plaintiff prays for judgment as set forth below.**

22 **COUNT II**

23 **(Violation of Title 47 U.S.C. Section 553)**

24 24. Plaintiff's hereby incorporates by reference all of the allegations contained in paragraphs 1-
25 23, inclusive, as though set forth herein at length.

26
27 25. The unauthorized interceptions, reception, publication, divulgence, display, and/or
28

1 exhibition of the *Program* by the above named Defendant was prohibited by Title 47 U.S.C.
2 Section 553, *et seq.*

3 26. By reason of the aforesaid mentioned conduct, the aforementioned Defendant, violated
4 Title 47 U.S.C. Section 553, *et seq.*

5
6 27. By reason of the Defendant's violation of Title 47 U.S.C. Section 553, *et seq.*, Plaintiff Joe
7 Hand Promotions, Inc., has the private right of action pursuant to Title 47 U.S.C. Section 553.

8 28. As the result of the aforementioned Defendant's violation of Title 47 U.S.C. Section 553,
9 Plaintiff Joe Hand Promotions, Inc., is entitled to the following from each Defendant:

10
11 (a) Statutory damages for each violation in an amount to
12 \$10,000.00 pursuant to Title 47 U.S.C. § 553(c)(3)(A)(ii); and also

13 (b) Statutory damages for each willful violation in an amount to
14 \$50,000.00 pursuant to Title 47 U.S.C. § 553(c)(3)(B); and also

15
16 (c) the recovery of full costs pursuant to Title 47 U.S.C. Section 553
17 (c)(2)(C); and also

18 (d) and in the discretion of this Honorable Court, reasonable attorneys' fees,
19 pursuant to Title 47 U.S.C. Section 553 (c)(2)(C).

20
21 **WHEREFORE, Plaintiff prays for judgment as set forth below.**

22 **COUNT III**

23 **(Conversion)**

24
25 29. Plaintiff's hereby incorporates by reference all of the allegations contained in paragraphs 1-
26 28, inclusive, as though set forth herein at length.

27
28 30. By his aforesaid acts of interception, reception, publication, divulgence, display, and/or

1 exhibition of the *Program* at his commercial establishment at the above-captioned address, the
2 aforementioned Defendant, tortuously obtained possession of the *Program* and wrongfully
3 converted same for his own use and benefit.

4 31. The aforesaid acts of the Defendant were willful, malicious, egregious, and intentionally
5 designed to harm Plaintiff Joe Hand Promotions, Inc., by depriving Plaintiff of the commercial
6 license fee to which Plaintiff was rightfully entitled to receive from them, and in doing so, the
7 Defendant subjected the Plaintiff to severe economic distress and great financial loss.

8 32. Accordingly, Plaintiff Joe Hand Promotions, Inc., is entitled to both
9 compensatory, as well as punitive and exemplary damages, from aforementioned Defendant as the
10 result of the Defendant's egregious conduct, theft, and conversion of the *Program* and deliberate
11 injury to the Plaintiff.

12
13 **WHEREFORE, Plaintiff prays for judgment as set forth below.**

14 **As to the First Count:**

- 15
16 1. For statutory damages in the amount of \$110,000.00 against the Defendant,
17 and
18 2. For reasonable attorneys' fees as mandated by statute, and
19 3. For all costs of suit, including but not limited to filing fees, service of
20 process fees, investigative costs, and
21 4. For such other and further relief as this Honorable Court may deem just
22 and proper;

23 **As to the Second Count:**

- 24
25 1. For statutory damages in the amount of \$60,000.00 against the Defendant,
26 and;
27 2. For reasonable attorneys' fees as may be awarded in the Court's
28 discretion pursuant to statute, and;

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3. For all costs of suit, including but not limited to filing fees, service of process fees, investigative costs, and;
4. For such other and further relief as this Honorable Court may deem just and proper.

As to the Third Count:

1. For compensatory damages in an amount according to proof against the Defendant, and;
2. For exemplary damages against the Defendant, and;
3. For punitive damages against the Defendant, and;
4. For reasonable attorneys' fees as may be awarded in the Court's discretion pursuant to statute, and;
5. For all costs of suit, including but not limited to filing fees, service of process fee, investigative costs, and;
6. For such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

Date: December 27, 2013


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