

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Jesse Ventura a/k/a James
G. Janos,

Plaintiff,

Civ. No. 12-472 (RHK/JJK)
ORDER

v.

Taya Kyle, as Executor of the Estate of
Chris Kyle,

Defendant.

Presently before the Court is the disposition of Plaintiff Jesse Ventura's unjust-enrichment claim following trial. The Court submitted the unjust-enrichment claim to the jury in an advisory capacity and, concluding that the jury's verdict in favor of Ventura and its award of \$1,345,477.25 are reasonable and supported by a preponderance of the evidence, the Court will adopt the jury's verdict as its own.¹

Trial in this matter commenced July 8, 2014, and the jury returned a verdict July 29, 2014. Over the course of the trial, the Court received substantial evidence related to Ventura's unjust-enrichment claim, as well as his defamation and appropriation claims. Most notably, Taya Kyle, Peter Hubbard, and Sharon Rosenblum all testified regarding the promotion of American Sniper, media interest in Chris Kyle's story about Ventura,

¹ The Court indicated at the close of trial, upon request of defense counsel, that it might hear from the parties again before disposing of the unjust-enrichment claim. However, upon reviewing the trial transcripts, as well as the parties' briefing on Defendant's two Motions for Summary Judgment and Motion for Judgment as a Matter of Law, the Court concluded further argument on the matter was unnecessary and would only serve to delay the entry of judgment.

sales of American Sniper, revenues and royalties, and the development of a motion picture adaptation. Their testimony, together with the exhibits, revealed the following:

American Sniper went on sale Tuesday, January 3, 2012. (Trial Tr. at 1824.)

Before it went on sale, there had been approximately 3,400 preorders of the book, which the publishers considered “tremendous.” (Id. at 1819; Def. Ex. 264.) HarperCollins had not expected the book to be a best seller because Kyle was an “unknown author.” (Trial Tr. at 1819.) Chris Kyle was scheduled to do a publicity tour for the book beginning January 3. On Wednesday, January 4, he appeared on the Opie & Anthony radio show. About twenty minutes into the show, a listener called in and asked about whether Kyle had punched Ventura. (Pl. Ex. 100.) Opie and Anthony responded with enthusiasm and Kyle’s publicist, Sharon Rosenblum, agreed the show “got lively” at that point. (Trial Tr. at 1826.) She was pleased with Kyle’s performance and considered it a “hit interview.” (Id. at 1828.)

The next day, January 5, the book rose to number 21 on Amazon’s best-seller list. (Id. at 1829.) The editor, Peter Hubbard, emailed Rosenblum and others a link to a Fox News story captioned “Navy Seal Punched Out Jesse Ventura,” remarking it was “priceless.” (Id. at 1829; Pl. Ex. 102.) Rosenblum responded that Kyle had been invited to appear on Fox and Friends again to tell this story and called it “hot hot hot.” (Trial Tr. at 1830; Pl. Ex. 102.) That evening, Kyle’s interview on The O’Reilly Factor aired, which both Rosenblum and Hubbard testified was an important interview. After introducing Chris Kyle and his book, O’Reilly’s first question to Kyle was about getting in a fight with Ventura. (Trial Tr. at 1832; Pl. Ex. 103.) In other words, O’Reilly chose

to lead with the Ventura story—not Kyle’s record number of kills or his fatal 2,100 yard shot.

On Friday, January 6, the day after the O’Reilly interview aired, sales rocketed and American Sniper went from number 21 to number 2 on Amazon’s best-seller list. (Trial Tr. at 1834.) The CEO of HarperCollins sent an email that day scheduling a reprint of 100,000 copies of American Sniper. (Id. at 1836–37; Pl. Ex. 315.) Hubbard responded, “Holy shit.” (Trial Tr. at 1837; Pl. Ex. 315.) Rosenblum sent out a “News Flash” on American Sniper to the HarperCollins sales team for distribution to their accounts, which linked to a Fox News story about the Ventura story and to a clip of the Opie & Anthony show in which Kyle discussed Ventura. (Trial Tr. at 1840; Pl. Ex. 295.)

By the weekend, the book was the number 1 seller on Amazon and Barnes & Noble. (Trial Tr. at 1834.) The head of sales sent an email with the subject line “Number 1 both Amazon & bn.com” that said “Thank you Mr. O’Reilly.” (Id. at 1835; Pl. Ex. 104.) Kyle was invited back onto the Opie & Anthony Show on January 10 to discuss the Ventura story further. (Trial Tr. at 1849–50; Pl. Ex. 113.) By January 11, Rosenblum described the sales of American Sniper as “astonishing.” (Trial Tr. at 1855.) By January 22, the book was number 1 on the New York Times best-seller list, where it remained for many weeks. (Pl. Ex. 126) In June 2012, the film rights were optioned by Warner Brothers, which has since filmed a movie based on the book, directed by Clint Eastwood and starring Bradley Cooper. (Trial Tr. at 99–100; Pl. Exs. 130, 134.)

At trial, Hubbard estimated American Sniper had sold 1.5 million copies to date. (Trial Tr. at 1881.) At \$26.99 per book, Ventura’s counsel estimated in closing argument

that HarperCollins had made approximately \$40 million off American Sniper sales. (Id. at 2038.) Kyle was entitled to 15% of the revenue (after the first \$10,000) (Pl. Ex. 82), which would equal over \$6 million in royalties to Kyle and his Estate to date (Trial Tr. at 2038). In addition, Kyle received more than \$500,000 from the Warner Brothers contract to date. (Pl. Exs. 134, 135, 355, 356.)

After two weeks of evidence and more than five full days of deliberations, the jury returned a divided verdict (with the parties' agreement, see Fed. R. Civ. P. 48(b)) of eight to two in favor of Ventura on defamation and unjust enrichment and in favor of Kyle on appropriation. The jury awarded Ventura \$500,000 for defamation and \$1,345,477.25 for unjust enrichment. Given how much media attention the Ventura story garnered and how book sales sky-rocketed after select media appearances in which Kyle recounted and discussed the Ventura story, the jury's conclusion that Kyle was unjustly enriched by his story about Ventura was supported by a preponderance of the evidence. Likewise, its award of \$1,345,477.25 was a reasonable portion (approximately 25%) of Chris Kyle's and his Estate's total profits to date and was supported by substantial evidence.

CONCLUSION

This case was tried to a jury and the Court from July 8, 2014, to July 22, 2014. On July 29, 2014, upon agreement by the parties, the jury returned a divided verdict of eight to two as follows:

1. Did Plaintiff Jesse Ventura prove his claim of defamation against Chris Kyle? (See Jury Instruction Nos. 8, 8A, 8B, 8C.)

YES NO

2. What amount of money, if any, will fairly and adequately compensate Plaintiff Jesse Ventura for damages directly caused by the defamation? (See Jury Instruction Nos. 12 and 13 for the means of determining damages.)

\$ 500,000.00

3. Did Plaintiff Jesse Ventura prove his claim of appropriation against Chris Kyle? (See Jury Instruction No. 9.)

 YES X NO

4. What amount of money, if any, will fairly and adequately compensate Plaintiff Jesse Ventura for damages directly caused by the appropriation? (See Jury Instruction No. 13 for the means of determining damages.)

\$ _____

5. Did Plaintiff Jesse Ventura prove his claim of unjust enrichment against Chris Kyle and the Defendant Estate? (See Jury Instruction No. 10.)

 X YES NO

6. By what amount of money, if any, has the Defendant Estate been unjustly enriched? (See Jury Instruction No. 13 for the means of determining damages.)

\$ 1,345,477.25

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Based on the foregoing, **IT IS ORDERED** that the jury's verdicts are **ADOPTED** by the Court as its own. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED**, pursuant to Federal Rule of Civil Procedure 58(b), that Plaintiff Jesse

Ventura recover of Defendant Taya Kyle, as the Executor of the Estate of Chris Kyle, the sum of \$1,845,477.25 comprising \$500,000.00 in defamation damages and \$1,345,477.25 in unjust enrichment.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 7, 2014

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge