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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

J & J SPORTS PRODUCTIONS, INC.,  
Plaintiff,  
v.  
PETRICE M. MARINI, et al.,  
Defendants.

CASE NO. 1:16-cv-477-AWI-JLT

**ORDER PERMITTING DEFENDANTS  
TO RESUBMIT WITNESS  
STATEMENTS IN THE FORM  
REQUIRED WITHIN FOURTEEN  
DAYS**

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**I. Introduction**

On April 6, 2016, Plaintiff J&J Sports Productions, Inc. (“Plaintiff”), brought suit against Petrice Marini and Vincent Marini, individually and doing business as Vinnie’s Bar (“Defendants”), alleging that Defendants unlawfully intercepted (or received) and broadcast “*The Fight of the Century*” *Floyd Mayweather, Jr. v. Manny Pacquiao Championship Fight Program* (the “Program”), over which Plaintiff was granted exclusive rights for nationwide commercial distribution. *See* Doc. 1; Affidavit of Joseph M. Gagliardi, Doc. 31-3 (“Gagliardi Aff.”) at ¶ 3. Plaintiff moves for summary judgment because Plaintiff has acknowledged having displayed the Program. Defendants oppose the motion on the ground that the Program was displayed on a channel authorized for their use. Plaintiff objects to the Court’s consideration of much of the evidence submitted by Defendants.

1 For the following reasons, a ruling on Plaintiff’s motion for partial summary judgment  
2 will be delayed and Defendants will be permitted to resubmit witness statements in a form  
3 appropriately considered by the Court.

## 4 **II. Background**

5 Plaintiff is a television production company that obtained “the exclusive nationwide  
6 commercial distribution (closed-circuit) rights to” the Program. Gagliardi Aff. at ¶ 3. Plaintiff  
7 granted limited sublicenses to various commercial entities in California, specifically permitting  
8 public exhibition of the Program in the commercial establishments that those entities operated.  
9 *Id.* Defendants did not obtain any license to receive or display the Program to the public at  
10 Vinny’s Bar. *Id.* Defendants did receive and display the at least some portion of the Program to  
11 patrons at Vinny’s Bar on Saturday, May 2, 2015. Doc 1 at ¶ 21. Specifically, Defendant’s  
12 investigator “observed one television located inside [Vinny’s Bar] playing the [Program]. The  
13 TV was a 32” flat screen, located on the left hand side of the bar.” Affidavit of Brandi Sutton,  
14 Doc.31-4 (“Sutton Aff.”) at 2-3.

15 Defendants Vincent and Petrice Marini are co-owners of Vinny’s Bar in Bakersfield,  
16 California. *See* Declaration of Vincent and Petrice Marini, Doc. 35 (“Marini Decl.”) at ¶ 1.  
17 Defendants admit having displayed the main event of the Program to the Patrons of Vinny’s Bar  
18 on Saturday, May 2, 2015. Doc. 18 at ¶ 12; *see* Marini Decl. at ¶¶ 8, 12. However, Defendants  
19 contend that they not receive the program on a closed-circuit channel. Marini Decl. at ¶¶ 7, 11.  
20 Doc. 18 at ¶ 12. Defendants explain that “[two] and a half hours into [t]he Program... nationwide  
21 [] technical failure caused blackouts,” resulting in “[P]laintiff, [its] partners, and[/]or their cable  
22 subsidiaries [] transmit[ting] ... [the remainder of] [t]he Program via ... an open ordinary  
23 channel” of a commercial cable account. Doc. 22 at 3; *accord* Doc. 18 at ¶ 24. At approximately  
24 9:00 p.m., a Vinny’s Bar patron asked the bartender to change the channel to “Bright House  
25 Cable, channel 902,” to display the Program and the bartender did so. Marini Decl. at ¶¶ 7-8;  
26 Declaration of Deidre Watters, Doc. 35 (“Watters Decl.”) at 13; Declaration of Brandyn Hicks,  
27 Doc. 35 (“Hicks Decl.”) at 18-19.

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### III. Legal Standard

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2 “A party may move for summary judgment, identifying each claim or defense – or the  
3 part of each claim or defense – on which summary judgment is sought. The court shall grant  
4 summary judgment if the movant shows that there is no genuine dispute as to any material fact  
5 and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving  
6 party bears the initial burden of “informing the district court of the basis for its motion, and  
7 identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and  
8 admissions on file, together with the affidavits, if any,’ which it believes demonstrate the  
9 absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986);  
10 *see* Fed. R. Civ. P. 56(c)(1)(A).

11 Where the party moving for summary judgment will bear the burden of proof at trial that  
12 party must come forward with evidence that would entitle it to a directed verdict if the evidence  
13 were uncontroverted at trial. *Houghton v. South*, 965 F.2d 1532, 1536 (9th Cir. 1992); *see also*  
14 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007) (“Where the moving party  
15 will have the burden of proof on an issue at trial, the movant must affirmatively demonstrate that  
16 no reasonable trier of fact could find other than for the moving party.”). If the moving party  
17 meets its initial burden, the burden shifts to the non-moving party to present evidence  
18 establishing the existence of a genuine dispute as to any material fact. *See Matsushita Elec.*  
19 *Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86 (1986). To overcome summary  
20 judgment, the opposing party must demonstrate a factual dispute that is both material, i.e., it  
21 affects the outcome of the claim under the governing law, *see Anderson*, 477 U.S. at 248; *T.W.*  
22 *Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987), and genuine,  
23 i.e., the evidence is such that a reasonable jury could return a verdict for the nonmoving party.  
24 *See Wool v. Tandem Computers, Inc.*, 818 F.2d 1433, 1436 (9th Cir. 1987). In order to  
25 demonstrate a genuine issue, the opposing party “must do more than simply show that there is  
26 some metaphysical doubt as to the material facts.... Where the record taken as a whole could not  
27 lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’”  
28 *Matsushita*, 475 U.S. at p. 587 (citation omitted).

1 A court ruling on a motion for summary judgment must construe all facts and inferences  
2 in the light most favorable to the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477  
3 U.S. 242, 255 (1986). Nevertheless, inferences are not drawn out of the air, and it is the opposing  
4 party’s obligation to produce a factual predicate from which the inference may be drawn. *See*  
5 *Richards v. Nielsen Freight Lines*, 602 F.Supp. 1224, 1244–45 (E.D. Cal. 1985), *aff’d*, 810 F.2d  
6 898, 902 (9th Cir. 1987).

#### 7 **IV. Discussion**

8 Plaintiff moves for summary adjudication as to its cause of actions for (1) unauthorized  
9 interception or receipt of the Program in violation of the Cable Television Consumer Protection  
10 and Competition Act of 1992, 47 U.S.C. § 553, (or the Federal Communications Act of 1934  
11 (“Communications Act”), 47 U.S.C. § 605) and (2) conversion under California law. *See* Doc. 31  
12 at 2. Defendants have filed multiple documents in response to Plaintiff’s motion, including  
13 declarations from witnesses. Plaintiff objects to the admissibility of much of that evidence. The  
14 Court addresses only the questions of admissibility. Resolution of Plaintiff’s motion for  
15 summary judgment will be delayed.

##### 16 A. Admissibility of Defendants’ Submissions

17 Plaintiff objections to this Court’s consideration of any of the “Witness Statements”  
18 submitted by Defendants because none are sworn under penalty of perjury or attest to the truth of  
19 the facts set forth therein. Doc. 38 at 2-3. Plaintiff is correct that Defendants’ witness statements  
20 are not in compliance with 28 U.S.C. § 1746(2), requiring a declaration to be made under penalty  
21 of perjury and attested to be true. 28 U.S.C. § 1746(2) (Declarations must be “in substantially the  
22 following form: ... “I declare (or certify, verify, or state) under penalty of perjury that the  
23 foregoing is true and correct. Executed on (date). (Signature)’.”); *see, e.g.* Watters Decl. at 12-  
24 13. Courts in this Circuit uniformly refuse to consider such submissions as evidence because  
25 they lack sufficient indicia of truthfulness. *See Aviles v. Quick Pick Express, LLC*, 2015 WL  
26 5601824, \*2 (C.D. Cal. Sept. 23, 2015); *Johnson v. Sandy*, 2015 WL 1894400, at \*1 (E.D. Cal.  
27 April 24, 2015); *Forbes v. Villa*, 2013 WL 12164779, \*2 (C.D. Cal. Dec. 3, 2013); *Davenport v.*  
28 *Bd. of Trustees of State Ctr. Cmty. Coll. Dist.*, 654 F. Supp. 2d 1073, 1083 (E.D. Cal. 2009). The

