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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER E. TALAVERA, an individual formerly doing business as TURNKEY WEB TOOLS; and TURNKEY WEB TOOLS, INC., a California corporation,  
  
Plaintiffs,  
  
v.  
  
GLOBAL PAYMENTS, INC., a Georgia corporation; ACTIVE NETWORK, LLC, a Delaware limited liability company; HEARTLAND PAYMENT SYSTEMS, LLC, a Delaware limited liability company; and DOES 1 through 229, inclusive,  
  
Defendants.

Case No.: 21-CV-1585 TWR (MSB)  
  
**ORDER (1) DENYING PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT AND (2) GRANTING DEFENDANTS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**  
  
(ECF Nos. 55, 60)

Presently before the Court are the Cross-Motions for summary judgment filed by Plaintiffs Christopher E. Talavera and Turnkey Web Tools, Inc. (ECF No. 60, “Pls.’ MSJ”) and Defendants Active Network, LLC; Global Payments, Inc.; and Heartland Payment  
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1 Systems, LLC<sup>1</sup> (ECF No. 55; ECF No. 55-1, “Defs.’ MSJ”). The Cross-Motions are fully  
 2 briefed, (*see* ECF Nos. 55, 60–63), and the Court held a hearing on March 2, 2023, (*see*  
 3 ECF No. 66). Having carefully considered the Parties’ arguments, the record, and the  
 4 applicable law, the Court **DENIES** Plaintiffs’ Motion and **GRANTS** Defendants’ Motion.

## 5 **BACKGROUND**

### 6 **I. Facts**

7 This action arises out of a dispute over a software program called “SunShop.” (ECF  
 8 No. 63, “Jt. Stmt.” ¶ 3.) In 2001, Plaintiff Christopher Talavera created the source code  
 9 for the SunShop software program. (*Id.*) From 2002 to 2003 Talavera operated under the  
 10 business name “Turnkey Web Tools, Inc.” (“TWT”). (ECF No. 16, “FAC” ¶ 4.)<sup>2</sup> In June  
 11 2003, Talavera incorporated and registered TWT to do business in California. (Jt. Stmt. ¶  
 12 2.) Talavera is the President of TWT. (*Id.* ¶ 1.)

13 In February 2004, Talavera obtained a copyright registration certificate for the  
 14 SunShop software and underlying source code (Copyright No. TX 5-896-387). (*Id.* ¶ 5;  
 15 *see also* FAC ¶ 2.) And in September 2021, Talavera obtained a second copyright  
 16 registration certificate for a revised version of the SunShop software and source code  
 17 (Copyright No. TX 9-010-501). (Jt. Stmt. ¶ 6; FAC ¶ 3.) Although TWT does not own  
 18 these copyrights, (Jt. Stmt. ¶ 8), since its incorporation, TWT has purportedly been  
 19 authorized by Talavera to act as the exclusive copyright and license administrator for  
 20

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21 <sup>1</sup> Doe Defendants 1 through 229 have not been identified or served, and thus do not join in  
 22 Defendants’ Motion for Summary Judgment. Plaintiffs’ claims against the Doe Defendants are discussed  
 23 further in Section II.I.

24 <sup>2</sup> In their Motion for Summary Judgment, Defendants rely on various facts within the First Amended  
 25 Complaint (“FAC”) on the basis that it was verified under oath. (Defs.’ MSJ at 5 n.1.) Yet in their later  
 26 briefing, Defendants contend that the FAC should not be considered because it is unverified. (ECF No.  
 27 61 at 8.) Although the copy of FAC submitted with Plaintiffs’ Cross-Motion does not contain the  
 28 verification page, (ECF No. 60-1, “Pls.’ Ex. A”), it is substantively identical to the FAC on the Docket,  
 which has been verified under oath by Plaintiff Christopher Talavera on behalf of himself and TWT, (*see*  
 ECF No. 16-1). Therefore, the Court will consider the verified FAC as summary judgment evidence.

Due to the anemic Joint Statement of Facts submitted by the Parties, the Court has been forced to  
 scour the Parties’ briefing to identify those facts within the FAC which have been adopted by both sides.  
 Those undisputed facts are incorporated into the Background Section of this Order.

1 SunShop, (FAC ¶ 9; *see also* ECF No. 61 at 29). This authorization is not memorialized  
2 in a written agreement. (Jt. Stmt. ¶ 9.)

3 From approximately 2007, (Defs.’ MSJ at 6; Pls.’ MSJ at 8), to 2012,<sup>3</sup> Blue Bear  
4 Corporation (“Blue Bear”) paid Plaintiffs to license the SunShop software program to offer  
5 “shopping cart services” to school districts selling merchandise, event tickets, and other  
6 online goods and services, (FAC ¶¶ 21, 29). In 2008, Defendant Active Network, LLC  
7 (“Active”) wholly acquired Blue Bear, including all license agreements. (ECF No. 8-2,  
8 “Loch Decl.” ¶ 12.)<sup>4</sup> In 2017, Active merged with Defendant Global Payments, Inc.  
9 (“GPI”). (*Id.* ¶ 11.) Now, GPI wholly owns Active as well as Defendant Heartland  
10 Payment Systems, LLC (“Heartland”). (*Id.* ¶ 3.)

11 In 2013, Active stopped making licensing fee payments to Plaintiffs for the SunShop  
12 software, (*id.* ¶ 13), but Active has continued to use the software through the present day,  
13 (*id.* ¶ 14; *see also* ECF No. 8 at 10).

## 14 **II. Procedural History**

15 Plaintiffs initiated this action on September 8, 2021, (*see* ECF No. 1), and filed a  
16 First Amended Complaint on November 9, 2021, (*see* ECF No. 16). The First Amended  
17 Complaint brings eight claims: (1) copyright infringement; (2) induced copyright  
18 infringement; (3) violation of the Digital Millenium Copyright Act (“DMCA”) §  
19 1201(a)(2) (Circumvention); (4) violation of the DMCA § 1202 (False/Removed Copyright  
20 Management Information); (5) false designation of origin; (6) trade dress infringement;

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22  
23 <sup>3</sup> Although it is undisputed that Defendants last paid for use of the license through 2012, the  
24 evidence submitted by Plaintiffs indicates that the license in fact expired in 2013, (*see* ECF No. 60-1,  
25 “Pls.’ Ex. J”), purportedly due to a promotion providing Defendants with an additional year of use, (*see*  
26 Pls.’ MSJ at 10). Plaintiffs clarified this issue at the Motion Hearing and Defendants did not present any  
27 evidence to the contrary. Thus, the Court accepts it as true.

28 <sup>4</sup> Mr. Loch is the Vice President and General Manager of School Solutions at Defendant Active.  
Plaintiffs have submitted the Loch Declaration in its entirety in support of their Motion, (ECF No. 60-1,  
“Pls.’ Ex. D”), and Defendants have incorporated various facts from the Loch Declaration into their  
Motion, (*see generally* Defs.’ MSJ), and submitted the Declaration in support of a prior filing, (*see* ECF  
No 8-2). Accordingly, the Court incorporates undisputed facts from the Declaration into the Background  
Section of this Order.

1 (7) unfair competition; and (8) unjust enrichment. (*See generally* FAC.) Defendants  
2 answered on December 20, 2021, (*see* ECF No. 22), and the Parties completed discovery  
3 approximately one year later, (*see* ECF No. 53).

4 On December 19, 2022, Defendants filed a Motion for Partial Summary Judgment  
5 on Plaintiffs' Fifth, Sixth, and Eighth Claims for Relief. (*See* Defs.' MSJ.) At Plaintiffs'  
6 request, (*see* ECF No. 57), the Court set a consolidated briefing schedule allowing  
7 Plaintiffs to file a Cross-Motion for Summary Judgment, (ECF No. 59). On January 19,  
8 2023, Plaintiffs filed a consolidated Cross-Motion and Opposition to Defendants' Motion.  
9 (ECF No. 60.) Defendants then filed a consolidated Opposition to the Cross-Motion and  
10 Reply in support of their affirmative Motion, (ECF No. 61), and Plaintiffs filed a Reply in  
11 support of their Cross-Motion, (ECF No. 62). The Parties also filed a Joint Statement of  
12 Undisputed Facts. (ECF No. 63.) The Court held a hearing on the Cross-Motions on March  
13 2, 2023. (*See* ECF No. 66.)

#### 14 LEGAL STANDARD

15 Under Federal Rule of Civil Procedure 56, a party may move for summary judgment  
16 as to a claim or defense or part of a claim or defense. Fed. R. Civ. P. 56(a). Summary  
17 judgment is appropriate where "the movant shows that there is no genuine dispute as to  
18 any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ.  
19 P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Although materiality is  
20 determined by substantive law, "[o]nly disputes over facts that might affect the outcome of  
21 the suit . . . will properly preclude the entry of summary judgment." *Anderson v. Liberty*  
22 *Lobby, Inc.*, 477 U.S. 242, 248, (1986). A dispute is "genuine" only "if the evidence is  
23 such that a reasonable jury could return a verdict for the nonmoving party." *Id.* When  
24 considering the evidence presented by the parties, "[t]he evidence of the non-movant is to  
25 be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255.

26 The initial burden of establishing the absence of a genuine issue of material fact falls  
27 on the moving party. *Celotex*, 477 U.S. at 323. The moving party may meet this burden  
28 by "identifying those portions of 'the pleadings, depositions, answers to interrogatories,

1 and admissions on file, together with the affidavits, if any,’ which it believes demonstrate  
2 the absence of a genuine issue of material fact.” *Id.* “When the party moving for summary  
3 judgment would bear the burden of proof at trial, ‘it must come forward with evidence  
4 which would entitle it to a directed verdict if the evidence went uncontroverted at trial.”  
5 *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000)  
6 (quoting *Houghton v. South*, 965 F.2d 1532, 1536 (9th Cir. 1992)).

7 Once the moving party satisfies this initial burden, the nonmoving party must  
8 identify specific facts showing that there is a genuine dispute for trial. *Celotex*, 477 U.S.  
9 at 324. This requires “more than simply show[ing] that there is some metaphysical doubt  
10 as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,  
11 586 (1986). Rather, to survive summary judgment, the nonmoving party must “go beyond  
12 the pleadings and by her own affidavits, or by the ‘depositions, answers to interrogatories,  
13 and admissions on file,’ designate ‘specific facts’” that would allow a reasonable fact finder  
14 to return a verdict for the non-moving party. *Celotex*, 477 U.S. at 324; *see also Anderson*,  
15 477 U.S. at 248. Accordingly, the nonmoving party cannot oppose a properly supported  
16 summary judgment motion by “rest[ing] upon mere allegations or denials of his pleading.”  
17 *Anderson*, 477 U.S. at 256.

18 Where, as here, the parties have filed cross-motions, the court considers each motion  
19 “separately, giving the nonmoving party in each instance the benefit of all reasonable  
20 inferences.” *See SEC v. Feng*, 935 F.3d 721, 728 (9th Cir. 2019). The Court must  
21 “consider the appropriate evidentiary material identified and submitted in support of both  
22 motions, and in opposition to both motions, before ruling on each of them.” *Tulalip Tribes*  
23 *of Wash. v. Washington*, 783 F.3d 1151, 1156 (9th Cir. 2015).

## 24 ANALYSIS

### 25 I. Evidentiary Objections

26 As a preliminary matter, Defendants raise several objections to the evidence  
27 submitted in support of Plaintiffs’ Cross-Motion for Summary Judgment, (*see* ECF No. 61-  
28 6), and Reply in Support of that Cross-Motion, (*see* ECF No. 64). The Court addresses

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