



Federal Communications Commission  
Washington, D.C. 20554

April 12, 2017

Michael Couzens, Esq.  
Michael Couzens Law Office  
6536 Telegraph Avenue, Suite B201  
Oakland, CA 94609

Re: KPFW-LD, Dallas, TX  
Facility ID No. 127891  
File No. BALDTL-20160209ABU

Dear Counsel,

This letter refers to the above captioned digital low power television station, licensed to Iglesia Jesucristo Es Mi Refugio, Inc. (JEMIR), and the associated request to assign the license of KPFW-LD. On March 15, 2016, Jose Gonzalez, by his attorney, filed an informal objection against granting JEMIR's request for license assignment. On March 24, 2016, Jose Gonzalez, by his attorney, requested withdrawal of his informal objection. In his request, Jose Gonzales states that his withdrawal complies with the requirements of Section 73.3588 of the Commission's rules<sup>1</sup> and that he has neither received nor will he receive any consideration in connection with the request for withdrawal.

Accordingly, we **GRANT** the request for withdrawal and **DISMISS** the informal objection.

Sincerely,

A handwritten signature in black ink, appearing to read "Hossein Hashemzadeh", written in a cursive style.

Hossein Hashemzadeh  
Deputy Chief, Video Division  
Media Bureau

Cc:  
Iglesia Jesucristo Es Mi Refugio, Inc.  
2929 S. Westmoreland Rd.  
Dallas, TX 75233-1315

Dan J. Alpert, Esq.  
The Law Office of Dan J. Alpert  
2120 N. 21<sup>st</sup> Rd.  
Arlington, VA 22201

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<sup>1</sup> 47 C.F.R. 73.3588.

**ORIGINAL**

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CALIFORNIA AND IN THE  
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March 24, 2017

Accepted / Filed

MAR 24 2017

Federal Communications Commission  
Office of the Secretary

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street S.W.  
Washington, D.C. 20554

Re: **Withdrawal of Objections**

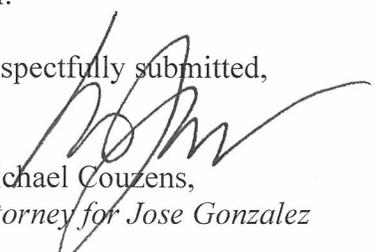
BALDTL-20160209ABU  
KPFW-LD, Dallas, TX  
Facility ID No. 127891

Dear Ms. Secretary:

Jose Gonzalez, by his attorney, hereby dismisses the informal objection with respect to their application, submitted on March 15, 2016.

In conjunction with this dismissal and pursuant to Section 73.3588 of the Rules and Regulations, the objector certifies in Attachment A that no money or other consideration has been promised or will be paid in exchange for this dismissal.

Respectfully submitted,

  
Michael Couzens,  
Attorney for Jose Gonzalez

c. Hossein Hashemzadeh  
Evan Morris

CERTIFICATION

I, Jose Gonzalez, make the following declaration.

1. As an individual party I submitted informal objections at the Federal Communications Commission, with respect to the following applications:

BALDTL-20160301ABS  
BALDTL-20160301ABT  
BALDTL-20160209ABU  
BALDVL-20160526ACZ

Additional I filed a petition to deny the following application:

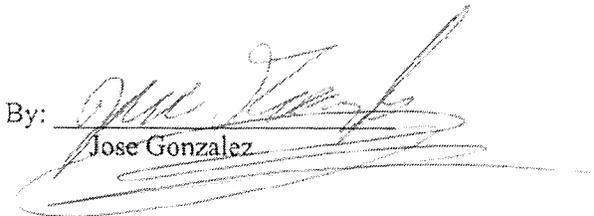
BRDTL-20140731ARX.

2. I have instructed my attorney to dismiss the petition and all such objections. I certify that I have not received nor been promised any money or other valuable consideration in exchange for the dismissal of these items.

The foregoing is certified, under the penalties for perjury provided in the laws of the United States.

Dated: March 23, 2017

By:

  
Jose Gonzalez



longer existed) to Los Angeles within one year, or refund the money. They did neither.

Plaintiffs rely on the above evidence to support claims for intentional misrepresentation, concealment, and false promise (collectively, fraud). The court finds that this evidence supports Plaintiff's claim for fraud. (*Id.*, p. 5).

The Superior Court judgment squarely presents the issue of whether assignor Jemir possesses the requisite character qualifications to be permitted to hold the authorization that is proposed for assignment here or for that matter to hold any FCC authorization. "The integrity of the Commission's processes cannot be maintained without honest dealing with the Commission by licensees." *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 at 1211 (1985) This issue is a preliminary to the question of whether or not the application may be processed or granted.<sup>2</sup>

#### **Reversion Violation Issue (Sec. 73.1150)**

The parties amended their application for assignment on or about February 19, 2016, to include an "Amendment to Asset Purchase Agreement." It provides:

Section 5.7 is added to state:

5.7 Programming. Following closing, for a period of ten years, Buyer shall not broadcast, and shall not allow the broadcast, of hispanic christian programming on the station.

This clause is a violation of Sec. 73.1150 of the Rules, which provides:

(a) In transferring a broadcast station, the licensee may retain no right of reversion of the license, no right to reassignment of the license in the future, and may not reserve the right to use the facilities of the station for any period whatsoever.

In applying the rule, the Commission mainly is concerned with contractual provisions related to

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<sup>2</sup> It would be futile for Jemir or Roberto Gomez to profess ignorance of the law's requirements. The defendants throughout these frauds and omissions were represented by an experienced communications counsel, Dan Alpert.

Superior Court of California  
County of Los Angeles  
Department 78

**FILED**  
Superior Court of California  
County of Los Angeles

FEB 26 2016

Sherri R. Carter, Executive Officer/Clerk

By Armando Garcia Deputy

JOSE GONZALEZ, et al.

Plaintiffs,

v.

IGLESIA JESUCRISTO ES MI REFUGIO, et  
al.,

Defendants.

Case No.: BC 501688

Hearing Date: February 29, 2016

**RULING RE ENTRY OF  
DEFAULT JUDGMENT**

Plaintiffs Jose Gonzalez ("Gonzalez"), Otto R. Azurdia ("Azurdia"), Carlos Rincon ("Rincon"), Sammy Fernandez ("Fernandez"), Jenar Orantes ("Orantes"), and Comizion Church, Inc.'s ("Comizion") request for Default Judgment is GRANTED in the amount of \$1,059,712.90, with \$622,867.42 in interest. Costs are award in the amount of \$6,652.16. Plaintiffs fail to explain how the \$9,918.72 of "other" costs requested are allowable under Code of Civil Procedure section 1033.5. Plaintiff's request for punitive damages is DENIED.

**Procedural History**

The Second Amended Complaint ("SAC") in this case was filed on March 18, 2014, alleging causes of action for Fraud, Breach of Contract, Unfair Business Practices, and Money Had and Received. (SAC at p. 1.) This case stems from a business arrangement for the purchase of television broadcast stations by plaintiffs from defendants. (SAC ¶ 4.) The SAC seeks \$1,299,090 in monetary damages, prejudgment interest, and punitive damages.

**Default Judgment**

Plaintiffs seek entry of a default judgment against the following defendants: Roberto Gomez ("Gomez"), the pastor of defendant church Iglesia Jesucristo Es Mi Refugio, Inc. ("Iglesia"); Iglesia; Antonio Cesar Guel ("Guel"), 100% owner of defendant HCCN, Inc. ("HCCN"); and HCCN. Gomez and Guel were held in default as of September 3, 2015, and Iglesia and HCCN were held in default as of October 20, 2015. The other named defendants (Richard Escobedo ("Escobedo") and Centro Palabra de Fe ("Centro") were dismissed with prejudice on August 13, 2015.

amount. Plaintiffs have also adequately explained the confusion surrounding exhibit 45, which includes incomplete payments to HCCN.

### A. Summary of the Evidence

The evidence presented sets forth the factual events in three phases.

**Phase 1** is from 2006 to 2007. Escobedo and Gomez met in the 1990s, and in 2006, Gomez told Escobedo about two low power television broadcast stations that he owned: one in Ridgecrest and one in Santa Maria. (See Plaintiff's Evidence in Lieu of Testimony ("PELT") at p. 4; Escobedo Depo. at 12:15-22.) Gomez told Escobedo that there was a "90% chance" that the station would be moved to Los Angeles to Mount Wilson. (PELT at p. 4.) Defendant Guel was to facilitate the transition of the stations to Los Angeles. (PELT at p. 4.)

On November 16, 2006, defendants Gomez and Escobedo signed an agreement for acquisition of "the Ridgecrest, California license" for \$550,000. (PELT at p. 4, Ex. 1.) On January 2, 2007, the Santa Maria station was agreed to be sold for \$1,500,000, with a \$300,000 if both stations were purchased. (PELT at p. 4, Ex. 2.)

By June 7, 2006, Escobedo had recruited plaintiffs as co-investors, and the collectively paid \$490,000 toward Ridgecrest and \$135,000 toward Santa Maria. (PELT at p. 5, Ex. 4.) By that date, Escobedo has shifted the accounts into a common entity, Comizion TV. (PELT at p. 5, Ex. 5.)

During these discussions, however, Gomez and Guel failed to disclose that Ridgecrest was, in actuality, owned by Kern Educational Telecommunications ("Kern"), and it was not bought by HCCN until March 19, 2007. (PELT at p. 5, Exs. 8-10.) HCCN purchased the stations for \$90,000. During the same time period that plaintiffs were "investing" in purchasing the stations from defendants, the Santa Maria station was actually owned by non-party Cherie Erwin, who sold the station to HCCN on January 17, 2007, for \$240,000. (PELT at pp. 5-6, Exs. 14-15.)

Plaintiffs state that the sales between plaintiffs and defendants violated 47 U.S.C. section 310, subd. (d), which requires any transfers of a broadcast station license to be predicated on a successful application to the Federal Communications Commission ("FCC"), because no such application was made. (PELT at p. 6, Exs. 8-9, 14-15.) Compliance was actually impossible because Gomez did not actually own the stations at the time he sold them to plaintiffs.

Plaintiffs argue that case law holds that in such a fraud case, they would not be held to have constructive knowledge of the true owners of the station by means of public records, and that they had no duty to investigate the truth of representations they were justified in relying on, especially considering their relative inexperience and ignorance of broadcast laws. (PELT at p. 7.) Plaintiffs supply deposition testimony by Escobedo that supports a finding that he intentionally hid the transfers of the stations to prevent people in Los Angeles from attempting to stop the transfers. (PELT at p. 7; Escobedo Depo at p. 60-61.)

The two stations were sold by HCCN to Iglesia in September, 2007, both for \$250,000. (PELT at p. 8, Exs 11, 12, 17, 18.) These transactions were not disclosed to the plaintiffs.

Plaintiffs filed suit on February 25, 2013. (PELT at p. 17.)

Plaintiffs rely on the above evidence to support claims for intentional misrepresentation, concealment, and false promise (collectively, fraud). The court finds that this evidence supports Plaintiffs' claim for fraud. Plaintiffs seek rescission of the underlying contracts. They do not seek a finding on their third cause of action for money had and received or their fourth cause of action for Unfair business Practices. (PELT at p. 18.)

### **B. Monetary Damages**

In support of their monetary damages, plaintiffs submit evidence that they paid \$800,683.95 in installment payments to Iglesia and \$145,670 in fees generally to HCCN. (Exs. 43, 45.) Plaintiff Comizion also paid \$95,000 to reimburse Escobedo for some of his initial investment, an amount proximately caused by the fraud. As noted above, these amounts total \$1,041,353.95, but the court finds that calculation of damages based on Exhibits 41, 43, and 44 supports a finding of damages in the total amount of 1,059,712.90, and judgment will be entered in this amount.

The court finds that all defendants are jointly and severally liable for these damages because the fraud was perpetrated by both Guel and Gomez, who were acting as agents for HCCN and Iglesia. Accordingly, the court will enter judgment in the amount of \$1,059,712.90 in monetary damages.

**Pre-Judgment Interest:** Civil Code Section 3266 provides that interest may be given "in the discretion of the jury" in fraud cases, and that in a bench trial, the judgment may award pre-judgment interest. (PELT at pp. 21-22.) The statutory amount of 7% is applicable to fraud claims. (PELT at p. 22; *Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1585.) Exhibit 60, Attachment D calculates the interest to be \$622,867.42, and plaintiffs served this pre-judgment interest amount on defendants on November 18, 2015, in the Statement of Damages. (PELT at p. 23.) The court therefore awards pre-judgment interest in the amount of \$622,867.42.

### **C. Punitive Damages**

To justify an award for punitive damages, the defendant must be guilty of oppression, fraud or malice, acting intentionally to vex, injure, or annoy, or with a conscious disregard of the plaintiff's rights. (*Neal v. Farmers Ins. Exchange*, 21 Cal.3d 910, 921 (1978).) In determining whether punitive damages are excessive, the court in *Neal* articulated three factors to guide the assessment: (1) the reprehensibility of the defendant's conduct in light of the whole record; (2) the amount of compensatory damages awarded as compared to punitive damages; and (3) the wealth of the particular defendant. (*Id.* at p. 928.)

Generally, an award of punitive damages cannot be sustained unless "the trial record contains meaningful evidence of the defendant's financial condition." (*Adams v. Murakami*, 54 Cal.3d 105, 109 (1991).) "[T]he key question before the reviewing court is whether the amount of damages 'exceeds the level necessary to properly punish and deter.' [Citation.]" (*Id.* at p. 110.) "[E]vidence of a defendant's income, standing alone, is wholly inadequate," and a showing of a defendant's "financial condition" is generally synonymous with a showing of its "net worth." (*Lara v. Cadag* (1993) 13 Cal.App.4th 1061, 1064-5.)

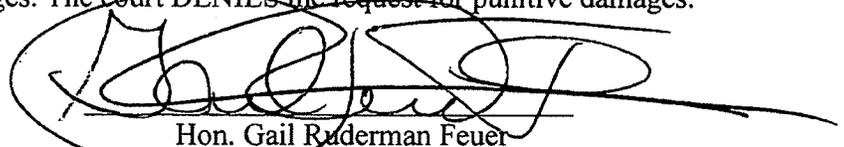
along with evidence of yearly earnings and evidence that the negative net worth was due only to accumulated depreciation, and that the defendant was in fact able to pay the punitive damages. (*Ibid.*) Here, however, there is no evidence *other* than defendants' negative net worth.

In their supplemental briefing, Gonzalez argues that the plaintiffs filed an ex parte motion on February 23, 2016 requesting a court order directing defendants to submit net worth financial data by March 8, 2016. (Supplement to Plaintiff's Evidence in lieu of Testimony at p. 3.) However, the court denied this ex parte application for lack of any notice on the defaulted defendants. Additionally, the court notes that Code Civ. Proc. section 3295, subd. (c) does not specifically allow such a hearing to be set for a party in default. While it true that a party who fails to comply with an order to produce evidence of financial condition thereafter waives its right to object to an award of punitive damages based on a lack of evidence (see *Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597, 608), no such order has been made by this court. As noted above, Gonzalez had adequate time and remedies during the lengthy litigation of this case to seek to compel defendants to produce evidence of their financial condition, and failed to do so.

While illegal profit off of a fraudulent endeavor may be used as evidence of financial condition for purposes of punitive damages in a default judgment proveup, punitive damages in that case is limited to the amount of profit not recovered through compensatory damages. (See *Cummings Medical Corp. v. Occupational Medical Corp.* (1992) 10 Cal.App.4th 1291, 1301.) Here, all of the money transferred to defendants — i.e., the profit to defendants — is included in the request for compensatory damages. Therefore, there is no “remaining illegal profit” that could be recoverable as punitive damages.

Gonzalez has failed to produce any evidence of the financial condition of the defendants to support his request for punitive damages. The court DENIES the request for punitive damages.

DATED: February 26, 2016

  
Hon. Gail Ruderman Feuer  
Judge of the Superior Court

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in default by order of this court on October 20, 2015. The answer of all defendants was stricken.

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2 ~~Plaintiffs' request for a statement of decision is granted.~~

3 Default is deemed an admission of all the properly pleading allegations of the complaint,  
4 (*Bristol Convalescent Hospital v. Stone* (1968) 258 Cal.App.2d 848, 859.) <sup>The court finds that</sup> In addition, plaintiffs  
5 have submitted sufficient credible evidence to support the claims <sup>for</sup> relief, C.C.P. Section  
6 585(b), <sup>as set forth in the court's Ruling re Entry of Default</sup>  
7 <sup>Judgment,</sup>

8 With respect to the second cause of action for fraud, the court finds that defendants  
9 Gomez and Guel made false representations to plaintiffs, that at the time they knew were false.  
10 The statements were made with the intention and for the purpose of deceiving the plaintiffs.  
11 The plaintiffs justifiably relied on such representations. As a result, the plaintiffs sustained a  
12 loss as the proximate result of the representations, by paying defendants the sum of  
13 \$1,059,712.90. Said payments were made to defendants H.C.C.N. and Iglesia. All defendants are  
14 jointly and severally liable for these payments as the result of a single indivisible injury, induced  
15 by fraud.

16 To make the plaintiffs whole for their injuries, the court awards pre-judgment interest at  
17 the Constitutional rate of seven per cent, in the amount of \$622,867.42.

18  
19 ~~The court finds that the facts support a conclusion of oppression, fraud or malice, Civil  
20 Code Section 3294. By order adopted on February 23, 2016, the court directed defendants to  
21 produce audited balance sheets or other probative evidence of their net worth, to enable the  
22 award to award damages appropriate to the overall reprehensibility of the acts, the deterrent  
23 effect, and the ability of defendants to pay. To, the extent that a party has not complied with this  
24 order, it will have waived any right to appeal the amount of punitive damages. Based on the  
25 evidence, the court awards punitive damages against the defendants jointly and severally in the  
26 amount of \_\_\_\_\_.~~

27  
28 *Jose Gonzalez vs. Iglesia Jesucristo Es Mi Refugio-- Default Judgment by Court*

CERTIFICATE OF SERVICE

I, Michael Couzens, certify that copies of the foregoing Informal Objection were served by First Class Mail, with postage fully prepaid, on March 16, 2016, to the following:

Barbara A. Kreisman, Chief  
Video Division, Media Bureau  
Federal Communications Commission  
445 Twelfth Street S.W.  
Washington, D.C. 20554

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Law Office of Dan J. Alpert  
2120 N. 21<sup>st</sup> Rd  
Arlington, VA 22201

Mark B. Denbo  
Smithwick & Belendiuk PC  
5028 Wisconsin Avenue, N.W.  
Washington, D.C. 20016



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Michael Couzens