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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOE HAND PROMOTIONS, INC.,

Plaintiff,

v.

ROSEVILLE LODGE NO. 1293,  
LOYAL ORDER OF MOOSE,  
INCORPORATED, an unknown  
business entity d/b/a MOOSE LODGE  
1293,

Defendant.

No. 2:14-cv-00361-MCE-EFB

**MEMORANDUM AND ORDER**

Plaintiff Joe Hand Promotions, Inc. ("Plaintiff") asserts several causes of action against Defendant Roseville Lodge No. 1293, Loyal Order of Moose, Inc. ("Defendant") based on an unlawful interception and broadcast of a television program to which Plaintiff had the exclusive commercial distribution rights. Pending before the Court are the parties' respective motions for summary judgment. ECF Nos. 19, 20. For the reasons that follow, Defendant's Motion for Summary Judgment (ECF No. 19) is DENIED, and Plaintiff's Motion for Summary Judgment (ECF No. 20) is GRANTED in part and DENIED in part.<sup>1</sup>

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<sup>1</sup> Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefs. See E.D. Cal. Local R. 230(g).

## BACKGROUND<sup>2</sup>

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3 Plaintiff had the exclusive nationwide distribution rights to “Ultimate Fighting  
4 Championship 157: Ronda Rousey v. Liz Carmouche,” which aired on Saturday,  
5 February 22, 2013 (“the Fight”). Plaintiff’s rights to the Fight included non-residential  
6 establishments such as Defendant’s establishment and encompassed all undercard  
7 events as well as the main event.<sup>3</sup> Without the authorization of Plaintiff, Defendant  
8 exhibited the Fight at its establishment in Roseville, California.

9 On the date of the Fight, Sherri Hokada visited Defendant’s establishment.  
10 Hokada, an investigator, observed that the Fight was broadcast on five of seven  
11 televisions and that there were between fifty-seven and sixty-four patrons present.  
12 Hokada estimated the capacity to be around two-hundred individuals. Based on that  
13 capacity, Plaintiff would have charged \$1,600 to show the Fight in Defendant’s  
14 establishment. Hokada also observed a satellite dish on the roof of the building.

15 Defendant does not dispute that it (1) showed the Fight, (2) had satellite  
16 technology at its establishment, and (3) neither ordered the Fight nor paid Plaintiff a  
17 licensing fee for it. Def.’s Resp. to Pl.’s Statement of Undisputed Facts, ECF No. 23-1,  
18 at 1-2. However, Defendant contends that the maximum capacity of its establishment is  
19 “between 80-100,” a figure that, per Plaintiff’s rate card, reduces the licensing fee that  
20 Plaintiff would have charged for the Fight to \$950. *Id.* at 2.

21 Plaintiff’s Complaint identifies the following causes of action: (1) violation of  
22 47 U.S.C. § 605; (2) violation of 47 U.S.C. § 553; (3) conversion; and (4) violation of  
23 California Business and Professions Code § 17200. Plaintiff seeks summary judgment  
24 on the first, second, and third causes of action, and Defendant seeks summary judgment  
25 on all four causes of action.

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26 <sup>2</sup> The following statement of facts is based on the allegations in Plaintiff’s Motion for Summary  
27 Judgment. ECF No. 20.

28 <sup>3</sup> Defendant disputes that Plaintiff’s rights extended to distribution in non-residential  
establishments.

## STANDARD

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3 The Federal Rules of Civil Procedure provide for summary judgment when “the  
4 movant shows that there is no genuine dispute as to any material fact and the movant is  
5 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). One of the principal  
6 purposes of Rule 56 is to dispose of factually unsupported claims or defenses. Celotex  
7 Corp. v. Catrett, 477 U.S. 317, 325 (1986).

8 In a summary judgment motion, the moving party always bears the initial  
9 responsibility of informing the court of the basis for the motion and identifying the  
10 portions in the record “which it believes demonstrate the absence of a genuine issue of  
11 material fact.” Id. at 323. If the moving party meets its initial responsibility, the burden  
12 then shifts to the opposing party to establish that a genuine issue as to any material fact  
13 actually does exist. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,  
14 586-87 (1986).

15 In attempting to establish the existence or non-existence of a genuine factual  
16 dispute, the party must support its assertion by “citing to particular parts of materials in  
17 the record, including depositions, documents, electronically stored information,  
18 affidavits[,] or declarations . . . or other materials; or showing that the materials cited do  
19 not establish the absence or presence of a genuine dispute, or that an adverse party  
20 cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). The  
21 opposing party must demonstrate that the fact in contention is material, i.e., a fact that  
22 might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby,  
23 Inc., 477 U.S. 242, 248, 251-52 (1986). The opposing party must also demonstrate that  
24 the dispute about a material fact “is ‘genuine,’ that is, [] the evidence is such that a  
25 reasonable jury could return a verdict for the nonmoving party.” Id. at 248. In other  
26 words, the judge needs to answer the preliminary question before the evidence is left to  
27 the jury of “not whether there is literally no evidence, but whether there is any upon  
28 which a jury could properly proceed to find a verdict for the party producing it, upon

1 whom the onus of proof is imposed.” Id. at 251 (quoting Improvement Co. v. Munson,  
2 81 U.S. 442, 448 (1871)) (emphasis in original). As the Supreme Court explained:  
3 “When the moving party has carried its burden under Rule [56(a)], its opponent must do  
4 more than simply show that there is some metaphysical doubt as to the material facts.”  
5 Matsushita, 475 U.S. at 586. Therefore, “[w]here the record taken as a whole could not  
6 lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for  
7 trial.’” Id. at 587.

8 In resolving a summary judgment motion, the evidence of the opposing party is to  
9 be believed, and all reasonable inferences that may be drawn from the facts placed  
10 before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at  
11 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s  
12 obligation to produce a factual predicate from which the inference may be drawn.  
13 Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d,  
14 810 F.2d 898 (9th Cir. 1987).

## 16 ANALYSIS

17  
18 Both Plaintiff and Defendant advance several arguments in the pending motions.  
19 The Court will examine each Motion in turn and address only the arguments that the  
20 Court finds dispositive.

### 21 A. Plaintiff’s Motion for Summary Judgment

#### 22 1. First Cause of Action: 47 U.S.C. § 605

##### 23 a. Entitlement to Summary Judgment

24 As the moving party, Plaintiff bears the initial burden of informing the Court of the  
25 basis of its Motion and identifying the portions of the record that Plaintiff believes  
26 demonstrate the absence of a genuine issue of material fact. Plaintiff’s Motion  
27 accomplishes these objectives with respect to the first cause of action.

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1           Section 605(a) provides: “No person not being authorized by the sender shall  
2 intercept any radio communication and divulge or publish the existence, contents,  
3 substance, purport, effect, or meaning of such intercepted communication to any  
4 person.” 47 U.S.C. § 605(a). More simply, the statute “prohibits commercial  
5 establishments from intercepting and broadcasting to its patrons satellite cable  
6 programming.” Kingvision Pay-Per-View v. Guzman, No. C09-00217, 2009 WL  
7 1475722, at \*2 (N.D. Cal. May 27, 2009). Although § 605 did not originally address  
8 television signal piracy, “amendments made to the statute in the 1980’s extended [its]  
9 reach to the unauthorized reception or interception of television programming.” DirecTV,  
10 Inc. v. Webb, 545 F.3d 837, 843 (9th Cir. 2008). Furthermore, while damages under  
11 § 605 may be reduced if “it is later found that defendant acted unknowingly,” a  
12 defendant’s willful violation is irrelevant “in determining liability.” Joe Hand Promotions,  
13 Inc. v. Albright, CIV. 2:11-2260 WBS CMK, 2013 WL 2449500, \*4 (E.D. Cal. June 5,  
14 2013).

15           Here, Plaintiff has produced sufficient evidence to show that Defendant violated  
16 § 605 by intercepting a satellite broadcast of the Fight. Plaintiff has established that it  
17 had the exclusive commercial distribution rights to the Fight. Pl.’s Decl. (Ex. 1), ECF  
18 No. 11, at 4-19. Plaintiff also established that it entered into sub-licensing agreements  
19 with various establishments, including establishments such as Defendant’s, to permit the  
20 public exhibition of the Fight. Id. at 1-3. Plaintiff further established—and Defendant  
21 does not dispute—that Defendant showed the Fight without paying the licensing fee or  
22 receiving authorization from Plaintiff. Def.’s Resp. to Req. for Admis. (Nos. 1, 3), ECF  
23 No. 20-3. Defendant also conceded that it has satellite service at its establishment. The  
24 undisputed evidence—specifically, the lack of Plaintiff’s authorization and the satellite  
25 service at Defendant’s establishment—is sufficient to establish Defendant’s  
26 unauthorized interception of the Fight via satellite service. See Webb, 545 F.3d at 844  
27 (“direct evidence of signal piracy is not required to prove unlawful interception”); Albright,  
28 2013 WL 2449500 at \*5 (granting summary judgment on a § 605 claim and explaining

1 that exhibition of a program at an establishment with an antenna and satellite dish leads  
2 to the “reasonable inference . . . that the Program was intercepted via satellite service”).

3 The burden therefore shifts to Defendant to controvert Plaintiff’s circumstantial  
4 evidence and establish that a genuine issue as to any material fact actually does exist.  
5 Zenith Radio Corp., 475 U.S. at 586-87. Defendant, however, has failed to establish the  
6 existence of a genuine issue of material fact. First, Defendant concedes that it showed  
7 the Fight without Plaintiff’s authorization. Second, Defendant has not offered any  
8 evidence to indicate that the Fight was received through some other method; and, again,  
9 Defendant admitted having satellite technology at its establishment on the date of the  
10 Fight. Def.’s Resp. to Admis. (No. 11), ECF No. 20-3. Because Defendant has failed to  
11 establish the existence of a genuine issue as to Plaintiff’s § 605 claim, Plaintiff’s Motion  
12 for Summary Judgment is GRANTED as to the first cause of action.

13 **b. Damages under 47 U.S.C. § 605**

14 The next issue is the amount of damages Plaintiff is entitled to for the § 605  
15 violation. “The party aggrieved may recover an award of statutory damages for each  
16 violation of subsection (a) of this section involved in the action in a sum not less than  
17 \$1,000 or more than \$10,000, as the court considers just.” 47 U.S.C.

18 § 605(e)(3)(C)(i)(II). “Courts in this circuit have granted widely varying awards ranging  
19 from near the minimum statutory award of [\$]1,000 to near the maximum of [\$]110,000,  
20 depending on such factors as the capacity of the establishment, the number of patrons  
21 in attendance, and whether a cover charge was required for entrance.” Albright,  
22 2013 WL 2449500 at \*6. Courts have also considered whether the defendant previously  
23 violated anti-piracy laws. Id.

24 Plaintiff requests statutory damages of \$5,000 pursuant to § 605(e)(3)(C)(i)(II) and  
25 enhanced statutory damages of \$20,000 pursuant to § 605(e)(3)(C)(ii). The Court will  
26 award \$2,000 in statutory damages and no enhanced statutory damages. Although  
27 Defendant showed the Fight on five of seven televisions and there were between fifty-  
28 seven and sixty-four patrons at the establishment, there is no evidence that Defendant

1 charged a cover charge for entrance, increased food or beverage prices during the  
2 Fight, or previously violated either § 553 or § 605. Plaintiff has not established that  
3 enhanced statutory damages are warranted. Accordingly, the Court finds an award of  
4 \$2,000 in statutory damages appropriate. See Albright, 2013 WL 2449500, at \*7  
5 (awarding \$1,000 in statutory damages and no enhanced statutory damages under  
6 similar factual circumstances).

7 **2. Second Cause of Action: 47 U.S.C. § 553**

8 “A signal pirate violates section 553 if he intercepts a cable signal, [and] he  
9 violates section 605 if he intercepts a satellite broadcast. But he cannot violate both by  
10 a single act of interception.” J & J Sports Prods., Inc. v. Manzano, No. C-08-01872  
11 RMW, 2008 WL 4542962, at \*2 (N.D. Cal. Sept. 29, 2008). Here, the undisputed  
12 evidence indicates that Defendant intercepted a satellite broadcast, not a cable signal;  
13 that is a violation of § 605, not § 553. Accordingly, Plaintiff’s Motion is DENIED to the  
14 extent it seeks summary judgment on the second cause of action.

15 **3. Third Cause of Action: Conversion**

16 **a. Entitlement to Summary Judgment**

17 Plaintiff’s third cause of action is a conversion claim. To establish conversion, a  
18 plaintiff must show: (1) plaintiffs’ ownership or right to possession of the property at the  
19 time of the conversion; (2) defendants’ conversion by a wrongful act or disposition of  
20 plaintiffs’ property rights; and (3) damages. Tyrone Pac. Intern., Inc. v. MV Eurychili,  
21 658 F.2d 664, 666 (9th Cir. 1981). Because conversion is a strict liability claim, a  
22 defendant’s “good faith, lack of knowledge, motive, or intent are not relevant” in  
23 establishing a claim for conversion. Albright, 2013 WL 2449500 at \*8.

24 As to the first element, the “right to distribute programming via satellite” is  
25 recognized as a “right to possession of personal property” for purposes of a conversion  
26 claim under California law. DirecTV, Inc. v. Pahnke, 405 F. Supp. 2d 1182, 1189-90  
27 (E.D. Cal. Dec. 12, 2005) (granting plaintiff summary judgment on its conversion claim  
28 after recognizing the right to distribute as a right to possession of the property). Here,

1 Plaintiff has established its right to distribute the Fight in establishments such as  
2 Defendant's. Pl.'s Decl. (Ex. 1), ECF No. 11, at 1-19. Plaintiff has thus sufficiently  
3 established its property interest at the time of the conversion.

4 Defendant counters that Plaintiff did not have the right to distribute the Fight in  
5 Defendant's establishment because (1) Plaintiff's distribution rights extended only to  
6 commercial establishments and (2) Defendant is a "members-only non-profit private  
7 charitable organization." Def.'s Mot., ECF No. 19 at 4. Defendant made the same  
8 argument in a prior motion, and the Court rejected that argument. See ECF No. 16 at 5.  
9 Defendant has not provided the Court with any argument undermining the Court's  
10 reasoning in the previous Order or otherwise established a genuine issue of material fact  
11 as to the first element of Plaintiff's conversion claim. Plaintiff's property interest included  
12 the right to distribute to Defendant's establishment.

13 As to the second element of conversion, there is no dispute that Defendant  
14 showed the Fight without Plaintiff's authorization. The undisputed facts are sufficient to  
15 establish Defendant's conversion of Plaintiff's property right by a wrongful act. See  
16 Pahnke, 405 F. Supp. 2d at 1189-90 (concluding that lack of plaintiff's authorization was  
17 sufficient to show that defendant misappropriated plaintiff's property rights).

18 Plaintiff has also established damages, the third element of its conversion claim.  
19 Specifically, the undisputed evidence indicates that Defendant deprived Plaintiff of the  
20 commercial license fee to which Plaintiff was rightfully entitled to receive.

21 There being no genuine issue of material fact as to any element of conversion,  
22 Plaintiff's Motion is GRANTED to the extent it seeks summary judgment on the third  
23 cause of action.

#### 24 **b. Damages for Conversion**

25 Plaintiff may recover as damages the value of the property at the time of the  
26 conversion. Cal. Civ. Code § 3336; Krueger v. Bank of Am., 145 Cal. App. 3d 204, 215  
27 (2nd Cir. 1983). Plaintiff argues that it is entitled to \$1,600 in damages for the  
28 conversion, as that is the amount that Defendant would have had to pay to broadcast the



1 Fight lawfully. That figure is based on the investigator’s estimate that Defendant’s  
2 establishment has a capacity of 200 and the “rate card” for the Fight. Pl.’s Statement of  
3 Undisputed Facts (No. 8), ECF No. 20-1 (citing the rate card and the investigator’s  
4 affidavit); See Hokada Aff., ECF No. 20-2, at 3; Def.’s Mot. (Ex. 3), ECF No. 19-3 (the  
5 rate card). Plaintiff has carried its burden with respect to the amount of damages for the  
6 conversion claim.

7 Defendant counters that the maximum capacity of its establishment is “between  
8 80-100,” and that the value of the property at the time of the conversion (according to  
9 Plaintiff’s rate card) is therefore only \$950. Def.’s Resp. to Pl.’s Statement of Undisputed  
10 Facts, ECF No. 23-1, at 2. But the only evidence that Defendant cites in support of that  
11 assertion is “the headcounts of plaintiff’s investigator as well as the photographs . . . .”  
12 Id.

13 Defendant’s evidence is insufficient to create a triable issue. First, Defendant  
14 seems to agree that Plaintiff’s rate card—which provides licensing fees based solely on  
15 the “Fire Code Occupancy” of the establishment—determines the value of the Fight for  
16 purposes of conversion. Id. Second, the evidence that Defendant relies on—  
17 headcounts and photographs—does not corroborate its claim that its establishment is  
18 “between 80-100.” Again, the only variable on the rate card is the “Fire Code  
19 Occupancy” of the establishment; the investigator’s head count (i.e., the number of  
20 patrons actually present during Defendant’s showing of the Fight) is entirely irrelevant for  
21 purposes of determining the value of the Fight under the rate card. Defendant fails to  
22 appreciate that the investigator that took the head count also estimated a capacity of  
23 200. Moreover, Defendant’s reference to unspecified “photographs” lacks the  
24 particularity that Rule 56 requires to establish the existence of a genuine factual dispute.  
25 See Fed. R. Civ. P. 56(c)(1). Lastly, the photographs attached to the investigator’s  
26 affidavit—all of which capture the exterior of the building—do not undermine the  
27 investigator’s estimates, corroborate Defendant’s estimation of “between 80-100,” or  
28 otherwise create a genuine issue of material fact.

1 Defendant further argues that allowing damages for both Plaintiff's § 605 claim  
2 and its conversion claim would result in impermissible duplicative recovery. Some courts  
3 in this circuit generally award damages under both the statutory claim and for  
4 conversion, although other districts have taken the opposite approach. Albright, 2013  
5 WL 2449500 at \*9; Compare J & J Sports Prod., Inc. v. Paolilli, 1:11-CV-680 LJO GSA,  
6 2011 WL 6211905, at \*3-4 (E.D. Cal. Dec. 14, 2011) (awarding damages for both § 605  
7 and conversion claims), with J & J Sports Prods., Inc. v. J.R. 'Z Neighborhood Sports  
8 Grille, Inc., 2:0903141 DCN RSC, 2010 WL 1838432, at \*2 (D.S.C. Apr. 5, 2010)  
9 (denying plaintiff's claim for recovery for conversion after awarding damages under  
10 § 605). To avoid impermissible duplicative recovery, the Court did not consider the  
11 value of Defendant's unauthorized showing of the Fight when determining the  
12 appropriate statutory damages under § 605. Accordingly, the Court's award of \$1,600 in  
13 conversion damages is not duplicative.

#### 14 **B. Defendant's Motion for Summary Judgment**

15 Defendant raises several arguments in its Motion, some of which the Court has  
16 already addressed in evaluating the merits of Plaintiff's Motion for Summary Judgment.  
17 The remainder of this Order addresses only those arguments that the Court has not  
18 already examined.

##### 19 **1. Standing**

20 Defendant argues that Plaintiff lacks standing because Plaintiff does not have  
21 distribution rights to a "members-only non-profit private charitable organization" such as  
22 Defendant's establishment. Def.'s Mot., ECF No. 19 at 4. Defendant advanced the  
23 same argument in its Motion for Judgment on the Pleadings (ECF No. 8), and the Court  
24 rejected that argument (ECF No. 16). Defendant has failed to provide any argument to  
25 justify a deviation from the Court's previous order or otherwise establish that Plaintiff  
26 lacks standing. Thus, Defendant is not entitled to summary judgment on the ground that  
27 Plaintiff lacks standing.

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**2. Evidence of the type of signal intercepted under § 605**

Defendant argues that “it is necessary for the [P]laintiff to establish the type of signal that was allegedly intercepted to prevail in its case.” Def.’s Mot., ECF No. 19, at 9. Defendant’s argument is inconsistent with the applicable and binding case law. The Ninth Circuit has made clear a plaintiff may rely on “circumstantial evidence to prove unlawful interception.” Webb, 545 F.3d at 844. As the Court has already explained, the lack of Plaintiff’s authorization and Defendant’s satellite service—facts which Defendant does not dispute—are sufficient to establish that the Fight was intercepted via satellite service. See Albright, 2013 WL 2449500 at \*5. Id. Thus, Defendant is not entitled to summary judgment on the ground that Plaintiff failed to establish the type of signal intercepted.

Accordingly, Defendant’s Motion is for Summary Judgment is DENIED.

**CONCLUSION**

Defendant’s Motion for Summary Judgment (ECF No. 19) is DENIED.

Plaintiff’s Motion for Summary Judgment (ECF No. 20) is GRANTED in part and DENIED in part as follows:

1. Plaintiff’s Motion is GRANTED as to the first cause of action (violation of 47 U.S.C. § 605); Plaintiff is awarded \$2,000 in statutory damages and no enhanced statutory damages for that claim.

2. Plaintiff’s Motion is DENIED as to the second cause of action (violation of 47 U.S.C. § 553).

3. Plaintiff’s Motion is GRANTED as to the third cause of action (conversion), and Plaintiff is awarded \$1,600 in damages for that claim.

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1 Plaintiff did not seek summary judgment on the fourth cause of action. Within  
2 fourteen (14) days of the date this Order is electronically filed, Plaintiff shall inform the  
3 Court whether it will proceed on the fourth cause of action or seek dismissal of that claim  
4 and request that this case be closed. If no notice is received with said fourteen (14) day  
5 period, this case will be closed without any further notice to the parties.

6 IT IS SO ORDERED.

7 Dated: February 10, 2016

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MORRISON C. ENGLAND, JR., CHIEF JUDGE  
UNITED STATES DISTRICT COURT