



**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA**

In re:

JOSÉ SANDOVAL,

Debtor,

COMCAST OF LOS ANGELES, INC.,

Plaintiff,

vs.

JOSÉ SANDOVAL,

Defendant.

Case No. LA 05-24453-SB

Adv. No. LA-05-02196-SB

CHAPTER 7

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
AFTER TRIAL

DATE: December 8, 2005

TIME: 10:00 a.m.

CRTRM.:1575 (Roybal)

## I. INTRODUCTION

Creditor Comcast of Los Angeles, Inc. ("Comcast") seeks a determination that its claim for statutory damages resulting from Debtor Jose Sandoval's alleged violations of anti-piracy and anti-signal theft laws under California Penal Code § 593d is a nondischargeable debt under § 523.<sup>1</sup>

Sandoval, a subscriber to Comcast's basic cable service, was found with two cable converter boxes connected to his television sets, neither provided by Comcast, with hardwire alterations permitting him to decode all of Comcast's premium and Pay per View cable transmissions.

Following trial, the court finds that Comcast has not provided sufficient evidence to show a violation of the statute. The court further finds that Comcast has not presented sufficient evidence to establish a prima facie case that its claim for statutory damages is nondischargeable. Consequently, any debt owing to Comcast by reason of the cable boxes is discharged.

## II. RELEVANT FACTS

There are two sets of facts relevant to this case – the facts presented at trial, and background facts about the operations of the cable television industry.

### A. Facts of This Case

Comcast distributes television broadcast signals through a cable television system in parts of Los Angeles County, California. Comcast offers several different levels of cable service to its customers, including a "basic" level service or "standard" package and premium and Pay per View services. Sandoval had a subscription for the "basic" level of service from Comcast, Sandoval's cable television provider.

At trial, the only probative evidence presented by Comcast was a Security Field Observation Report ("field report") and a Converter Discrepancy Report ("discrepancy report"), which were admitted into evidence as records of regularly conducted activity.<sup>2</sup>

<sup>1</sup> Unless otherwise specified, all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (West 2005) and all rule references are to the Federal Rules of Bankruptcy Procedure.

<sup>2</sup> See FED. R. EVID. 803(6).

Comcast performed an inspection of the cable wires and equipment at Sandoval's residence, with his consent, on August 12, 2003. There Comcast found two grey Zenith cable television transmission converter boxes without serial numbers, one connected to a television set in Sandoval's living room, and the other connected to a television set in the back bedroom. The field report indicates that both converters were "clearly receiving all premium and pay per view channels. They were receiving (SHO-27) Real Men, (iN1-75) Just Married."

Sandoval voluntarily surrendered the converters to Comcast. Comcast's later office inspection revealed that both converters had "hardwire modifications."

### B. The Cable Television Industry

Comcast presented no evidence on the nature or the technology of the cable television industry. Some information is available from other recently reported cases.

Cable television signals are transmitted through cable wiring from a cable television system provider's transmission center to its customer's television sets. Cable services offered include basic cable programming, premium programming (including movie channels such as HBO) and "Pay per View" programs. Cable television system providers encode or "scramble" the signals of the channels except for those in the basic service package. Basic service is provided at a monthly fee, premium services are provided for additional monthly fees, and Pay per View programming is sold by event. See *generally*, *CSC Holdings, Inc. v. Alberto*, 379 F. Supp. 2d 490, 491 (S.D.N.Y. 2005).

For each customer, a cable television provider installs a converter to unscramble the coded signals if the customer purchases service above the basic level. A service provider also attaches a filter to the cable lines to prevent a decoding device from descrambling any scrambled programs. Customers with unfiltered service levels may obtain "pirate" decoding devices to unscramble the scrambled signals, and thus to obtain higher levels of service without paying the additional fees. See *id.*

## III. ANALYSIS

Comcast argues that Sandoval knowingly and willfully possessed, attached to its satellite television system, and used two unauthorized and illegally modified cable television decoder boxes to

1 view Comcast's scrambled premium and Pay per  
2 View programming without authorization or proper  
3 payment. By doing so, Comcast claims that  
4 Sandoval committed six separate violations of  
5 California Penal Code § 593d and that it is entitled  
6 to monetary damages in the amount of \$30,000  
7 under § 593d(f)(1).

8 Comcast further argues that the debt is  
9 based on actual fraud, larceny, and conversion,  
10 and thus is nondischargeable under §§  
11 523(a)(2)(A), (4), and (6), respectively. The court  
12 held a trial for Comcast to make a prima facie case  
13 that the debt is owing and that it is  
14 nondischargeable.

#### 15 **A. VALIDITY AND AMOUNT OF THE CLAIM:** 16 **CALIFORNIA PENAL CODE § 593d**

17 We first examine whether, and to what  
18 extent, Comcast has a claim under applicable  
19 state law. A "claim" is defined in § 101(5) to  
20 include a "right to payment, whether or not such  
21 right is reduced to judgment, liquidated,  
22 unliquidated, fixed, contingent, matured,  
23 unmatured, disputed, undisputed, legal, equitable,  
24 secured, or unsecured."

25 Non-bankruptcy law determines the  
26 validity of a creditor's claim. *See, e.g., Grogan v.*  
27 *Garner*, 498 U.S. 279, 283-84 (1991); *Cossu v.*  
28 *Jefferson Pilot Sec. Corp. (In re Cossu)*, 410 F.3d  
591, 595 (9th Cir. 2005). To the extent that  
Comcast fails to prove a debt, there is no issue of  
nondischargeability.

California Penal Code § 593d(a) provides  
the state law rule governing possession and use of  
unauthorized and unlawfully modified cable  
television signal decoders.<sup>3</sup> Section 593d(a)  
states, in relevant part:

[A]ny person who, for the purpose  
of intercepting, receiving, or using  
any program or other service  
carried by a multichannel video or  
information services provider that  
the person is not authorized by  
that provider to receive or use,  
commits any of the following acts  
is guilty of a public offense:

<sup>3</sup>There is also a federal statute imposing both  
criminal and civil liability for the unauthorized  
reception of cable service. *See* 47 U.S.C. § 553  
(2006). This statute is not before the court  
because Comcast does not bring any claim  
thereunder.

(1) Knowingly and willfully makes  
or maintains an unauthorized  
connection or connections,  
whether physically, electrically,  
electronically, or inductively, to  
any cable, wire, or other  
component of a multichannel  
video or information services  
provider's system or to a cable,  
wire or other media, or receiver  
that is attached to a multichannel  
video or information services  
provider's system.

(2) Knowingly and willfully  
purchases, possesses, attaches,  
causes to be attached, assists  
others in attaching, or maintains  
the attachment of any  
unauthorized device or devices to  
any cable, wire, or other  
component of a multichannel  
video or information services  
provider's system or to a cable,  
wire or other media, or receiver  
that is attached to a multichannel  
video or information services  
provider's system.

(3) Knowingly and willfully makes  
or maintains any modification or  
alteration to any device installed  
with the authorization of a  
multichannel video or information  
services provider.

(4) Knowingly and willfully makes  
or maintains any modifications or  
alterations to an access device  
that authorizes services or  
knowingly and willfully obtains an  
unauthorized access device and  
uses the modified, altered, or  
unauthorized access device to  
obtain services from a  
multichannel video or information  
services provider.

For purposes of this section, each  
purchase, possession,  
connection, attachment, or  
modification shall constitute a  
separate violation of this section.

Section 593d(f) provides a civil remedy of \$5,000  
or triple damages, whichever is greater, plus

1 reasonable attorney fees, against “[a]ny person  
2 who violates this section.” Comcast does not  
3 contend that it suffered any actual damages as a  
4 result of the violations.

5 There are four elements to a cause of  
6 action under § 593d: (1) offending conduct, (2)  
7 performed “knowingly and willfully,” (3) done for a  
8 specified unlawful purpose, (4) that caused  
9 damage to the claimant.

## 10 **1. Offending Conduct**

11 Comcast contends that Sandoval engaged  
12 in three kinds of offending conduct for each of the  
13 two cable boxes, which resulted in six violations of  
14 § 593d. We now turn to an examination of the  
15 evidence supporting each of these charges.

### 16 **a. Unauthorized Connection**

17 Section 593d(a)(1) prohibits unauthorized  
18 connections to a cable provider’s system. This  
19 section is designed to prohibit the stealing of a  
20 cable television signal by a person who is not a  
21 customer of the provider.

22 There is no evidence that Sandoval made  
23 any unauthorized connection to Comcast’s cable  
24 system, within the meaning of § 593d(a)(1).  
25 Comcast admits that it authorized Sandoval’s  
26 connection to its cable system to receive  
27 programming from Comcast. Thus, Comcast  
28 authorized the connection of both television sets to  
the decoders. In consequence, the evidence  
does not support any claim for unauthorized  
connection to Comcast’s cable system.

### 29 **b. Possession of Unauthorized 30 Decoding Devices**

31 Section 593d(a)(2) makes it a violation to  
32 possess any “unauthorized device” that is attached  
33 to a cable provider’s system. This provision is  
34 designed to prohibit a legitimate cable service  
35 customer from attaching any such device to the  
36 customer’s receiver system or to the cable system.  
37 This statutory provision also applies to anyone  
38 who purchases or attaches such a device for  
someone else.

While Sandoval possessed the Zenith  
converter boxes, there is no evidence before the  
court that they were unauthorized. The field report  
states only that these converters were “not issued  
to the account” and that they “had hardwire  
modifications.” There is no evidence in the record  
as to what equipment or devices Comcast has

authorized, either in general or for Sandoval in  
particular. Furthermore, there is no evidence  
whether such a Zenith converter box (in either the  
modified or unmodified version) is on the list of  
authorized devices.

The court is left totally uninformed as to  
what boxes were authorized by Comcast in this  
case, and whether the decoders found at  
Sandoval’s residence were or were not authorized.  
The court finds that Comcast has not shown that  
Sandoval possessed an unauthorized decoder  
device.

## 31 **c. Modification of Equipment Installed 32 by Service Provider**

Section 593d(a)(3) prohibits making or  
maintaining any modification or alteration of any  
device installed with the authorization of a service  
provider. This provision is designed to cover a  
consumer’s modification of equipment provided or  
authorized by the service provider.

The court’s best guess is that this  
provision does not apply to Sandoval, because he  
did not have a modified or altered converter  
provided by Comcast. Because Comcast has  
failed to show what equipment or devices it  
authorized Sandoval to use, the court cannot find  
that either of the Zenith decoders was a “device  
installed with the authorization” of Comcast.

Furthermore, the evidence admitted is  
insufficient to determine whether the converters  
here at issue were modified or altered in any  
sense relevant to § 593d(a)(3). To be relevant, the  
modification must be made for an improper  
purpose, as discussed *infra*. The field observation  
report only states that, “they had hardwire  
modifications.” However, this is a mere  
conclusion. The report fails to specify any respect  
in which the converters were improperly modified,  
or the purpose of the modifications.

In consequence, the court cannot  
determine whether the “modifications” were in fact  
different from the state in which the converters  
should have been, or whether the “modifications”  
violated any rights of Comcast. Thus, the court  
finds insufficient evidence to determine that there  
was any relevant modification for the purposes of  
§ 593d(a)(3).

The report also states that the Zenith  
converters were “clearly receiving all premium and  
pay per view channels.” However, Comcast fails  
to explain (at all) what was improper about such  
reception.

The court assumes (with no evidentiary  
support) that Comcast sends the same package of

1 programming to every customer, and that it  
2 controls the level of service provided to a particular  
3 customer through the converter box that it installs  
4 at the customer's home. See, e.g., *CSC Holdings,*  
5 *Inc. v. Kelly*, 374 F. Supp. 2d 303, 303 (E.D.N.Y.  
6 2005) (describing role of converter in descrambling  
7 signal and regulating type of service provided to a  
8 customer). If this were not so, an altered converter  
9 would provide no benefit to a customer. In  
10 consequence, every converter installed for every  
11 customer receives all of the signals, whether  
12 covered by the customer's contract or not. It  
13 would thus be altogether proper for Sandoval's  
14 converters to receive all of Comcast's channels.

#### 15 **d. Use of Unauthorized of Modified Devices**

16 Use of each of the Zenith converters may  
17 in fact constitute a violation under § 593d(a)(4).  
18 However, Comcast makes no contention that  
19 Sandoval committed a violation of § 593d(a)(4).  
20 Furthermore, Comcast has presented no evidence  
21 that Sandoval actually used either of the cable  
22 boxes.

#### 23 **2. "Knowingly & Willfully"**

24 California case law gives us guidance in  
25 interpreting the meaning of "knowingly and  
26 willfully" in each subparagraph of § 593d. A  
27 violation of this statute is a "general intent offense."  
28 See *People v. Prevost*, 71 Cal. Rptr. 2d 487, 492  
(Cal. App. 1998). This requires only that the  
defendant knowingly and willfully engage in the  
conduct, not that he have a specific intent to  
engage in theft of cable services. *Id.*

Comcast altogether omits any reference to  
the "knowingly and willfully" requirement. The  
record is altogether lacking in any evidence that  
Sandoval "knowingly and willfully" engaged in  
improper conduct. There are only two items of  
possibly relevant evidence. First, Sandoval signed  
the voluntary surrender form and surrendered the  
Zenith converters to agents for plaintiff when they  
visited his residence. The debtor surrendered the  
units immediately after agents of the plaintiff  
"informed Jose that he was in violation of state and  
federal laws and was given copies of such laws as  
well as the public notice." Because the surrender  
of the converter was made immediately after the  
delivery to the debtor of these unsubstantiated  
allegations, the court can draw no inference  
adverse to the debtor from his voluntary surrender  
of the converters.

The second item of evidence is that an  
agent of Comcast asked Sandoval where he

obtained the "illegal" converters, and he stated, "I  
bought them from some guy a while ago." The  
evidence before the court does not disclose  
exactly what question Comcast agent posed to the  
debtor. The testimony of the inquiring agent could  
have been helpful on this issue, but he did not  
testify. The court treats Sandoval's response as  
noncommittal with respect to any improper action.

The voluntary surrender form is likewise  
unavailing to Comcast. Apart from the "voluntary  
surrender" title of the document, it contains no  
language that the court can conclude the debtor  
adopted in signing the document.

The court concludes that there is no  
credible evidence of any admission on the debtor's  
part of any conduct that was a knowing and willful  
violation of the statute.

#### 3. Unlawful Purpose

Section 593d specifies that the offending  
activity must be conducted "for the purpose of  
intercepting, receiving, or using any program or  
other service . . . that the person is not authorized  
by that provider to receive or use . . . ." Comcast  
argues in its trial brief that the boxes in this case  
were intentionally modified for the sole purpose of  
perpetrating cable signal theft. However, the trial  
record in this case is altogether lacking in any  
evidence of the debtor's purpose in possessing the  
altered cable boxes.

Comcast may have had no evidence as to  
the debtor's specific purpose in possessing these  
cable boxes. Nonetheless, Comcast could have  
presented evidence that such alterations are  
almost always made for this purpose, and perhaps  
even that there is no other known purpose for such  
alterations. See, e.g., *CSC Holdings v. Kelly*, 374  
F. Supp. 2d 303, 305-06 (E.D.N.Y. 2005) (plaintiff  
submitted affidavits showing that the "J Cube"  
device had only one purpose, to intercept cable  
television programming services); *CSC Holdings,*  
*Inc. v. Alberto*, 379 F. Supp. 2d 490, 492 (S.D.N.Y.  
2005) (same). But there is no such evidence in  
the trial record in this case.

#### 4. Damage

To prove a debt arising under § 593d,  
Comcast must show that it was in fact damaged by  
the debtor's conduct. Comcast makes no claim for  
actual damages in any amount. It relies, instead,  
entirely on its claim for statutory damages.

Comcast argues that Sandoval has  
committed at least six violations of § 593d,  
consisting of the possession, connection, and use

1 of each of the two allegedly unauthorized  
2 converters taken from his residence. Comcast  
3 argues that, because § 593d(f)(1) provides for  
damages of \$5,000 per violation, it is entitled to  
statutory damages of at least \$30,000.

4 However, § 593d(f) does not provide for  
5 \$5,000 in statutory damages for each violation. It  
only provides a single \$5,000 liability for “[a]ny  
6 person who violates this section . . . .” *Accord*,  
7 *Continental Cablevision, Inc. v. Poll*, 124 F.3d  
1044, 1049 (9<sup>th</sup> Cir. 1997) (giving similar  
interpretation to federal statute providing for  
statutory damages).

8 Furthermore, we are constrained in the §  
523 context by the rule that the exception to  
9 dischargeability is construed strongly in favor of  
the debtor and against the creditor. *See, e.g., Su*  
10 *v. Carrillo (In re Su)*, 259 B.R. 909, 912 (B.A.P. 9<sup>th</sup>  
Cir. 2001), *aff’d* 290 F.3d 1140 (9<sup>th</sup> Cir. 2002); *Riso*  
11 *v. Snoke (In re Riso)*, 978 F.2d 1151, 1154 (9<sup>th</sup>  
Cir. 1992); *Mandalay Resort Group v. Miller (In re*  
12 *Miller)*, 310 B.R. 185, 193 (Bankr. C.D. Cal. 2004).  
Comcast has only claimed that one person, Mr.  
Sandoval, violated the statute.

13 The court finds that, for the purposes of §  
523, § 593d(f) imposes only \$5,000 in statutory  
14 damages on such a person, and does not impose  
separate damage awards for each violation.  
15 Accordingly, the court concludes that Sandoval  
would owe only \$5,000 in statutory damages at  
16 most, if Comcast had proven its § 593d claim.

## 17 B. DISCHARGEABILITY

18 Even if Comcast had a \$5000 statutory  
claim against Sandoval, we could not find that the  
19 claim is nondischargeable.

20 Comcast contends that the debt here at  
issue is nondischargeable under §§ 523(a)(2), (4)  
and (6). Any exceptions to the discharge under  
21 these provisions must be construed narrowly in  
favor of the debtor. *See, e.g., Su*, 259 B.R. at 912,  
22 *aff’d* 290 F.3d 1140 (9<sup>th</sup> Cir. 2002); *Riso*, 978 F.2d  
at 1154; *Miller*, 310 B.R. at 193. The  
23 nondischargeable debts listed in § 523 are not  
automatically excluded from the discharge. A  
24 creditor must file an adversary proceeding under  
strict time limits. *See* § 523(c)(1); Rule 4007.

25 A court may require a creditor to present  
admissible evidence to make a prima facie case  
26 that a debt qualifies for exclusion from the  
discharge. *See, e.g., Citibank (South Dakota),*  
27 *N.A. v. Eashai (In re Eashai)*, 87 F.3d 1082, 1086-  
87 (9<sup>th</sup> Cir. 1996); *Lu v. Liu (In re Liu)*, 282 B.R.  
28 904, 907-08 (Bankr. C.D. Cal. 2002). The court  
set a trial for this purpose, where it took testimony

and admitted documents. Sandoval did not  
appear at the trial. The court now considers  
whether Comcast has made its prima facie case  
under any of these exceptions to discharge.

### 1. The § 523(a)(2)(A) Claim - Fraud

Section 523(a)(2)(A) provides, in relevant  
part, that a debt for money, property, or services is  
nondischargeable to the extent that it is obtained  
by “false pretenses, a false representation, or  
actual fraud<sup>4</sup>, other than a statement respecting  
the debtor’s or an insider’s financial condition.”  
Under Ninth Circuit law, a creditor seeking to  
establish the nondischargeability of a debt  
resulting from actual fraud under § 523(a)(2)(A)  
must establish:

- (1) a misrepresentation of fact by the  
debtor,
- (2) that the debtor knew at the time to be  
false,
- (3) that the debtor made with the  
intention of deceiving the creditor,
- (4) upon which the creditor relied, and
- (5) that was the proximate cause of  
damage to the creditor.

*See, e.g., Field v. Mans*, 516 U.S. 59 (1995);  
*Cossu*, 410 F.3d at 596; *Eashai*, 87 F.3d at 1086;  
*Britton v. Price (In re Britton)*, 950 F.2d 602, 604  
(9<sup>th</sup> Cir. 1991). In *Field*, the U.S. Supreme Court  
added that any reliance must be justifiable. *See*  
*Field*, 516 U.S. at 73-75. Each of these elements  
must be proved (by a preponderance of the  
evidence) in order for a creditor to prevail on a  
claim of nondischargeability based on actual fraud.

Underlying each of these elements is the  
requirement of a representation, oral or written,  
made by the debtor. At trial, Comcast presented  
no evidence whatsoever of any oral or written  
representations made by Sandoval relevant to this  
litigation. The only evidence offered was the  
information contained in the field report and  
discrepancy report. The discovery of the  
unauthorized converters connected to the  
televisions in Sandoval’s home by itself does not  
constitute a “representation” made by the debtor.  
Because Comcast failed to prove that Sandoval

<sup>4</sup> Under Ninth Circuit law, there is no separate  
nondischargeability cause of action for false  
pretenses or a false representation. To prevail  
under § 523(a)(2)(A), the creditor must prove  
actual fraud. *See, e.g., Miller*, 310 B.R. at 200-  
02.

1 made any representation, true or false, Comcast  
2 failed to make a prima facie case for actual fraud  
under § 523(a)(2)(A).

3 Even if Comcast had successfully  
4 established that Sandoval had made a  
misrepresentation, Comcast has not proven the  
5 remaining elements of actual fraud under §  
6 523(a)(2)(A). In support of its contention that the  
debt owing by Sandoval is based on fraud,  
7 Comcast cites to *Electric Power board of*  
8 *Chattanooga v. Holt (In re Holt)*, 24 B.R. 215  
(Bankr. E.D. Tenn. 1981), a case involving theft of  
9 electrical service. In *Holt*, the bankruptcy court  
10 found that the debtor was guilty of actual fraud and  
11 that the debt arising from charges for electrical  
12 services furnished to debtor's residence was thus  
nondischargeable. The court noted that the  
13 evidence indicated "a pattern of conduct by the  
14 occupants of the residence in question to use  
15 utility services from the Electric Power Board and  
16 the Chattanooga Gas Company without paying for  
17 them" and that the debtor "received the electrical  
18 service knowing that it was stolen." *Id.* at 215-216.

13 In this case, the evidence presented by  
14 Comcast does not indicate who occupied the  
15 residence, any such pattern or conduct of theft, or  
16 any knowledge on Sandoval's part that the  
17 decoders were allowing him to receive  
18 programming which he knew to be stolen.  
19 Comcast has failed to establish each of the  
20 elements required under § 523(a)(2)(A), and thus  
21 cannot prevail on its claim of nondischargeability  
22 based on actual fraud.

## 2. The § 523(a)(4) Claim - Embezzlement or Larceny

20 Section 523(a)(4) excepts from an  
21 individual debtor's discharge debts arising from  
22 embezzlement or larceny.<sup>5</sup> For purposes of §  
23 523(a)(4), federal law (as opposed to state law)  
24 governs the definition of embezzlement. *First Del.*  
*Life Ins. Co. v. Wada (In re Wada)*, 210 B.R. 572,  
576-77 (B.A.P. 9<sup>th</sup> Cir. 1997). In the Ninth Circuit,  
the elements of a claim based on embezzlement  
are:

- 25 (1) property owned by another is  
rightfully in the possession of the  
debtor;
- 26 (2) debtor's appropriation of such  
property to a use other than the

27 <sup>5</sup> Not relevant in this case, § 523(a)(4) also  
28 excepts from discharge a debt resulting from  
fraud or defalcation by a fiduciary.

- use for which the property was  
entrusted to debtor; and
- (3) circumstances indicating fraud.

*Transamerica Commercial Fin. Corp. v. Littleton*  
(*In re Littleton*), 942 F.2d 551, 555 (9<sup>th</sup> Cir. 1991);  
*Wada*, 210 B.R. at 576. The elements of a claim  
based on larceny differ from the elements of  
embezzlement only in that the larcenous debtor  
takes possession of the property unlawfully. 4  
COLLIER ON BANKRUPTCY § 523.10[2] (Alan N.  
Resnick & Henry J. Sommer eds., 15<sup>th</sup> ed. rev.  
2005).

Comcast argues that the debt qualifies for  
the larceny exception to discharge under §  
523(a)(4) because Sandoval unlawfully,  
larcenously, and fraudulently intercepted, decoded  
and viewed its scrambled premium and Pay per  
View cable television transmissions. Comcast  
does not contest that Sandoval properly received  
Comcast's signals as a subscriber to its basic  
programming package.

Comcast has offered no direct evidence  
that Sandoval viewed any programs for which he  
had not paid (or even that he viewed any programs  
at all). Comcast asks the court to infer, from his  
possession of equipment capable of decoding the  
premium programs, that in fact he used the  
equipment for this purpose. Comcast could have  
installed software to monitor use of the cable box  
to obtain this information, but it did not. Comcast  
could have installed a filter to prevent Sandoval  
from receiving transmissions of the premium  
services, but it did not. Given the obligation to  
construe the relevant discharge exceptions  
strongly in Sandoval's favor, the court declines to  
infer that Sandoval watched programs for which he  
did not pay.

Indeed, the court cannot even infer that  
Sandoval used the converters here at issue. The  
record lacks any evidence whatever of who or how  
many people inhabited the residence, or which (if  
any) of them watched television programs. Given  
the rule requiring strict application of the  
nondischargeability provisions, the court declines  
to make any such inference.

Furthermore, the evidence admitted at trial  
is entirely devoid of information regarding the  
channels that are included in the various  
programming packages. The field report merely  
states that the Zenith converters "were both clearly  
receiving all premium and pay per view channels.  
They were receiving (SHO-27) Real Men, (iN1-75)  
Just Married." Comcast presents no evidence that  
those channels or programs were included only in  
its premium and Pay per View packages, and were

1 not included in Sandoval's subscription to  
2 Comcast's basic package. Without knowing which  
3 channels and programs are included in the various  
4 packages, the court cannot determine that  
5 Sandoval unlawfully received cable transmissions  
6 to which he was not entitled. Because Comcast  
7 has failed to prove unlawful appropriation of its  
8 cable signals, Comcast has not established the  
9 prima facie elements of larceny or embezzlement.

10 This is not to say that no debt for the theft  
11 of cable services is dischargeable notwithstanding  
12 § 523(a)(4). Indeed, the court assumes that a  
13 properly proven theft of cable services charge  
14 would qualify under § 523(a)(4), at least as to the  
15 actual damages shown. If Comcast had  
16 successfully established the offensive conduct  
17 element of a cause of action under § 593d, that  
18 may have been sufficient to show that he  
19 unlawfully received programming for which he had  
20 not paid, this would constitute larceny, and that the  
21 resulting damages would be nondischargeable.  
22 Because Comcast has not proven a debt owing  
23 under the law against the theft of cable signals, it  
24 cannot prevail under § 523(a)(4).

### 25 **3. The § 523(a)(6) Claim - Willful 26 and Malicious Injury**

27 Comcast further claims that the debt owed  
28 is based on conversion, and thus is  
nondischargeable under § 523(a)(6). Section  
523(a)(6) excepts from discharge debts "for willful  
and malicious injury by the debtor to another entity  
or to the property of another entity." Conversion is  
covered by this statutory language. See *Del Bino*  
*v. Bailey* (*In re Bailey*), 197 F.3d 997, 1000 (9<sup>th</sup> Cir.  
1999); *Littleton*, 942 F.2d at 554.

Although bankruptcy law determines the  
dischargeability of debts, courts look to state law to  
determine whether a conversion has in fact  
occurred. *Jercich v. Petralia* (*In re Jercich*), 238  
F.3d 1202, 1206 (9<sup>th</sup> Cir. 2001); *Bailey*, 197 F.3d at  
1000. Under California law, "a conversion is not  
per se a willful and malicious injury to the property  
of another." *Peklar v. Ikerd* (*In re Peklar*), 260  
F.3d 1035, 1037 (9<sup>th</sup> Cir. 2001); see *id.* at 1039  
("[a] judgment for conversion under California  
substantive law decides only that the defendant  
has engaged in the 'wrongful exercise of dominion'  
over the personal property of the plaintiff. It does  
not necessarily decide that the defendant has  
caused 'willful and malicious injury' within the  
meaning of § 523(a)(6)". Consequently, to prevail  
on its claim of nondischargeability, Comcast must  
first establish that a conversion has occurred

under California law, and second that the  
conversion is willful and malicious.

#### **a. Conversion under California Law**

Under California law, conversion is defined  
as "the wrongful exercise of dominion over the  
personal property of another." *Id.* at 1037; *Taylor*  
*v. Forte Hotels Int'l*, 235 Cal. App. 3d 1119, 1124  
(1991). More specifically, conversion includes:

any act of dominion wrongfully  
asserted over another's personal  
property in denial of or  
inconsistent with his rights  
therein. It is not necessary that  
there be a manual taking of the  
property; it is only necessary to  
show an assumption of control or  
ownership over the property, or  
that the alleged converter has  
applied the property to his own  
use.

*Bailey*, 197 F.3d at 1000; *Igauye v. Howard*, 249  
P.2d 558, 561 (Cal. Ct. App. 1952); see *Farmers*  
*Ins. Exch. v. Zerlin*, 61 Cal. Rptr. 2d 707, 709  
(1997) ("the elements of a conversion are the  
creditor's ownership or right to possession of the  
property at the time of the conversion; the debtor's  
conversion by a wrongful act or disposition of  
property rights; and damages.").

Comcast presented no evidence at trial to  
show that Sandoval in fact converted its cable  
transmissions. The field report indicates that  
Sandoval was entitled to receive Comcast's  
signals as a subscriber to its basic programming  
package. There is no evidence regarding which  
channels were included in the programming  
packages for which Sandoval had paid.  
Consequently, the court cannot determine which  
channels Sandoval was entitled to receive or that  
Sandoval wrongfully asserted dominion over  
Comcast's signal transmissions by possessing  
descramblers which allowed him to view premium  
and Pay per View programming. Comcast has not  
sufficiently established that Sandoval's treatment  
of its signals constituted conversion as defined  
under California law.

#### **b. "Willful and Malicious"**

Once it is established that a conversion  
did in fact occur, a determination of  
nondischargeability under § 523(a)(6) requires that

1 Comcast prove that the conversion was both willful  
and malicious.

2 Under § 523(a)(6), the willfulness element  
3 requires that the debtor intended the  
consequences of his action, and not just the action  
4 itself. *Kawaauhau v. Geiger*, 523 U.S. 57, 61  
(1998); *Thiara v. Spycher Bros. (In re Thiara)*, 285  
5 B.R. 420, 427 (B.A.P. 9<sup>th</sup> Cir. 2002). An injury is  
willful when it is shown either that the debtor had  
6 a subjective motive to inflict the injury or that the  
debtor believed that injury was substantially certain  
7 to result from his conduct. See *Su*, 290 F.3d at  
1142-46.

8 The injury inflicted by the debtor must also  
be “malicious,” which requires that the debtor  
9 intentionally perform a wrongful act which  
necessarily causes injury and which is done  
without cause or excuse. *Id.* at 1146-47. Although  
10 malice may be inferred from the act, it must first be  
established that the conversion was a “willful”  
11 injury. *Littleton*, 942 F.2d at 554; *Thiara*, 285 B.R.  
at 434. Under Ninth Circuit law, willfulness and  
12 malice are two distinct elements that must not be  
conflated. See *Su*, 290 F.3d at 1146.

13 Based on the minimal evidence presented  
at trial, Comcast has failed establish that  
14 Sandoval’s treatment of its signals constituted  
conversion as it is defined under California law. In  
15 the Ninth Circuit, “a failure to prove conversion is  
fatal to an argument that defendant’s conduct  
16 caused ‘willful and malicious injury.’” *Peklar*, 260  
F.3d at 1038. Because Comcast has not  
17 sufficiently proved that it suffered injury due to any  
conversion by Sandoval, Comcast cannot satisfy  
18 the willful and malicious prongs of the test for  
nondischargeability under § 523(a)(6). The  
19 evidence does not support a finding of such willful  
and malicious injury.

20 Furthermore, even if Comcast successfully  
established that a conversion of its cable  
21 transmissions did in fact occur, it is not clear  
whether an award of statutory damages under  
22 California Penal Code § 593d supports a claim for  
willful and malicious injury. Although Comcast  
23 cites to *CSC Holdings, Inc. v. Feiner (In re Feiner)*,  
254 B.R. 266 (Bankr. D. Kan. 2000), as a case  
24 exactly on point dealing with the discharge  
exception for willful and malicious injury and  
25 statutory damages arising from cable piracy and  
use of a cable television descrambler, the  
26 damages at issue in that case were awarded  
pursuant to a *federal* anti-cable signal theft law. In  
27 a prior proceeding, a district court had found that  
the debtor had violated § 553(1) of the  
28 Communications Act, which states:

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

47 U.S.C § 553(1) (2006). Based on the testimony  
and evidence presented, the district court found  
that Feiner intercepted or received pay per view  
service over CSC’s cable system, without  
authorization, and without paying for the service.  
*Feiner*, 254 B.R. at 270. The bankruptcy court  
gave preclusive effect to the district court’s findings  
and noted that

[t]he issues of Feiner’s use of the  
descrambler without justification  
or excuse, with intent to receive  
service without paying for it, and  
with knowledge that he had no  
authorization from CSC and was  
thus stealing from CSC, are all  
issues that were actually and  
necessarily litigated in the District  
Court action.

*Id.* at 271. Thus, the bankruptcy court declined to  
relitigate the issues of Feiner’s intent, knowledge,  
and unauthorized use of the descrambler, and  
found the debt owing to CSC was  
nondischargeable under § 523(a)(6). *Id.* at 271,  
273. Rather than finding that all violations of §  
553(1) of the Communications Act constitute willful  
and malicious injury, the bankruptcy court relied on  
the district court’s factual findings in determining  
the nondischargeability of the debt. This court,  
unlike the bankruptcy court in *Feiner*, does not  
have the benefit of such findings of fact and has  
not been presented with any evidence whatsoever  
sufficient to support a finding of  
nondischargeability for willful or malicious injury for  
all violations of § 593d or specifically with respect  
to Sandoval’s alleged conduct.

1 Although § 593d allows for concurrent  
2 criminal and civil remedies, no existing case law  
3 establishes that violations of this state anti-piracy  
4 and anti-signal theft law constitute willful and  
5 malicious injury under § 523(a)(6). On its face, §  
6 593d(a) describes acts performed “knowingly and  
7 willfully,” in violation of the statute. See §  
8 593d(a)(1)-(4). Comcast has failed to establish  
9 whether this language meets the willfulness  
10 requirement of § 523(a)(6), that the debtor  
11 intended the consequences of his action, and not  
12 just the action itself. See *Geiger*, 523 U.S. at 61;  
13 *Thiara*, 285 B.R. at 427.

14 Comcast has also failed to address  
15 whether statutory damages awarded under §  
16 593d(f) meet the “malicious” requirement, a distinct  
17 element that must be satisfied for a debt to be  
18 determined nondischargeable under § 523(a)(6).  
19 See *Su*, 290 F.3d at 1146. The court concludes  
20 that Comcast has not shown that any statutory  
21 damages owing by Sandoval is a  
22 nondischargeable debt under § 523(a)(6).

23 Entirely apart from the California statute,  
24 Comcast could present evidence that Sandoval’s  
25 conduct was willful and malicious. However,  
26 Comcast has failed to present any such evidence.  
27 In particular, Comcast’s total failure to present any  
28 evidence of damages apart from statutory  
damages requires it to rely on the statutory  
violation for its damage claim. However, Comcast  
has failed to show that its statutory damages result  
from willful and malicious conduct on Sandoval’s  
part.

#### 18 IV. CONCLUSION

19 Comcast has not established that it is  
20 owed any statutory damages resulting from  
21 Sandoval’s alleged violations of anti-signal theft  
22 laws under California Penal Code § 593d. Even if  
23 Comcast had proven such damages, it has failed  
24 to show that such damages qualify for exception to  
25 discharge under § 523(a)(2)(A), (4), or (6). The  
26 court concludes that Comcast is not entitled to a  
27 judgment in its favor, and that the adversary  
28 proceeding must be dismissed.

DATED: March 31, 2006

27 \_\_\_\_\_/s/  
28 Samuel L. Bufford  
United States Bankruptcy Judge

**CERTIFICATE OF MAILING**

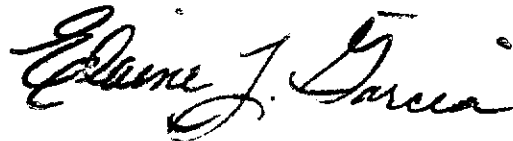
I certify that a true copy of this **FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**AFTER TRIAL** was mailed on MAR 31 2006 to the parties listed below:

U.S. Trustee's Office  
725 So. Figueroa St., Suite 2600  
Los Angeles, CA 90017

Anthony E. Bell, Esq.  
700 S. Flower St., Suite 1100  
Los Angeles, CA 90017-4113

Jose Sandoval  
1029 1/2 Osage Ave Apt 7  
Inglewood, CA 90301

DATED: MAR 31 2006



DEPUTY CLERK