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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

AARON BORNSTEIN et al.,

Plaintiffs and Appellants,

v.

SONIC AUTOMOTIVE, INC., et al.,

Defendants and Respondents.

G047251

(Super. Ct. No. 30-2008-00059024)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Kim Garlin Dunning, Judge. Affirmed in part, reversed in part, and remanded with
directions. Request for judicial notice. Denied.

Carroll, Kelly, Trotter, Franzen & McKenna, Carroll, Kelly, Trotter,
Franzen, McKenna & Peabody, Michael J. Trotter and David P. Pruett for Plaintiff and
Appellant Aaron Bornstein.

No appearance for Plaintiff and Appellant Donald R. Hall.

Arent Fox, Victor P. Danhi, Steven A. Haskins and Stanley G.
Stringfellow II for Defendants and Respondents.

* * *

INTRODUCTION

Plaintiff Aaron Bornstein was employed at Long Beach BMW automobile dealership (the dealership) as a sales associate. In July 2007, the dealership's owner, who was either defendant SAI Long Beach B, Inc., or defendant Sonic Automotive, Inc., contracted with a company to provide incoming toll-free telephone lines at the dealership. (We refer to SAI Long Beach B, Inc., and Sonic Automotive, Inc., collectively as defendants.) Conversations on those incoming telephone lines could be monitored and recorded, thereby enabling management to better evaluate the quality of customer service provided by sales associates.

Bornstein declared he learned in March 2008 that incoming toll-free calls at the dealership had been monitored and recorded by his employer. Bornstein, along with plaintiff Donald R. Hall (a customer of the dealership), sued defendants for invasion of privacy in violation of Penal Code sections 631 and 632 (all further statutory references are to the Penal Code unless otherwise specified), and for unfair competition in violation of Business and Professions Code section 17200 based on defendants' alleged violations of sections 631 and 632. Defendants filed a motion for summary judgment and for, in the alternative, summary adjudication as to each cause of action. The trial court granted defendants' motion for summary judgment.

We affirm the judgment entered in favor of defendants and against Hall. Although Hall's name appears on the notice of appeal from the judgment entered after the trial court granted the motion for summary judgment, he has not filed any appellate briefs or otherwise made any appearance in this appeal. We do not hereafter refer to Hall except to provide relevant background to the issues raised in Bornstein's appeal.

Based on the language of section 631, we must reverse the judgment entered in favor of defendants and against Bornstein, and remand with directions. If Bornstein's invasion of privacy claim were solely based on an alleged violation of section 632, judgment would have been properly entered in favor of defendants. The

undisputed facts established that Bornstein did not have an objectively reasonable expectation of privacy with regard to the telephone calls he received at work on the dealership's incoming toll-free lines. Bornstein's invasion of privacy claim, however, is also based on an alleged violation of section 631, subdivision (a), which broadly and ambiguously proscribes, inter alia, the interception of the content of a telephone communication "without the consent" of all parties to that communication. Because Bornstein has produced evidence in opposition to the motion for summary judgment that he was unaware of the monitoring of his conversations on the toll-free lines until March 2008, he has established the existence of a triable issue of fact as to whether he consented to such monitoring within the meaning of section 631.

As to Bornstein's second cause of action for unfair competition, he does not have standing to pursue such a claim as a matter of law because he has not suffered any economic injury as a result of defendants' alleged violation of section 631. On remand, we direct the trial court to enter an order granting summary adjudication in favor of defendants as to Bornstein's second cause of action.

SUMMARY OF UNDISPUTED FACTS AND ADDITIONAL EVIDENCE PRODUCED BY BORNSTEIN IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Bornstein was employed as a sales adviser at the dealership from July 2007 through April 2008. His duties included speaking to customers over the telephone. The dealership's sales associates work in open cubicles or work areas located on the dealership's showroom floor, or in the Internet sales office. Because they work in close proximity to each other, the sales associates can overhear each other's telephone conversations.

In 2007, the dealership was acquired by SAI Long Beach B, Inc.; Bornstein stated in his declaration that the dealership was acquired by Sonic Automotive, Inc. In October 2007, the owner of the dealership contracted with Callbright Corporation

(Callbright) to install a call-recording system to monitor and record incoming calls from customers who called the dealership using the toll-free numbers provided by Callbright. Callbright never recorded or monitored any calls made to or from the dealership through local telephone numbers. Callbright never recorded or monitored any outgoing calls from the dealership.

Callbright's services included an automated, recorded announcement at the beginning of each incoming toll-free call advising that the call was subject to monitoring and recording. This advisory has been provided as long as Callbright has been recording incoming toll-free calls for the dealership.

The dealership's sales manager Jimmy Campanis's duties included listening to incoming customer calls to evaluate the performance of the sales associates. Campanis, along with other sales managers, general sales managers, and general managers of the dealership, played back recorded incoming calls.

In his declaration,¹ Campanis stated that during the weekly sales meetings attended by the sales associates, "it is not uncommon" for a manager "to talk about the proper handling of calls between customers or potential customers and sales associates. During these discussions, the sales associates are reminded that telephone calls at [the dealership] are subject to monitoring and recording and that management will review the recorded phone calls regularly to ensure that customers['] calls are being properly handled." He stated that a recorded call between a sales associate and a customer, on occasion, would be played back at the sales meeting, followed by a discussion of how the sales call was handled. Campanis further stated, "I can recall discussions relating to the monitoring and recording of phone calls at [the dealership] occurring at least once per month for at least the last five years, and such discussions continue to occur regularly at

¹ Campanis's declaration, dated January 26, 2009, was produced by plaintiffs in opposition to defendants' motion for summary judgment and/or adjudication.

the weekly Sales Meeting.” Campanis also stated Bornstein was present at sales meetings when the subject of monitoring and recording of calls was discussed.

Bornstein declared that on March 3, 2008, he learned telephone conversations he had at work had been recorded. He complained to Campanis who confirmed that calls were being recorded. Bornstein stated he was “upset and angry” about the recording of his telephone calls. He stated that some of the calls he received from family or friends came through the toll-free lines and that they were personal and private. He further stated that “[r]egarding calls [he] received from customers calling in to [the dealership] on such toll free lines, [he] would seek to establish a personal relationship with the customer. [His] communications with those customers would frequently include personal discussions. For instance, if a customer revealed something personal during those calls, [he] would often reciprocate and reveal something personal, including things that [he] would otherwise consider private, about [him]self to them.” Bornstein continued, “[t]he personal and private topics that [he] discussed with customers who called, including those who called on toll free numbers, during that time frame included such personal and private matters as [his] relationships with loved ones, financial concerns, and other personal matters.” Other than being upset and angry, Bornstein does not claim to have suffered any actual harm or damage as a result of the monitoring and recording of telephone calls at the dealership.

PROCEDURAL BACKGROUND

I.

THE FIRST AMENDED COMPLAINT

Bornstein and Hall, as individuals and on behalf of the general public and all others similarly situated, filed a first amended complaint (the complaint) against defendants for invasion of privacy in violation of sections 631, 632, and 637.2, and violation of Business and Professions Code section 17200. Although the complaint

contained class action allegations, as of the time of the trial court's order granting summary judgment in favor of defendants, plaintiffs had not filed a motion for class certification.

The complaint alleged that Bornstein was employed by and Hall was a customer of the dealership, and that “[a]t all relevant times herein, Sonic implemented, established, controlled, permitted and/or participated in the illegal tapping, recording or eavesdropping on telephone calls by and between [the dealership], Sonics’ California dealerships, their customers and employees.” The complaint further alleged, “[a]s part of their business in selling and leasing automobiles to California consumers, defendants have engaged in illegal and unlawful conduct including, without limitation, eavesdropping on, recording and/or wiretapping telephone calls” and otherwise making unauthorized connections to telephone calls “in violation of California Penal Code sections 631 and 632.” The complaint also alleged defendants’ “surreptitious wiretapping [wa]s accomplished through a machine, instrument, or contrivance, or in another manner prohibited by California Penal Code section 631(a)” and the “surreptitious eavesdropping and recording of telephone conversations [wa]s accomplished by means of electronic amplifying or recording devices in violation of California Penal Code section 632(a).” The complaint stated, “defendants did not have the authorization or permission from plaintiffs . . . to eavesdrop upon, record or tap telephone conversations.”

As to the first cause of action for invasion of privacy, the complaint stated, “[b]ecause defendants eavesdropped on, or otherwise made an unauthorized connection to plaintiffs and other class members’ conversations, defendants are liable for the greater of \$5,000.00 per violation or three times the amount of actual damages sustained by each plaintiff pursuant to California Penal Code section 637.2.” The complaint further stated that because defendants’ conduct and invasion of plaintiffs’ right to privacy was willful, deliberate, malicious, intentional, and in violation of sections 631 and 632, plaintiffs

sought statutory penalties and remedies for each putative class member “without regard to any actual damages that may have been sustained by an individual putative class member.”

The complaint alleged the second cause of action for unfair competition was based on the allegations supporting the first cause of action—with the additional allegation that “[t]he conduct of defendants as alleged herein constitutes an ongoing, unfair and/or fraudulent and/or unlawful business practice.”

II.

MOTION FOR SUMMARY JUDGMENT OR ADJUDICATION

Defendants filed a motion for summary judgment or adjudication. The trial court granted the motion. As to Hall, in its minute order, the court noted that Hall did not oppose the motion for summary judgment. As to Bornstein, the court concluded, as a matter of law, that Bornstein “did not have an objectively reasonable expectation that his telephone conversations on the toll-free number were confidential, i.e., they would not be overheard or recorded.”²

Judgment was entered in favor of defendants. Plaintiffs filed a notice of appeal. Hall did not file any appellate briefs and has not otherwise made any appearance in this appeal. Hall has thus abandoned his appeal, and we therefore affirm the judgment entered against him and in defendants’ favor.

² Defendants filed objections to evidence produced by Bornstein in opposition to the motion for summary judgment. The trial court stated, in its minute order, that “the written objections did not comply with [California Rules of Court,] rule 3.1354(b)(2).” The court noted that “a variety of” unspecified statements in Bornstein’s declaration “did not provide admissible evidence. Some were speculative and lacking in foundation,” such as Bornstein’s understanding that some calls came into the dealership through toll-free lines, and “[o]ther statements” reflected “[his] subjective beliefs.” The court further stated, “nothing in the declaration supports an objectively reasonable expectation that telephone calls on the dealership’s toll-free lines would not be recorded.” The parties do not challenge the trial court’s ruling on the evidentiary objections in this appeal.

REQUEST FOR JUDICIAL NOTICE

Bornstein requests that this court take judicial notice of three documents:

(1) “Official proceedings of the California State Legislature, specifically the 1957 California Senate Judiciary Committee report entitled ‘The Interception of Messages by the Use of Electronic and Other Devices and the Use of Such in the Suppression of Crime and the Use of Such by Private Parties for Their Own Use’”; (2) “February of 1967 the President’s Commission on Law Enforcement and Administration of Justice issued a lengthy examination and findings pertaining to organized crime in the United States, <https://www.ncjrs.gov/pdffiles1/nij/42.pdf>”; and (3) “Official proceedings of the California State Legislature, specifically in February of 1967 the President’s Commission on Law Enforcement and Administration of Justice issued a lengthy examination and findings pertaining to organized crime in the United States.”

As discussed *post*, this appeal is based on the interpretation of two statutes of the California Invasion of Privacy Act (§ 630 et seq.). In light of the Legislature’s declaration of the policy behind the California Invasion of Privacy Act which is codified at section 630 et seq., and California Supreme Court and appellate court opinions interpreting the statutes at issue in this case, we deny Bornstein’s request for judicial notice because the materials are irrelevant to our decision on appeal. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1089 & fn. 4 [appellate court will not take judicial notice of irrelevant material].)

DISCUSSION

I.

BURDENS OF PROOF AND STANDARD OF REVIEW

“A trial court properly grants a motion for summary judgment only if no issues of triable fact appear and the moving party is entitled to judgment as a matter of

law. [Citations.] The moving party bears the burden of showing the court that the plaintiff “has not established, and cannot reasonably expect to establish, a prima facie case” [Citation.]’ [Citation.] ‘[O]nce a moving defendant has “shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,” the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff “may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action” [Citations.]’ [Citation.]” (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 274.)

“In reviewing a trial court’s grant of summary judgment, we apply the following rules: “[W]e take the facts from the record that was before the trial court when it ruled on that motion” and ““review the trial court’s decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.”” [Citation.] In addition, we “liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party.”” (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1039.)

II.

BORNSTEIN’S FIRST CAUSE OF ACTION FOR VIOLATION OF PRIVACY

Bornstein’ first cause of action for invasion of privacy in violation of sections 631, 632, and 637.2 was based on the allegation defendants “eavesdropped upon, recorded, tapped or otherwise made unauthorized connection to telephone calls with plaintiffs and others similarly situated, all without their consent or knowledge.” As we will explain, the trial court properly concluded defendants had not violated section 632 as a matter of law because Bornstein did not have an objectively reasonable expectation of privacy. Had an alleged violation of section 632 been the only basis for Bornstein’s invasion of privacy cause of action, judgment would have been properly entered in favor

of defendants. Bornstein’s invasion of privacy claim was also based, however, on the allegation defendants violated section 631. On this record, because a triable issue of material fact exists as to whether Bornstein consented to the monitoring of those calls within the meaning of section 631, his violation of privacy claim should have survived summary judgment.

A.

The California Invasion of Privacy Act

The statutes underlying Bornstein’s invasion of privacy claim, sections 631, 632, and 632.7, are part of the California Invasion of Privacy Act (§ 630 et seq.), which was enacted in 1967 and thereby replaced prior laws that permitted the recording of telephone conversations with the consent of only one party to the conversation. (*Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 768 (*Flanagan*).)

Section 630 summarizes the Legislature’s intent in enacting this statutory scheme, stating in relevant part: “The Legislature hereby declares that advances in science and technology have led to the development of new devices and techniques for the purpose of eavesdropping upon *private communications* and that the invasion of privacy resulting from the continual and increasing use of such devices and techniques has created a serious threat to the free exercise of personal liberties and cannot be tolerated in a free and civilized society. [¶] The Legislature by this chapter intends to protect the right of privacy of the people of this state.” (Italics added; see *Flanagan, supra*, 27 Cal.4th at p. 769 [“The purpose of the act was to protect the right of privacy by, among other things, requiring that all parties consent to a recording of their conversation”].)

Sections 631 and 632 proscribe certain eavesdropping conduct and promulgate criminal penalties for violations of those statutes. In addition, section 637.2³

³ Section 637.2 provides: “(a) Any person who has been injured by a violation of this chapter may bring an action against the person who committed the violation for the

establishes a private cause of action on the part of “[a]ny person who has been injured by a violation of this chapter . . . against the person who committed the violation.” (*Warden v. Kahn* (1979) 99 Cal.App.3d 805, 810-811.)

B.

*No Triable Issue of Material Fact Exists Regarding
Bornstein’s Claim Defendants Violated Section 632.*

As interpreted by the California Supreme Court in *Flanagan*, section 632⁴ “prohibits the recording of a telephone call without consent from all parties, but only if the call includes a ‘confidential communication.’” (*Flanagan, supra*, 27 Cal.4th at p. 768.) Section 632, subdivision (c) provides: “The term ‘confidential communication’

greater of the following amounts: [¶] (1) Five thousand dollars (\$5,000). [¶] (2) Three times the amount of actual damages, if any, sustained by the plaintiff. [¶] (b) Any person may, in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any violation of this chapter, and may in the same action seek damages as provided by subdivision (a). [¶] (c) It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.”

⁴ Section 632 provides in part: “(a) Every person who, intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section or Section 631, 632.5, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. [¶] (b) The term ‘person’ includes an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof, whether federal, state, or local, but excludes an individual known by all parties to a confidential communication to be overhearing or recording the communication.” (§ 632, subds. (a), (b).)

includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.”

In *Flanagan, supra*, 27 Cal.4th at page 766, the California Supreme Court resolved the disagreement that had developed among the appellate courts as to the “meaning of the critical term ‘confidential communication’” (*id.* at p. 768) in the context of section 632, by holding that a conversation is confidential if a party to that conversation has “an objectively reasonable expectation that the conversation is not being overheard or recorded” (*Flanagan, supra*, at pp. 776-777). (See *Kight v. CashCall, Inc.* (2011) 200 Cal.App.4th 1377, 1396.)

Here, the trial court granted summary judgment in favor of defendants, based on the conclusion that, as a matter of law, Bornstein did not have “an objectively reasonable expectation that his telephone conversations on the toll-free number were confidential, i.e., they would not be overheard or recorded.” We agree.

The following undisputed facts establish that Bornstein did not have an objectively reasonable expectation of privacy as to incoming calls on the toll-free lines he had while working at the dealership. It is undisputed that the toll-free lines were set up for a business purpose and that customers and prospective customers calling into the dealership on the toll-free lines were advised through an automated, recorded message that their telephone conversations were subject to monitoring and recording. The dealership also had local telephone lines (non-toll-free area code 562 lines) that were not subjected to any monitoring or recording. Bornstein’s claim to have had a reasonable expectation of privacy is further undermined by evidence he produced in opposition to

the motion for summary judgment, showing that he attended sales meetings at which the recording of such telephone calls was discussed.

Furthermore, it is undisputed that due to the close proximity of sales associates in conducting business, sales associates' telephone conversations could be overheard by other sales associates. Under those circumstances, Bornstein did not have an objectively reasonable expectation of privacy regarding the incoming telephone calls on the dealership's toll-free lines. Such conversations, therefore, did not constitute confidential communications within the meaning of section 632.

C.

A Triable Issue of Material Fact Exists Regarding Whether Defendants Violated Section 631.

Bornstein's first cause of action for invasion of privacy was also based on the allegation defendants violated section 631.⁵ In *Warden v. Kahn, supra*, 99

⁵ Section 631, subdivision (a) provides: "Any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, or who willfully and *without the consent of all parties to the communication*, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or *communication* while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section, is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both a fine and imprisonment in the county jail or pursuant to subdivision (h) of Section 1170. If the person has previously been convicted of a violation of this section or Section 632, 632.5, 632.6, 632.7, or 636, he or she is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the county jail not exceeding one

Cal.App.3d at pages 811-812, footnote 3, the appellate court described section 631 as “patently ambiguous” and cited one commentator’s observation that the “antecedents of this complex statute date back to 1862 and, as a result of numerous previous amendments, it is badly in need of simplification.” We agree.

In *Tavernetti v. Superior Court* (1978) 22 Cal.3d 187, 192, the California Supreme Court stated: “Subdivision (a) of section 631 prescribes criminal penalties for three distinct and mutually independent patterns of conduct: intentional wiretapping, wilfully attempting to learn the contents or meaning of a communication in transit over a wire, and attempting to use or communicate information obtained as a result of engaging in either of the previous two activities.”

In *Ribas v. Clark* (1985) 38 Cal.3d 355, 360, the California Supreme Court concluded that a complaint charged an attorney with a “prima facie violation of section 631,” based on allegations the attorney listened in on a telephone conversation between her client and her client’s husband. The complaint alleged the call had been initiated by the client at the attorney’s office, and that, at the client’s request, the attorney surreptitiously listened to the conversation on an extension phone. (*Id.* at p. 358.)

In *Ribas v. Clark, supra*, 38 Cal.3d at page 359, the Supreme Court stated: “Section 631 was aimed at one aspect of the privacy problem—eavesdropping, or the secret monitoring of conversations by third parties.” The Supreme Court held that it has “read section 631 as prohibiting far more than illicit wiretapping,” and rejected the view that section 631 “merely encompass[ed] the use of electronic amplifying and recording devices” because “[s]uch a construction is inconsistent with the broad wording and purpose of the statute, and would render superfluous the language proscribing attempts ‘in any unauthorized manner . . . to learn the contents . . . of any . . . communication’” (*Ribas v. Clark, supra*, at p. 360.) The Supreme Court further stated: “[T]o the

year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both that fine and imprisonment.” (Italics added.)

extent that the broad language and purposes of the Privacy Act may encompass conduct that some people believe should not be proscribed, their remedy is to ask the Legislature to draft a statute they find more palatable.” (*Id.* at p. 362, fn. 4.)

Unlike section 632, which proscribes the recording of communications of which the parties have a reasonable expectation of privacy, section 631 broadly proscribes, *inter alia*, the interception of *any* communication without the consent of all the parties involved. Section 631 does not describe the type of consent required of the participants to a communication before the communication may be lawfully monitored. Although section 630 reflects the Legislature’s intent to protect “private communications” in enacting the Invasion of Privacy Act, section 631, subdivision (a) does not limit its scope to private communications or to confidential communications, the latter of which is defined in section 632, subdivision (c). Quite simply, the Legislature knew how to qualify the term “communications” as “private communications” in section 630 and “confidential communication” in section 632. In contrast, section 631, subdivision (a) addresses only communications “without the consent of all parties to the communication,” and Bornstein’s declaration creates a triable issue of material fact on this issue.

Here, it is undisputed Callbright’s monitoring and recording system was installed in October 2007. In his declaration, Bornstein stated he was unaware that any calls were monitored or recorded at the dealership until March 2008. In light of the ambiguity of section 631 and the Supreme Court’s broad interpretation of its reach, on this record, there exists a triable issue of fact as to whether Bornstein consented to the monitoring and recording of such telephone calls.

In their respondents’ brief, defendants argue that it is undisputed “Sonic did not engage in any monitoring or recording whatsoever, nor was the alleged violation committed by an agent or employee of Sonic. Because the evidence indisputably

establishes that Sonic did not ‘commit [] the violation,’ [Bornstein] cannot recover against Sonic under the statute.”

But, Bornstein’s declaration, offered in opposition to the motion for summary judgment, stated that he was “employed by [the dealership]” which was owned by Sonic Automotive, Inc. He also produced evidence the dealership’s relationship with Callbright was governed by an agreement entered into by Sonic and established “Callbright [as] the exclusive provider of Call Tracking Services endorsed by Sonic for Sonic Dealerships.” The agreement stated that a “preferred pricing rate” would be provided upon Sonic Automotive, Inc., “reaching the Required Enrollment Level,” or, in other words “a percentage of ‘all Sonic dealership locations.’” In view of the required liberal reading of Bornstein’s evidence, Sonic Automotive, Inc., remains in the case at this point.

Consequently, the first cause of action for invasion of privacy against defendants remains viable solely to the extent it is based on an alleged violation of section 631. In reaching this conclusion, we do not intend to suggest an opinion whether Bornstein will ultimately prevail on this issue at trial.

III.

BORNSTEIN’S UNFAIR COMPETITION CLAIM FAILS AS A MATTER OF LAW.

In moving for summary judgment, defendants also alternatively sought summary adjudication of, inter alia, the issue that “Plaintiffs’ Second Cause of Action for Violation of California Business & Professions Code Section 17200 fails because neither Plaintiff suffered any actual injury as a result of Defendants’ alleged conduct.” In *Zhang v. Superior Court* (2013) 57 Cal.4th 364, 372, the California Supreme Court stated: “The voters restricted private enforcement of the UCL [(unfair competition law) (Bus. & Prof. Code, § 17200 et seq.)] in 2004, by approving Proposition 64. Standing under the UCL is now limited to those who have ‘suffered injury in fact and [have] lost money or property as a result of . . . unfair competition.’ (Bus. & Prof. Code, § 17204.) Accordingly, to

bring a UCL action, a private plaintiff must be able to show economic injury caused by unfair competition.”

It is undisputed Bornstein did not suffer economic injury as a result of any unfair competition that occurred through defendants’ alleged violation of section 631. Defendants are therefore entitled to summary adjudication of the second cause of action for unfair competition.

DISPOSITION

We affirm the judgment entered in favor of defendants as to Hall. We reverse the judgment entered in favor of defendants as to Bornstein, and remand to the trial court with directions to enter an order granting summary adjudication in favor of defendants and against Bornstein as to the second cause of action for unfair competition. As both parties prevailed in part, in the interests of justice, neither party shall recover costs on appeal.

FYBEL, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.