

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JOE HAND PROMOTIONS, INC.

Plaintiff,

vs.

DAVID ALVARADO, et al.,

Defendants.

CASE NO. CV F 10-0907 LJO JLT

SUMMARY JUDGMENT DECISION
(Doc. 35.)

INTRODUCTION

Defendants David Alvarado and Linda Alvarado (collectively the “Alvarados”) seek summary judgment on plaintiff Joe Hand Promotions, Inc.’s (“Joe Hand’s”) cable piracy claims in that the Alvarados did not own, operate or control the bar where Joe Hand’s exclusive programming was allegedly intercepted. Joe Hand filed no papers to oppose summary judgment for the Alvarados. This Court considered the Alvarados’ summary judgment motion on the record¹ and VACATES the May 16, 2011 hearing, pursuant to Local Rule 230(c), (g). For the reasons discussed below, this Court GRANTS the Alvarados summary judgment.

¹ In the absence of Joe Hand’s opposition, this Court carefully reviewed and considered the entire record to determine whether the Alvarados’ summary judgment motion is well supported. Omission of reference to an argument, document or paper is not to be construed to the effect that this Court did not consider the argument, document or paper. This Court thoroughly reviewed, considered and applied the evidence and matters it deemed admissible, material and appropriate for summary judgment.

1 **BACKGROUND**

2 **Summary**

3 Joe Hand held exclusive closed-circuit distribution rights to *Ultimate Fighting Championship*
4 *98: Rashad Evans v. Lyoto Machida* (“telecast”), including under-card bouts, which were telecast
5 nationally on May 23, 2009. Joe Hand claims that the telecast was unlawfully intercepted at Frankie’s
6 Bar aka Patron’s Sports Bar in Madera. The Alvarados deny liability in that they did not own, operate
7 or control the bar at the time of the telecast. The Alvarados claim that alleged wrongdoing is attributable
8 to defendants Adolfo Ordaz, Jr., Susana Garcia and Andres Garcia (collectively the “Ordaz-Garcias”).

9 **The Alvarados’ Declarations**

10 In their declarations, the Alvarados state that:

- 11 1. The Alvarados owned and operated Frankie’s Bar in Madera prior to April 2009 and
12 again resuming toward the end of 2009;
- 13 2. The Ordaz-Garcias leased the bar premises during April 1, 2009 to November 2009 and
14 ran their Patron’s Sports Bar business;
- 15 3. The Ordaz-Garcias held exclusive control to the bar premises and “assumed all
16 responsibilities for the actions that took place therein,” including during May 2009;
- 17 4. Frankie’s Bar did not exist during the Ordaz-Garcias’ lease of the bar premises;
- 18 5. The Alvarados resumed control of the bar premises after the Ordaz-Garcias failed to pay
19 rent, and the Alvarados again operated the bar premises as Frankie’s Bar;
- 20 6. If the telecast was shown at the bar premises, the Ordaz-Garcias did so without the
21 Alvarados’ “knowledge, consent or permission”;
- 22 7. The Alvarados were not “in any way involved with what was taking place” at the bar
23 premises on May 23, 2009;
- 24 8. The Alvarados were not informed of what took place at Patron’s Sports Bar on May 23,
25 2009;
- 26 9. As of May 23, 2009, the Alvarados neither owned the business nor had employees
27 working at the bar premises;
- 28 10. Prior to the Ordaz-Garcias’ operation of the bar premises, the Alvarados “always

operated a lawful cable television system at the establishment”;

11. The Alvarados neither had prior knowledge that the telecast would be shown, had control over what was shown on the Patron’s Sport Bar’s televisions, nor derived benefits from telecast;

12. The Alvarados had neither a business nor financial stake in Patron’s Sports Bar;

13. The Alvarados held neither a supervisory position with control in Patron’s Sports Bar nor the right or ability to supervise Patron’s Sport Bar activities; and

14. The Alvarados neither played a part in violations of law regarding the telecast, authorized violations, nor “had a financial interest in any misconduct.”

Security Guards’ Declarations

Armando Gonzalez and Victor Gonzalez (collectively “security guards”) have worked as security guards at the bar premises since prior to April 2009 to present. In their declarations, the security guards state that:

1. On April 1, 2009, defendant Adolfo Ordaz, Jr. (“Mr. Ordaz”) took over the bar premises and began to run Patron’s Sports Bar;

2. On May 23, 2009 when the telecast was shown, the Alvarados “had nothing to do with the bar”;

3. When the security guards worked for Mr. Ordaz, Mr. Ordaz ran the day-to-day operations, was at the bar all of the time, from opening to closing, and was in charge;

4. In May 2009, Mr. Ordaz paid the security guards, not the Alvarados;

5. Based on Mr. Ordaz’ instructions, the security guards during May 2009 never dealt with the Alvarados, who according to Mr. Ordaz, “had nothing to do with the bar”;

6. During May 2009, the Alvarados “were never informed about what was going on at the bar” and “had no control of what was taking place” at the bar premises; and

7. The security guards understood that based on Mr. Ordaz’ statements that Mr. Ordaz “was the owner of the bar and was intentionally running the establishment independently” of the Alvarados.

In his declaration, Victor Gonzalez notes: “When Adolfo Ordaz, Jr. took over the bar he changed

1 the television system to some kind of satellite system and also had a ‘black box.’ Adolfo Ordaz, Jr.
2 specifically told me ‘don’t tell nobody’ about the black box that was routinely used by Adolfo Ordaz,
3 Jr. to obtain various television programs, including sports events.”

4 **Bartender’s Declaration**

5 Brandie Flores (“Ms. Flores”) worked as a bartender at Patron’s Sports Bar for three months
6 starting in spring 2009. In her declaration, Ms. Flores states that:

- 7 1. Ms. Flores understood that Mr. Ordaz owned the bar;
- 8 2. Mr. Ordaz held himself out as “the owner of the establishment” and “often referred to
9 himself as the owner and made clear to all of the employees working there that he was
10 in charge and we were supposed to report to him”;
- 11 3. The Alvarados were in the bar when Ms. Flores worked there;
- 12 4. Ms. Flores lacked knowledge of the Alvarados’ involvement in the bar business;
- 13 5. As of May 23, 2009, the Alvarados “had nothing to do with the operations of the
14 televisions at the bar” and “the business was being run as Patron’s Sports Bar” by Mr.
15 Ordaz;
- 16 6. Based on Mr. Ordaz’ statements, Ms. Flores understood that in May 2009, Mr. Ordaz
17 owned the bar and intentionally ran it independently of the Alvarados; and
- 18 7. The Alvarados “were never informed about what was going on at the bar at that time, and
19 they certainly had no control of what was taking place there.”

20 **Joe Hand’s Discovery Responses**

21 Joe Hand referenced only a California liquor license in the Alvarados’ name to respond to the
22 Alvarados’ interrogatories seeking facts, witnesses and documents to support that the Alvarados
23 controlled the bar premises on May 23, 2009. In response to the Alvarados’ interrogatories seeking
24 facts, witnesses and documents to support that the Alvarados knew that the telecast would be shown on
25 May 23, 2009, Joe Hand responded that it was unaware whether the Alvarados knew that the telecast
26 would be shown. Joe Hand again referenced the liquor license to respond to interrogatories seeking
27 facts, witnesses and documents to support that the Alvarados owned and/or operated the bar premises
28 and had involvement in the decision to display the telecast. Joe Hand responded to other interrogatories

1 that it was unaware whether the Alvarados were personally present at Patron’s Sports Bar during the
2 telecast.

3 In responses to requests for admission, Joe Hand admitted that the liquor license is its only basis
4 to support that the Alvarados owned and/or operated Patron’s Sports Bar.

5 The Alvarados note that in response to document requests, Joe Hand produced documents that
6 indicated that the Ordaz-Garcias were in charge of the bar premises and owned Patron’s Sports Bar on
7 May 23, 2009. Such documents include:

- 8 1. Mr. Ordaz’ May 4, 2009 letter on Patron’s Sports Bar letterhead to identify the bar
9 premises and to confirm that he is the owner;
- 10 2. A fictitious business name statement for Patron’s Sports Bar filed with the Madera
11 County Clerk on April 8, 2009, naming the Ordaz-Garcias as registrants and signed by
12 Mr. Ordaz;
- 13 3. A May 29, 2009 check payable to Victor Gonzalez on a Wells Fargo Bank account for
14 defendant Susana Garcia dba Patron’s Sports Bar;
- 15 4. An October 2009 merchant card processing statement in Patron’s Sports Bar’s name;
- 16 5. A contract confirmation between Patron’s Sports Bar and a radio station; and
- 17 6. A January 11, 2010 California Labor Commissioner decision to address claims against
18 Patron’s Sport Bar and the Ordaz-Garcias and which noted:

19 Defendant by his own admission operated the business as an owner, filed a fictitious
20 business statement with the County of Madera to operate Patron’s Sports Bar under a
21 general partnership, issued wages payments to Plaintiff with a check for Patron’s Sports
Bar, and attempted to procure small business loans for the business as a general
partnership doing business as Patron’s Sports Bar.

22 The Alvarados note that Joe Hand has failed to produce evidence that the Alvarados were
23 involved in “the alleged signal piracy activities and conversion of the television signal” or “wrongfully
24 obtained any money from the alleged television signal piracy.” The Alvarados contend that the sole
25 basis of their alleged liability is the liquor license in their names.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Joe Hand’s Claims

Joe Hand’s complaint (“complaint”) alleges that the Alvarados and the Ordaz-Garcias unlawfully pirated the telecast to violate the Communications Act of 1934, 47 U.S.C. §§ 605, et seq.,² the Cable & Television Consumer Protection and Competition Act of 1992, 47 U.S.C. §§ 553 et seq.,³ and the California Unfair Competition Law (“UCL”), Cal. Bus. & Profs. Code, §§ 17200, et seq. The complaint also alleges a conversion claim under California common law.

The complaint seeks to recover statutory, compensatory and punitive damages as well as attorney fees.

DISCUSSION

Summary Judgment Standards

The Alvarados seek summary judgment in the absence of evidence of their liability.

F.R.Civ.P. 56(a) permits a party to seek summary judgment “identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought.” “A district court may dispose of a particular claim or defense by summary judgment when one of the parties is entitled to judgment as a matter of law on that claim or defense.” *Beal Bank, SSB v. Pittorino*, 177 F.3d 65, 68 (1st Cir. 1999).

Summary judgment is appropriate when the movant shows “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” F.R.Civ.P. 56(a); *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 1356 (1986); *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987). The purpose of summary judgment is to “pierce the pleadings and assess the proof in order to see whether there is a genuine need for trial.” *Matsushita Elec.*, 475 U.S. at 586, n. 11, 106 S.Ct. 1348; *International Union of Bricklayers v. Martin Jaska, Inc.*, 752 F.2d 1401, 1405 (9th Cir. 1985).

² 47 U.S.C. § 605, et seq., prohibits the unauthorized use of wire or radio communications, including interception and broadcast of pirated cable or broadcast programming.

³ 47 U.S.C. § 553, et seq., prohibits interception or reception of any communication service over a cable system without authorization.

1 On summary judgment, a court must decide whether there is a “genuine issue as to any material
2 fact,” not weigh the evidence or determine the truth of contested matters. F.R.Civ.P. 56(a), (c); *Covey*
3 *v. Hollydale Mobilehome Estates*, 116 F.3d 830, 834 (9th Cir. 1997); *see Adickes v. S.H. Kress & Co.*,
4 398 U.S. 144, 157, 90 S.Ct. 1598 (1970); *Poller v. Columbia Broadcast System*, 368 U.S. 464, 467, 82
5 S.Ct. 486 (1962); *Loehr v. Ventura County Community College Dist.*, 743 F.2d 1310, 1313 (9th Cir.
6 1984). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate
7 inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for
8 summary judgment or for a directed verdict.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106
9 S.Ct. 2505 (1986)

10 The evidence of the party opposing summary judgment is to be believed and all reasonable
11 inferences that may be drawn from the facts before the court must be drawn in favor of the opposing
12 party. *Anderson*, 477 U.S. at 255, 106 S.Ct. 2505; *Matsushita*, 475 U.S. at 587, 106 S.Ct. 1348. The
13 inquiry is “whether the evidence presents a sufficient disagreement to require submission to a jury or
14 whether it is so one-sided that one party must prevail as a matter of law.” *Anderson*, 477 U.S. at 251-
15 252, 106 S.Ct. 2505.

16 To carry its burden of production on summary judgment, a moving party “must either produce
17 evidence negating an essential element of the nonmoving party’s claim or defense or show that the
18 nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of
19 persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102 (9th
20 Cir. 2000); *see Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (2007) (moving party is able to
21 prevail “by pointing out that there is an absence of evidence to support the nonmoving party’s case”);
22 *High Tech Gays v. Defense Indus. Sec. Clearance Office*, 895 F.2d 563, 574 (9th Cir. 1990). A
23 “complete failure of proof concerning an essential element of the nonmoving party’s case necessarily
24 renders all other facts immaterial” to entitle the moving party to summary judgment. *Celotex Corp. v.*
25 *Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548 (1986).

26 “[T]o carry its ultimate burden of persuasion on the motion, the moving party must persuade the
27 court that there is no genuine issue of material fact.” *Nissan Fire*, 210 F.3d at 1102; *see High Tech*
28 *Gays*, 895 F.2d at 574. “As to materiality, the substantive law will identify which facts are material.

1 Only disputes over facts that might affect the outcome of the suit under the governing law will properly
2 preclude the entry of summary judgment.” *Anderson*, 477 U.S. at 248, 106 S.Ct. 2505.

3 “If a moving party fails to carry its initial burden of production, the nonmoving party has no
4 obligation to produce anything, even if the nonmoving party would have the ultimate burden of
5 persuasion at trial.” *Nissan Fire*, 210 F.3d at 1102-1103; *see Adickes*, 398 U.S. at 160, 90 S.Ct. 1598.
6 “If, however, a moving party carries its burden of production, the nonmoving party must produce
7 evidence to support its claim or defense.” *Nissan Fire*, 210 F.3d at 1103; *see High Tech Gays*, 895 F.2d
8 at 574. “If the nonmoving party fails to produce enough evidence to create a genuine issue of material
9 fact, the moving party wins the motion for summary judgment.” *Nissan Fire*, 210 F.3d at 1103; *see*
10 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548 (1986) (F.R.Civ.P. 56 “mandates the entry
11 of summary judgment, after adequate time for discovery and upon motion, against a party who fails to
12 make the showing sufficient to establish the existence of an element essential to that party’s case, and
13 on which that party will bear the burden of proof at trial. In such a situation, there can be no ‘genuine
14 issue as to any material fact,’ since a complete failure of proof concerning an essential element of the
15 nonmoving party’s case necessarily renders all other facts immaterial.”)

16 F.R.Civ.P. 56(e)(2) requires a party opposing summary judgment to “set out specific facts
17 showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should,
18 if appropriate, be entered against that party.” “In the absence of specific facts, as opposed to allegations,
19 showing the existence of a genuine issue for trial, a properly supported summary judgment motion will
20 be granted.” *Nilsson, Robbins, et al. v. Louisiana Hydrolec*, 854 F.2d 1538, 1545 (9th Cir. 1988). When
21 a summary judgment motion is unopposed, a court must “determine whether summary judgment is
22 appropriate – that is, whether the moving party has shown itself to be entitled to judgment as a matter
23 of law.” *Anchorage Associates v. V.I. Bd. of Tax Review*, 922 F.2d 168, 175 (3rd Cir. 1990). A court
24 “cannot base the entry of summary judgment on the mere fact that the motion is unopposed, but, rather
25 must consider the merits of the motion.” *United States v. One Piece of Real Property, etc.*, 363 F.3d
26 1099, 1101 (11th Cir. 2004). A court “need not sua sponte review all of the evidentiary materials on file
27 at the time the motion is granted, but must ensure that the motion itself is supported by evidentiary
28 materials.” *One Piece of Real Property*, 363 F.3d at 1101.

1 As discussed below, the Alvarados demonstrate that they are entitled to judgment as a matter of
2 law.

3 **Joe Hand’s Federal Communications Claims**

4 *Statutory Authorities*

5 47 U.S.C. § 605 addresses unauthorized publication or use of wire or radio communications and
6 provides in pertinent part:

7 (a) . . . no person receiving, assisting in receiving . . . any interstate . . .
8 communication by wire or radio shall divulge or publish the existence, contents,
9 substance, purport, effect or meaning thereof, except through authorized channels of
10 transmission or reception, (1) to any person other than the addressee, his agent, or
11 attorney . . . No person having received any intercepted radio communication or having
12 become acquainted with the contents, substance, purport, effect, or meaning of such
13 communication (or any part thereof) knowing that such communication was intercepted,
14 shall divulge or publish the existence, contents, substance, purport, effect, or meaning
15 of such communication (or any part thereof) or use such communication (or any
16 information therein contained) for his own benefit or for the benefit of another not
17 entitled thereto.

18 . . .

19 (e)(3)(A) Any person aggrieved by a violation of subsection (a) of this section
20 . . . may bring a civil action in a United States district court or in any other court of
21 competent jurisdiction.

22 47 U.S.C. § 553 addresses unauthorized reception of cable service and provides in pertinent part:

23 (a)(1) No person shall intercept or receive or assist in intercepting or receiving
24 any communications service offered over a cable system, unless specifically authorized
25 to do so by a cable operator or as may otherwise be specifically authorized by law.

26 . . .

27 (c)(1) Any person aggrieved by any violation of subsection (a)(1) of this section
28 may bring a civil action in a United States district court or in any other court of
competent jurisdiction.

47 U.S.C. § 605(e)(3)(C)(i)(II) authorizes statutory damages “not less than \$1,000 or more than
\$10,000, as the court considers just.” 47 U.S.C. §605(e)(3)(C)(ii) authorizes damages up to \$100,000
if the court finds the violation was willfully committed for commercial advantage or private financial
gain. Alternatively, if “the court finds that the violator was not aware and had no reason to believe that
his acts constituted violation of this section, the court in its discretion may reduce the award of damages
to a sum of not less than \$250.” 47 U.S.C. §605(e)(C)(iii).

47 U.S.C. §553(c)(3)(A)(ii) authorizes statutory damages “of not less than \$250 or more than

1 \$10,000 as the court considers just,” and 26 U.S.C. §553(c)(3)(B) authorizes damages up to \$50,000 if
2 the court finds the violation was willfully committed for commercial advantage or private financial gain.
3 Alternatively, “where the court finds the violator was not aware and had no reason to believe his acts
4 constituted a violation of this section, the court in its discretion may reduce the award of damages to sum
5 not less than \$100.” 47 U.S.C. § 553(c)(3)(C).

6 *Individual Liability*

7 The Alvarados argue they are not individually liable in the absence of evidence that they
8 authorized alleged piracy of the telecast.

9 “Individual liability under the Cable Act requires that the individual authorize the underlying
10 violations.” *J&J Sports Productions, Inc. v. 291 Bar & Lounge, LLC*, 648 F.Supp.2d 469, 473 (E.D.
11 N.Y. 2009). “Put differently, the complaint must establish that the individual had a ‘right and ability
12 to supervise’ the violations, as well as an obvious and direct financial interest in the misconduct.” *291*
13 *Bar & Lounge*, 648 F.Supp.2d at 473 (quoting *Softel, Inc., v. Dragon Medical and Scientific*
14 *Communications, Inc.*, 118 F.3d 955, 971 (2d Cir.1997)).

15 The Alvarados hold Joe Hand to establish that the Alvarados:

- 16 1. Had control over the television at the time of the alleged signal piracy;
- 17 2. Authorized the violation; and
- 18 3. Derived a benefit from the alleged signal piracy.

19 The Alvarados argue that they were not in control of the television at Patron’s Sports Bar at the
20 time of the alleged signal piracy “as they had nothing to do with the business.” The Alvarados point to
21 the absence of their knowledge or control of events at Patron’s Sports Bar and evidence that they
22 authorized alleged signal piracy. The Alvarados note the absence of benefit to them from alleged signal
23 piracy.

24 The record is bare that the Alvarados authorized statutory violations to subject them to liability.
25 Nothing suggests that they had a right or ability to intercept the telecast on May 23, 2009 at Patron’s
26 Sports Bar. In addition, there is no evidence that the Alvarados derived a benefit from interception of
27 the telecast. As such, the Alvarados are not subject to liability for Joe Hand’s federal communications
28 claims.

1 ***Liquor License***

2 The Alvarados argue that their names on the liquor license for Patron’s Sports Bar is insufficient
3 to support their liability under the federal communications claims.

4 “The owner of a liquor license has the responsibility to see to it that the license is not used in
5 violation of law and as a matter of general law the knowledge and acts of the employee or agent are
6 imputable to the licensee.” *Munro v. Alcoholic Beverage etc. Control Appeals Board*, 181 Cal.App.2d
7 162, 164, 5 Cal. Rptr. 527 (1961).

8 The Alvarados note that the Ordaz-Garcias were not their employees or agents to subject the
9 Alvarados to liability for the Ordaz-Garcias’ actions, especially given that the Alvarados were not
10 involved in Patron’s Sports Bar.

11 The Alvarados’ names appearing on the liquor license is insufficient to subject them to liability
12 under Joe Hand’s federal communications claims.

13 ***Signal Interception***

14 The Alvarados point to the absence of evidence that they intercepted the telecast or means by
15 which they could have obtained the telecast’s signal. The Alvarados note that in response to their
16 discovery requests, Joe Hand “produced nothing indicating that a satellite signal was stolen specifically.”
17 The Alvarados conclude that at most, the evidence reveals that the telecast was shown.

18 The Alvarados are correct. There is no evidence to suggest that they intercepted the telecast to
19 further doom Joe Hand’s federal communications claims against the Alvarados.

20 **Conversion**

21 The complaint’s conversion claim alleges that by interception of the telecast, the Alvarados
22 “wrongfully converted same for their own use and benefit.”

23 The Alvarados argue that an intangible personal property interest in the telecast’s exclusive
24 license is not subject to a conversion claim.

25 “Conversion is the wrongful exercise of dominion over personal property of another.” 5 Witkin,
26 *Summary of California Law, Torts* (10th ed. 2005), § 699, p. 1023. “[C]onversion is a tort that may be
27 committed only with relation to personal property and not real property.” *Munger v. Moore*, 11
28 Cal.App.3d 1, 7, 89 Cal.Rptr. 323 (1970).

1 “Courts have traditionally refused to recognize as conversion the unauthorized taking of
2 intangible interests that are not merged with, or reflected in, something tangible.” *Thrifty-Tel, Inc. v.*
3 *Bezenek*, 46 Cal.App.4th 1559, 1565, 54 Cal.Rptr.2d 468 (1996) (citing *Adkins v. Model Laundry Co.*,
4 92 Cal.App. 575, 583, 268 P. 939 (1928) (business goodwill); *Olschewski v. Hudson*, 87 Cal.App. 282,
5 286-288, 262 P. 43 (1927) (competitor's customer route); *Faircloth v. A.L. Williams & Associates*, 206
6 Ga.App. 764, 426 S.E.2d 601, 604-605 (1992) (unpaid commissions not evidenced by a receipt or
7 certificate); *Matzan v. Eastman Kodak Co.*, 134 A.D.2d 863, 521 N.Y.S.2d 917, 918 (1987) (no
8 protected interest in an idea)).

9 The Alvarados also argue that Joe Hand lacks evidence to support conversion elements, putting
10 aside the tangibility requirement. The Alvarados contend that the evidence reveals at most that Joe Hand
11 owned the telecast and there is no evidence that the Alvarados disposed of the “property” to cause
12 damages.

13 “The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of
14 the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3)
15 damages. Conversion is a strict liability tort.” *Burlesci v. Petersen*, 68 Cal.App.4th 1062, 1065, 80
16 Cal.Rptr.2d 704 (1998).

17 The Alvarados are not subject to a conversion claim in absence of evidence that they wrongfully
18 exercised dominion of the telecast to cause Joe Hand damages. The record reveals that the Alvarados
19 lacked ability to intercept the telecast at Patron’s Sports Bar to preclude a conversion claim against them.

20 **UCL Violation**

21 The complaint alleges that unlawful interception of the telecast violated the UCL. The Alvarados
22 note that Joe Hand’s UCL remedy is limited to restitution.

23 California Business and Professions Code section 17204 limits standing to bring a UCL claim
24 to specified public officials and a private person “who has suffered injury in fact and has lost money or
25 property as a result of the unfair competition.”

26 Business and Professions Code section 17203 addresses UCL relief and provides in pertinent
27 part:

28 Any person who engages, has engaged, or proposes to engage in unfair

1 competition may be enjoined in any court of competent jurisdiction. The court may make
2 such orders or judgments . . . as may be necessary to restore to any person in interest any
3 **money or property**, real or personal, which may have been acquired by means of such
4 unfair competition. (Bold added.)

5 “In a suit under the UCL, a public prosecutor may collect civil penalties, but a private plaintiff’s
6 remedies are ‘generally limited to injunctive relief and restitution.’” *Kasky v. Nike, Inc.*, 27 Cal.4th 939,
7 950, 119 Cal.Rptr.2d 296 (2002) (quoting *Cel-Tech Communications, Inc. v. Los Angeles Cellular
8 Telephone Co.*, 20 Cal.4th 163, 83 Cal.Rptr.2d 548 (1999)).

9 The Alvarados challenge existence of monies acquired by them through unfair competition in
10 connection with the telecast. The Alvarados are correct. The record lacks evidence that they obtained
11 money from the telecast to support restitution to Joe Hand.

12 The complaint’s UCL claim seeks attorney fees pursuant to California Code of Civil Procedure
13 section 1021.5, which authorizes an attorney fees award to a successful party “in any action which has
14 resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit,
15 whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons
16 . . .” The Alvarados correctly note the absence of a significant benefit to the general public or a large
17 class to entitle them to summary judgment on the attorney fees claim.

18 **CONCLUSION AND ORDER**

19 For the reasons discussed below, this Court:

- 20 1. GRANTS the Alvarados summary judgment;
- 21 2. DIRECTS the clerk to enter judgment in favor of defendants David Alvarado and Linda
22 Alvarado and against plaintiff Joe Hand Promotions, Inc. in that there is no just reason
23 to delay to enter such judgment given that Joe Hand’s claims against the Alvarados and
24 the Alvarados’ alleged liability are clear and distinct from claims against and liability of
25 any other defendant. *See* F.R.Civ.P. 54(b); and
- 26 3. FURTHER DIRECTS the clerk NOT to close this action with continues against the
27 Ordaz-Garcias.

28 IT IS SO ORDERED.

Dated: May 3, 2011

/s/ Lawrence J. O'Neill

UNITED STATES DISTRICT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28