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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 J & J SPORTS PRODUCTIONS,
9 INC.,

CASE NO. CV F 11-1896 LJO SKO

10 Plaintiff,

**SUMMARY JUDGMENT DECISION AND
11 JUDGMENT**
(Doc. 36.)

12 vs.

13
14 DANIEL DE LA CERDA, et al.,

15 Defendants.
16

17
PRELIMINARY STATEMENT TO PARTIES AND COUNSEL

18 Judges in the Eastern District of California carry the heaviest caseload in the nation,
19 and this Court is unable to devote inordinate time and resources to individual cases and
20 matters. This Court cannot address all arguments, evidence and matters raised by parties and
21 addresses only the arguments, evidence and matters necessary to reach the decision in this
22 order given the shortage of district judges and staff. The parties and counsel are encouraged to
23 contact United States Senators Diane Feinstein and Barbara Boxer to address this Court's
24 inability to accommodate the parties and this action.

25
INTRODUCTION

26 Pursuant to F.R.Civ.P. 56, plaintiff J & J Sports Productions, Inc. ("J & J") seeks to
27 impose a monetary judgment against defendant Daniel De La Cerda ("Mr. De La Cerda") for
28 Mr. De La Cerda's unlawful interception of a closed-circuit boxing program. This Court

1 considered J & J's unopposed summary judgment motion on the record¹ and VACATES the
2 October 28, 2013 hearing, pursuant to Local Rule 230(c), (g). For the reasons discussed
3 below, this Court GRANTS J & J a \$7,200 judgment against Mr. Cerda.

4 **BACKGROUND**

5 **Program Interception**

6 J & J is a closed-circuit distributor of sports and entertainment programming and
7 obtained for the United States the exclusive commercial exhibition licensing rights to "*Tactical*
8 *Warfare: Manny Pacquiao v. Antonio Margarito, WBC Light Middleweight Championship*
9 *Fight Program*" ("program"), which was broadcast on November 13, 2010. J & J marketed
10 sub-licensing (commercial exhibition) rights to commercial establishment customers in the
11 United States to permit them to show the program. To broadcast the program, J & J required
12 commercial establishments to pay a sublicense fee of \$2,200 for seating capacity up to 100
13 persons. J & J did not sublicense the program to Mr. De La Cerda, codefendants Erica De La
14 Cerda and Daniel's Mexican Grill, LLC.²

15 J & J alleges that Mr. De La Cerda unlawfully intercepted and exhibited the program at
16 his Daniel's Mexican Grill ("grill") in Reedley, California without payment of the \$2,200
17 commercial sub-licensing fee.

18 J & J relies on the affidavit of private investigator Everett Rabbon ("Mr. Rabbon"),
19 who claims that beginning at 8:15 p.m. during the program, he observed that two 50-inch
20 televisions showed the program and that no cover charge was assessed. Mr. Rabbon rated the
21 grill as "good." His three head counts during the program revealed four or five people in the
22 40-person capacity grill.

23 ///

24 ¹ In the absence of Mr. De La Cerda's timely opposition, this Court carefully reviewed and
25 considered the entire record to determine whether J & J's summary judgment motion is well supported. Omission
26 of reference to evidence, an argument, document, objection or paper is not to be construed to the effect that this
27 Court did not consider the evidence, argument, document, objection or paper. This Court thoroughly reviewed,
28 considered and applied the evidence it deemed admissible, material and appropriate for summary judgment.

² J & J seeks summary judgment against Mr. De La Cerda only.

1 **J & J's Claims**

2 J & J alleges claims for violation of the Communications Act of 1934, 47 U.S.C. §§
3 605, et seq., and conversion. By summary judgment, seeks statutory and enhanced damages
4 under 47 U.S.C. § 605 ("section 605") and \$2,200 damages for conversion of the program.

5 **DISCUSSION**

6 **Summary Judgment Standards**

7 J & J contends that there is no genuine issue of material fact as to Mr. De La Cerda's
8 unlawful interception and broadcast of the program.

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

14 Summary judgment is appropriate when the movant shows "there is no genuine dispute
15 as to any material fact and the movant is entitled to judgment as a matter of law." F.R.Civ.P.
16 56(a); *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 1356
17 (1986); *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir.
18 1987). The purpose of summary judgment is to "pierce the pleadings and assess the proof in
19 order to see whether there is a genuine need for trial." *Matsushita Elec.*, 475 U.S. at 586, n. 11,
20 106 S.Ct. 1348; *International Union of Bricklayers v. Martin Jaska, Inc.*, 752 F.2d 1401, 1405
21 (9th Cir. 1985).

22 On summary judgment, a court must decide whether there is a "genuine issue as to any
23 material fact," not weigh the evidence or determine the truth of contested matters. F.R.Civ.P.
24 56(a), (c); *Covey v. Hollydale Mobilehome Estates*, 116 F.3d 830, 834 (9th Cir. 1997); *see*
25 *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598 (1970); *Poller v. Columbia*
26 *Broadcast System*, 368 U.S. 464, 467, 82 S.Ct. 486 (1962); *Loehr v. Ventura County*
27 *Community College Dist.*, 743 F.2d 1310, 1313 (9th Cir. 1984). "Credibility determinations,
28 the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury

1 functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a
2 directed verdict.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505 (1986)

3 “[T]o carry its ultimate burden of persuasion on the motion, the moving party must
4 persuade the court that there is no genuine issue of material fact.” *Nissan Fire & Marine Ins.*
5 *Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000); *see High Tech Gays v.*
6 *Defense Sec. Clearance Office*, 895 F.2d 563, 574 (9th Cir. 1990). “As to materiality, the
7 substantive law will identify which facts are material. Only disputes over facts that might
8 affect the outcome of the suit under the governing law will properly preclude the entry of
9 summary judgment.” *Anderson*, 477 U.S. at 248, 106 S.Ct. 2505.

10 “If the nonmoving party fails to produce enough evidence to create a genuine issue of
11 material fact, the moving party wins the motion for summary judgment.” *Nissan Fire*, 210
12 F.3d at 1103; *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548 (1986)
13 (F.R.Civ.P. 56 “mandates the entry of summary judgment, after adequate time for discovery
14 and upon motion, against a party who fails to make the showing sufficient to establish the
15 existence of an element essential to that party’s case, and on which that party will bear the
16 burden of proof at trial. In such a situation, there can be no ‘genuine issue as to any material
17 fact,’ since a complete failure of proof concerning an essential element of the nonmoving
18 party’s case necessarily renders all other facts immaterial.”)

19 F.R.Civ.P. 56(e)(3) provides that when a party “fails to properly address another party’s
20 assertion of fact,” a court may “grant summary judgment if the motion and supporting
21 materials – including the facts considered undisputed – show that the movant is entitled to it.”
22 “In the absence of specific facts, as opposed to allegations, showing the existence of a genuine
23 issue for trial, a properly supported summary judgment motion will be granted.” *Nilsson,*
24 *Robbins, et al. v. Louisiana Hydrolec*, 854 F.2d 1538, 1545 (9th Cir. 1988). When a summary
25 judgment motion is unopposed, a court must “determine whether summary judgment is
26 appropriate – that is, whether the moving party has shown itself to be entitled to judgment as a
27 matter of law.” *Anchorage Associates v. V.I. Bd. of Tax Review*, 922 F.2d 168, 175 (3rd Cir.
28 1990). A court “cannot base the entry of summary judgment on the mere fact that the motion

1 is unopposed, but, rather must consider the merits of the motion.” *United States v. One Piece*
2 *of Real Property, etc.*, 363 F.3d 1099, 1101 (11th Cir. 2004). A court “need not sua sponte
3 review all of the evidentiary materials on file at the time the motion is granted, but must ensure
4 that the motion itself is supported by evidentiary materials.” *One Piece of Real Property*, 363
5 F.3d at 1101.

6 As discussed below, J & J has demonstrated that it is entitled to summary judgment
7 against Mr. De La Cerda on J & J's section 605 and conversion claims.

8 **Signal Piracy**

9 ***Liability***

10 Section 605 addresses unauthorized publication or use of wire or radio communications
11 and provides in pertinent part:

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

23 . . .

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

27 Section 605(d)(6) defines “any person aggrieved” to include “any person with
28 proprietary rights in the intercepted communication by wire or radio, including wholesale or

1 retail distributors of satellite cable programming.”

2 In addition, the Cable Communications Policy Act of 1992, in particular 47 U.S.C. §
3 553 (“section 553”), addresses unauthorized reception of cable service and provides in
4 pertinent part:

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

8 . . .

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

12 “The Cable Communications Act imposes strict liability under 47 U.S.C. §§ 553 and
13 605.” *Don King Productions/Kingvision v. Lovato*, 1996 WL 682006, at *3 (N.D. Cal. 1996).

14 “Both § 553 and § 605 are strict liability statutes.” *J & J Sports Productions, Inc. v. Delgado*,
15 2012 WL 371630, at *3 (E.D. Cal. 2012).

16 J & J identifies itself as a “person aggrieved” under sections 605 and 553 given its
17 “exclusive nationwide distribution rights to the Program” for commercial establishments, like
18 the grill.

19 ***Deemed Admissions***

20 To establish Mr. De La Cerda's liability under section 605, J & J relies on Mr. De La
21 Cerda's failure to respond to J & J's F.R.Civ.P. 36 requests for admission to result in Mr. De La
22 Cerda's deemed admissions. F.R.Civ.P. 36(a)(3) provides: "A matter is admitted unless, within
23 30 days after being served, the party to whom the request is directed serves on the requesting
24 party a written answer or objection addressed to the matter and signed by the party or its
25 attorney."

26 “Failure to respond to requests for admissions results in automatic admission of the
27 matters requested. . . . No motion to establish the admissions is needed because Federal Rule of
28 Civil Procedure 36(a) is self executing.” *Federal Trade Comm. v. Medicor LLC*, 217

1 F.Supp.2d 1048, 1053 (C.D. Cal. 2002). “The failure to respond to admissions can effectively
2 deprive a party of the opportunity to contest the merits of the case.” *In re Carney*, 258 F.3d
3 415, 421 (5th Cir. 2001).

4 “Unanswered requests for admissions may be relied on as the basis for granting
5 summary judgment.” *Conlon v. United States*, 474 F.3d 616, 621 (9th Cir.2007). Facts deemed
6 admitted because of failure to respond to requests for admission may support summary
7 judgment. *Nick-o-Val Music Co., Inc. v. P.O.S. Radio, Inc.*, 656 F.Supp. 826, 828 (M.D. Fla.
8 1987).

9 J & J notes that Mr. De La Cerda's failure to respond to J & J's requests for admission
10 results in the following deemed admissions:

11 1. Mr. De La Cerda was an owner, manager and officer of the grill when the
12 program was broadcast;

13 2. Mr. De La Cerda was present inside the grill when the program broadcast, and
14 bartenders and managers acted on his behalf;

15 3. Mr. De La Cerda advertised that the program would be telecast at the grill and
16 knew that the grill's patrons watched the program;

17 4. Mr. De La Cerda did not order the program from J & J;

18 5. Mr. De La Cerda did not pay a licensing fee to J & J although he was aware a
19 licensing fee was required to be paid to J & J;

20 6. Mr. De La Cerda willfully intercepted and broadcast the program at the grill;

21 7. The program was received because a residential cable or satellite service was
22 diverted to the grill, an illegal decoder was used in the grill, a satellite access card without
23 property authorization or payment was used, and/or Mr. De La Cerda ordered the program
24 from and paid a programming provider the residential license fee for the program; and

25 8. Mr. De La Cerda obtained the program illegally and intentionally broadcast the
26 program by deception for financial gain.

27 J & J argues that it is entitled to summary judgment on section 605 liability in that Mr.
28 De La Cerda effectively admits that he illegally intercepted and broadcast the program at the

1 grill willfully and for financial gain. J & J notes that Mr. De La Cerda could legally broadcast
2 the program only by contracting with J & J for a sub-license. J & J points out that the program
3 was broadcast at the grill to impose section 605 strict liability on Mr. De La Cerda.

4 "There are no mens rea or scienter elements for a non-willful violation of 47 U.S.C. §
5 605(a), or its counterpart governing unauthorized interception of cable service under 47 U.S.C.
6 § 553(a)." *Joe Hand Promotions, Inc. v. Easterling*, 2009 WL 1767579, at *4 (N.D. Oh.
7 2009). "These are strict liability offenses with no good faith defense." *Easterling*, 2009 WL
8 1767579, at *4. "As a strict liability statute, to prove a violation, [plaintiff] need only show
9 that the Event was shown in Defendant's establishment without its authorization." *Joe Hand*
10 *Promotions, Inc. v. Moctezuma Club, Inc.*, 2012 WL 2358254, 2 (N.D. Tex. 2012).

11 J & J contends that it is entitled to hold Mr. De La Cerda liable individually given his
12 ownership and control of the grill. To hold a defendant personally liable, a plaintiff must show
13 that the defendant had a "right and ability to supervise the violations, and that [he] had a strong
14 financial interest in such activities." *J & J Sports Productions, Inc. v. Ribeiro*, 562 F.Supp.2d
15 498, 501 (S.D.N.Y.2008). "Individual liability under the Cable Act requires that the individual
16 authorize the underlying violations." *J&J Sports Productions, Inc. v. 291 Bar & Lounge, LLC*,
17 648 F.Supp.2d 469, 473 (E.D. N.Y. 2009). "Put differently, the complaint must establish that
18 the individual had a 'right and ability to supervise' the violations, as well as an obvious and
19 direct financial interest in the misconduct." *291 Bar & Lounge*, 648 F.Supp.2d at 473 (quoting
20 *Softel, Inc., v. Dragon Medical and Scientific Communications, Inc.*, 118 F.3d 955, 971 (2d
21 Cir.1997)).

22 J & J points to Mr. De La Cerda's admission in his answer that he owns and controls the
23 grill. J & J further points to public records to reveal Mr. De La Cerda as an officer and
24 registered agent for defendant Daniel's Mexican Grill, LLC. J & J characterizes Mr. De La
25 Cerda to possess the right and ability to supervise violations with a strong financial interest in
26 violations. J & J concludes there is no factual issue whether Mr. De La Cerda is subject to
27 section 605 liability.

28 J & J raises valid points and establishes that it is an aggrieved person entitled to section

1 605 relief. Mr. De La Cerda's deemed admissions and failure to oppose summary judgment
2 demonstrate his wrongful interception of the program and liability under section 605.

3 *Damages*

4 J & J seeks to impose on Mr. De La Cerda statutory damages under section
5 605(e)(3)(C) given difficulty to prove actual damages sustained by J & J.

6 Section 605(e)(3)(C)(i)(II) authorizes statutory damages “not less than \$1,000 or more
7 than \$10,000, as the court considers just.” 47 U.S.C. §605(e)(3)(C)(ii) authorizes “enhanced”
8 damages up to \$100,000 if the court finds the violation was willfully committed for
9 commercial advantage or private financial gain. Alternatively, if “the court finds that the
10 violator was not aware and had no reason to believe that his acts constituted violation of this
11 section, the court in its discretion may reduce the award of damages to a sum of not less than
12 \$250.” 47 U.S.C. §605(e)(C)(iii).

13 Statutory Damages

14 “In general, statutory damages are appropriate where, as here, the measure of actual
15 damages is difficult to prove.” *Lauratex Textile Corp. v. Allton Knitting Mills Inc.*, 519
16 F.Supp. 730, 732 (D.C. N.Y. 1981).

17 In his affidavit, J & J President Joseph M. Gagliardi (“Mr. Gagliardi”) states that
18 “signal piracy” has caused J & J Sports’ “loss of several millions of dollars of sales revenue”
19 and “has a detrimental effect upon lawful residential and commercial customers of cable and
20 satellite broadcasting whose costs of service are increased significantly by these illegal
21 activities.” Mr. Gagliardi further points to signal pirates’ increased financial gains and millions
22 of dollars lost to J & J and its customers “resulting, in significant part, from the perceived lack
23 of consequences” to signal pirates.

24 J & J notes that section 605 awards serve the primary goal of “specific and general”
25 deterrence. The “amount of damages awarded should be in an amount that is adequate to deter
26 these Defendants and others from committing similar acts in the future.” *Joe Hand*
27 *Promotions, Inc. v. Gamino*, 2011 WL 66144, at *4 (E.D. Cal. 2011). A “firm judicial hand is
28 required to stop this predatory behavior, which is outright thievery, and to compensate the

1 aggrieved appropriately.” *J & J Sports Productions, Inc. v. Brazilian Paradise, LLC*, 789
2 F.Supp.2d 669, 677 (D. S.C. 2011) (internal quotation omitted). The “difficulty in detecting
3 unlawful interception, the widespread problem of piracy, the projected loss to plaintiff, and the
4 need for an award sufficient to deter future piracy by defendants and others, weigh in favor of
5 granting maximum statutory damages.” *J & J Sports Productions, Inc. v. Cubides*, 2008 WL
6 2756401, *2 (S.D. Tex. 2008).

7 J & J points to the absence of a Ninth Circuit formula to calculate section 605 damages
8 to invoke this Court's "considerable discretion." A fellow district court notes that section 605
9 damages are based on “the number of patrons in the establishment at the time of the violation”
10 or “a flat sum for damages.” *Entertainment by J & J, Inc. v. Al-Waha Enterprises, Inc.*, 219
11 F.Supp.2d 769, 776 (S.D. Tex. 2002). J & J urges a "flat sum" damages calculation given the
12 few patrons in the 100-capacity grill during the program and that "a damage award based on
13 this limited number may do little to prevent such unlawful conduct in the future." *See*
14 *Kingvision Pay-Per-View, Ltd. v. Gutierrez*, 544 F.Supp.2d 1179, 1184 (D. Colo. 2008).
15 “Merely requiring [defendant] to pay the price it would have been charged to obtain legal
16 authorization to display the Event does nothing to accomplish this objective of the statute.
17 There would be no incentive to cease the violation if the penalty were merely the amount that
18 should have been paid.” *Entertainment by J & J, Inc.*, 219 F.Supp.2d at 776 (internal quotation
19 omitted). “[M]inimal damage awards may result in a perceived lack of consequences for signal
20 piracy.” *J & J Sports Productions, Inc. v. Herrera*, 2011 WL 643413, at *4 (E.D. Cal. 2011).

21 J & J proposes no set amount of statutory damages under section 605(e)(3)(C)(i)(II). J
22 & J relies on this Court's discretion to award statutory damages between \$1,000 and \$10,000.
23 The record supports a flat sum of statutory damages given the limited four to five patrons at the
24 grill during the program. Mr. De La Cerda's deemed admissions are that he pirated the
25 program, and he offers nothing to mitigate his conduct. As such, statutory damages of \$2,500
26 will fulfill section 605(e)(3)(C)(i)(II) purposes and serve to deter piracy.

27 Enhanced Damages

28 Turning section 605(e)(C)(ii) enhanced damages, J & J points to Mr. De La Cerda's

1 deemed admissions that he acted willfully for financial gain. J & J contends that Mr. De La
2 Cerda's "inadvertent" acquisition of the program is "extremely unlikely" given J & J's efforts to
3 avoid descrambling signals to avoid piracy. "The act of intercepting an encrypted broadcast is
4 not done by accident, but requires an affirmative action by the defendant. Very simply, the
5 Court finds that the defendant took willful action to unlawfully intercept and broadcast the
6 Exhibition." *Joe Hand Promotions, Inc. v. Wing Spot Chicken & Waffles, Inc.*, 920 F.Supp.2d
7 659, 668 (E.D. Va. 2013) ("Because the defendant showed the Exhibition on all of its
8 televisions at no cost, the Court concludes that the defendant acted willfully for commercial
9 advantage and private financial gain.").

10 Similar to its approach to statutory damages, J & J proposes no set amount of enhanced
11 damages under section 605(e)(3)(C)(ii) and relies on this Court's discretion to award up to
12 \$100,000 enhanced damages. Mr. De La Cerda's deemed admissions and failure to defend J &
13 J's claims demonstrate he acted willfully for commercial gain. Although his gain appears
14 limited with only four to five patrons, no mitigating factors appear. As such, additional \$2,500
15 enhanced damages are appropriate.

16 Conversion Claim

17 J & J further seeks to impose on defendants a \$2,200 judgment for its conversion claim.

18 "In California, conversion has three elements: ownership or right to possession of
19 property, wrongful disposition of the property right and damages." *G.S. Rasmussen &*
20 *Associates, Inc. v. Kalitta Flying Service, Inc.*, 958 F.2d 896, 906 (9th Cir. 1992). Broadcast
21 signals and rights constitute property for a conversion claim. *DIRECTV, Inc. v. Pahnke*, 405
22 F.Supp.2d 1182, 1189 (E.D. Cal. 2005) ("Plaintiff possesses a right to distribute programming
23 via satellite broadcast, thereby satisfying the first element of conversion"); *Don King*
24 *Productions/Kingvision v. Lovato*, 911 F.Supp. 419, 423 (N.D. Cal. 1995).

25 J & J contends that its exclusive program distribution rights constituted its possession
26 of the program which was intercepted and thus converted. J & J seeks \$2,200, which is
27 commercial sub-license fee charged to an establishment with the grill's seating capacity.

28 The record reflects that Mr. De La Cerda converted the programming to entitle J & J to

1 its \$2,200 fee for an establishment of the grill's capacity.

2 **Legal Expenses**

3 Section 605(e)(3)(B)(iii) provides for “recovery of full costs, including awarding
4 reasonable attorneys' fees to an aggrieved party who prevails.” As such, J & J requests to
5 submit papers for an award of attorney fees and costs. J & J is entitled to seek attorney fees
6 and costs against Mr. De La Cerda given summary judgment for J & J.

7 **CONCLUSION, ORDER AND JUDGMENT**

8 J & J has established that it is entitled to summary judgment against Mr. De La Cerda
9 on its section 605 and conversion claims. As such, this Court:

10 1. GRANTS J & J a \$7,200 judgment against Mr. De La Cerda;

11 2. ENTERS this JUDGMENT in favor of plaintiff J & J Productions, Inc. and
12 against defendant Daniel De La Cerda in that there is no just reason to delay to enter this
13 JUDGMENT given that J & J's claims against Mr. De La Cerda and his alleged liability are
14 clear and distinct from claims against and liability of any other defendant, including defendants
15 Eric De La Cerda and Daniel's Mexican Grill, LLC. *See* F.R.Civ.P. 54(b). This JUDGMENT
16 is subject to F.R.App.P.'s 4(a)'s time limitations to file an appeal of this JUDGMENT; and

17 3. ORDERS J & J, no later than November 18, 2013, to file and serve appropriate
18 papers, if it seeks attorney fees and costs, and to set the appropriate hearing before U.S.
19 Magistrate Judge Sheila K. Oberto, who will determine the matter.

20
21 IT IS SO ORDERED.

22 Dated: **October 16, 2013**

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