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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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13 JOE HAND PROMOTIONS, INC.,

CASE NO. CV F 10-0907 LJO JLT

14 Plaintiffs,

ORDER ON ATTORNEY FEES MOTION
(Doc. 44.)

15 vs.

16 DAVID ALVARADO, et al.,

17 Defendants.
18 _____/

19 AND RELATED CROSS-ACTIONS.
20 _____/

INTRODUCTION

21 Defendants David Alvarado and Linda Alvarado (the “Alvarados”) seek to recover \$7,250
22 attorney fees as prevailing parties after obtaining summary judgment on plaintiff Joe Hand Promotions,
23 Inc.’s (“Joe Hand’s”) telecast piracy claims.¹ Joe Hand responds that the Alvarados are not entitled to
24 attorney fees under the legal authorities on which they rely. This Court considered the Alvarados’
25 attorney fees motion on the record without a hearing, pursuant to Local Rule 230(g). For the reasons
26 discussed below, this Court DENIES the Alvarados an attorney fees award.

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28 ¹ The Alvarados also sought \$174.72 for photocopy, postage and facsimile costs. Joe Hand has paid the
Alvarados those costs which are no longer at issue.

1 **BACKGROUND**

2 Joe Hand held exclusive closed-circuit distribution rights to *Ultimate Fighting Championship*
3 *98: Rashad Evans v. Lyoto Machida* (“program”), which was telecast nationally on May 23, 2009. Joe
4 Hand claims that the program was unlawfully intercepted at Frankie’s Bar aka Patron’s Sports Bar in
5 Madera. More specifically, Joe Hand claims the Alvarados and defendants Adolfo Ordaz, Jr., Susana
6 Garcia and Andres Garcia (collectively the “Ordaz-Garcias”) unlawfully pirated the program to violate
7 the Communications Act of 1934, 47 U.S.C. §§ 605, et seq.,² the Cable & Television Consumer
8 Protection and Competition Act of 1992, 47 U.S.C. §§ 553 et seq.,³ and California law. The Alvarados
9 deny liability in that they did not own, operate or control the bar at the time of the program. The
10 Alvarados claim that alleged wrongdoing is attributable to the Ordaz-Garcias, to whom the Alvarados
11 leased the bar which the Ordaz-Garcias operated without the Alvarados’ involvement. This Court
12 granted the Alvarados summary judgment on Joe Hand’s claims against them.

13 On January 26, 2011, the Alvarados had made a \$1,001 F.R.Civ.P. 68 offer to Joe Hand and
14 which Joe Hand did not accept. The Alvarados seek to recover from Joe Hand \$7,250 attorney fees as
15 the prevailing parties on Joe Hand’s claims under F.R.Civ.P. 68 and federal communications statutes.

16 **DISCUSSION**

17 F.R.Civ.P. 68(d) addresses costs after an unaccepted offer of judgment: “If the judgment that the
18 offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs
19 incurred after the offer was made.” The “term ‘costs,’ as used in Rule 68, should be read to include
20 attorney's fees where fees are authorized by the substantive statute at issue in the litigation.” *Fulps v.*
21 *City of Springfield, Tenn.*, 715 F.2d 1088, 1095 (6th Cir. 1983).

22 47 U.S.C. §605(e)(3)(B)(iii) requires a court to “direct the recovery of full costs, including
23 awarding reasonable attorneys' fees to an aggrieved party who prevails.” 47 U.S.C. § 553(c)(2)(C)
24 permits a court to “direct the recovery of full costs, including awarding reasonable attorneys' fees to an
25

26 ² 47 U.S.C. § 605, et seq., prohibit the unauthorized use of wire or radio communications, including
27 interception and broadcast of pirated cable or broadcast programming.

28 ³ 47 U.S.C. § 553, et seq., prohibit interception or reception of any communication service over a cable
system without authorization.

1 aggrieved party who prevails.” An “aggrieved” party includes “any person with **proprietary rights in**
2 **the intercepted communication** by wire or radio, including wholesale or retail distributors of satellite
3 cable programming, and, in the case of a violation of paragraph (4) of subsection (e) of this section, shall
4 also include any person engaged in the **lawful manufacture, distribution, or sale of equipment**
5 necessary to authorize or receive satellite cable programming.” 47 U.S.C. § 605(d)(6) (bold added).

6 The Alvarados argue that the federal communications statutes authorize attorney fees for them
7 as prevailing parties. Joe Hand disagrees in that the Alvarados are not “aggrieved” parties under the
8 federal communications statutes. Joe Hand argues that Congress did not intend that “any” prevailing
9 party recover attorney fees based on its restricted definition of “aggrieved party.” As such, Joe Hand
10 concludes that the Alvarados lack a statute authorizing attorney fees.

11 Joe Hand further attacks the Alvarados reliance on F.R.Civ.P. 68(d), which Joe Hand contends
12 has “no application if a defendant prevails outright.” Joe Hand is correct. As the U.S. Supreme Court
13 explained, F.R.Civ.P. 68 “applies only to offers made by the defendant and only to judgments obtained
14 by the plaintiff. It therefore is simply inapplicable to this case because it was the defendant that obtained
15 the judgment.” *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 352, 101 S.Ct. 1146 (1981). Moreover,
16 the Alvarados’ point that Joe Hand may recover against the non-offeror Ordaz-Garcias is irrelevant. *See*
17 *Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319, 334 (5th Cir. 1995) (plaintiff’s recovery against
18 non-offeror defendants “is irrelevant to the Rule 68 inquiry”).

19 The Alvarados are defendants who prevailed on Joe Hand’s claims. F.R.Civ.P. 68 does not
20 entitle them to recover attorney fees. The Alvarados are not “aggrieved” parties under the federal
21 communications statutes, which provide them no source to recover attorney fees. The Alvarados are not
22 entitled to recover attorney fees.

23 CONCLUSION AND ORDER

24 For the reasons discussed above, this Court DENIES the Alvarados an attorney fees award.

25 IT IS SO ORDERED.

26 **Dated: July 11, 2011**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE