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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Wolf Designs LLC,

10 Plaintiff,

11 v.

12 Five 18 Designs LLC, et al.,

13 Defendants.  
14

No. CV-21-01789-PHX-ROS

**ORDER**

15 Plaintiff Wolf Designs LLC (“Plaintiff”) designs and installs “vehicle wraps,” *i.e.*  
16 large vinyl graphics or decals applied to car bodies. Defendant Garrett Maxwell owns  
17 Defendant Five 18 Designs LLC (“Five 18”) (collectively “Defendants”). Five 18 is a  
18 direct competitor of Wolf. This suit involves Five 18 and Maxwell allegedly copying  
19 Wolf’s copyrighted designs and stealing Wolf’s customers.

20 **BACKGROUND**

21 **I. Factual Background**

22 The factual background is familiar to the parties and the Court. Briefly, and as  
23 relevant from the Amended Complaint (Doc. 66), Plaintiff alleges as follows.

24 Both Plaintiff and Defendants design and install vehicle wraps. (First Amended  
25 Verified Complaint, Doc. 66 at ¶¶ 9, 11) (“FAVC”). The First Amended Complaint  
26 asserts three claims related to alleged copyright infringement, based on three of  
27 Plaintiff’s customers allegedly opting to hire Defendants to install vehicle wraps  
28 featuring designs Plaintiff had created and copyrighted.

1           **A. Nash Copyrights**

2           In March 2020, Plaintiff’s customer, Nash Powersports (“Nash”) commissioned  
3 Plaintiff to design and install a custom wrap for a 5th wheel toy-hauler trailer used to haul  
4 off-road vehicles. (FAVC at ¶ 19). Plaintiff created a custom graphic design and installed  
5 it. (*Id.* at ¶ 20).

6           After that, Nash “again approached Wolf Designs commissioning Wolf to create  
7 and install wrap designs on a Nash truck and box trailer, utilizing the same design theme  
8 as with the wrap Wolf previously created.” (*Id.* at 21). Plaintiff sent Nash estimates for  
9 both the truck wrap and the box trailer wrap on April 5, 2021. (*Id.* at ¶ 22). Nash did not  
10 pursue the truck wrap, but with respect to the box trailer, Nash signed and executed the  
11 estimate, and paid the deposit on April 9, 2021. (*Id.* at ¶ 23-24). Plaintiff sent Nash a  
12 mockup of the box trailer design, which included Plaintiff’s logo and copyright notice. (*Id.*  
13 at ¶ 25). Plaintiff installed the wrap onto a Nash box trailer. (*Id.* at ¶ 26). Plaintiff published  
14 photographs of the design and completed installation work it did for Nash on its website.  
15 (*Id.* at ¶ 28).

16           At some point after this project, Plaintiff alleges Nash commissioned Defendants to  
17 copy Plaintiff’s design and install a vehicle wrap on Nash’s truck using Plaintiff’s protected  
18 work. (*Id.* at ¶ 30). Defendants installed the wrap and Plaintiff first became aware of this  
19 infringement in or around May 2021. (*Id.* at ¶ 31). Defendant Maxwell posted photographs  
20 of the completed truck project on his personal Instagram account. (*Id.*; FAVC Ex. M).

21           **B. Jagged X Truck**

22           Plaintiff’s First Amended Complaint asserts that it contracted with its customer  
23 Jagged X Racing for the design and installation of a custom wrap incorporating Jagged X’s  
24 logo onto one of its chase trucks, which Plaintiff installed. (*Id.* at ¶ 34). Plaintiff has a valid  
25 copyright for the design, and Plaintiff published a photograph of the Jagged X wrap on its  
26 website, including a copyright statement and “All Rights Reserved.” (*Id.* at ¶¶ 35-36). On  
27 February 23, 2022, Plaintiff became aware of Defendants’ alleged misappropriation when  
28 Defendants posted a photograph on their Instagram account “advertising its work on

1 another of Jagged X’s trucks that is an exact copy . . . of Wolf’s copyright protected Jagged  
2 X design.” (*Id.* at ¶ 38).

### 3 **C. Simon Med Prius**

4 Lastly, Plaintiff alleges Defendants used one of Plaintiff’s copyright protected  
5 designs on a Toyota Prius. Defendants allegedly used Plaintiff’s copyrighted design and  
6 Defendant Maxwell posted photographs of the completed vehicle wrap on his personal  
7 Instagram page. (*Id.* at ¶ 40).

## 8 **II. Procedural Background**

9 The initial Complaint (Doc. 1) included five claims: copyright infringement,  
10 violation of the Lanham Act, tortious interference with business expectancies, unfair  
11 competition, and “alter ego.” Defendants filed a Motion for Judgment on the Pleadings.  
12 (Doc. 45). The Court granted the motion in part, dismissing all but the copyright  
13 infringement claim. (Doc. 65). Plaintiff then filed the First Amended Complaint,  
14 reasserting its copyright infringement claim and amending its claims for tortious  
15 interference and unfair competition. Defendants’ motion to dismiss (Doc. 68) followed,  
16 seeking dismissal of the tortious interference and unfair competition claims.

## 17 **ANALYSIS**

### 18 **I. Motions to Dismiss**

19 A pleading must contain a “short and plain statement of the claim showing that the  
20 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “To survive a motion to dismiss, a  
21 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief  
22 that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
23 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted)). “[W]here the  
24 well-pleaded facts do not permit the court to infer more than the mere possibility of  
25 misconduct, the complaint” has not adequately shown the pleader is entitled to relief. *Id.*  
26 at 679. Although federal courts ruling on a motion to dismiss “must take all of the factual  
27 allegations in the complaint as true, [they] ‘are not bound to accept as true a legal  
28 conclusion couched as a factual allegation.’” *Id.* at 678 (quoting *Twombly*, 550 U.S. at

1 555).

2 **II. Count 2: Tortious Interference**

3 Plaintiff alleges it had contracts with Nash, Jagged X, and Simon Med (FAVC at ¶  
4 55) “to create custom designs and wraps for vehicles on various projects and each have an  
5 existing business relationship with Wolf Designs going back as far as 2015.” (*Id.*) Plaintiff  
6 alleges the “estimates” it provided became contracts once the client signed them, approving  
7 the mock-up designs, and paid a deposit. (*Id.*) Plaintiffs allege Defendants knowingly  
8 interfered in those business relationships by replicating and installing Plaintiff’s  
9 copyrighted work for them. (*Id.* at ¶ 60).

10 Tortious interference with contract or business expectancy has five elements under  
11 Arizona law: (1) the existence of a valid contractual relationship or business expectancy;  
12 (2) defendant’s knowledge of the relationship or expectancy; (3) defendant’s intentional  
13 interference in inducing or causing the breach; (4) defendant’s interference must be  
14 improper; and (5) resulting damages. *MDY Indus. LLC v. Blizzard Entertainment, Inc.*, 629  
15 F.3d 928, 955 (9th Cir. 2010) (citing *Safeway Ins. Co. v. Guerrero*, 106 P.3d 1020, 1025  
16 (Ariz. 2005)); *ThermoLife Int’l, LLC v. Gaspari Nutrition, Inc.*, 871 F. Supp. 2d 905, 912  
17 (D. Ariz. 2012).

18 The Court has already dismissed this claim once. In doing so, the Court explained  
19 it was unclear from the face of the complaint whether any alleged contract was specific to  
20 each individual project—i.e., a contract to create a wrap for the box trailer—or a more  
21 general agreement to do business together. The Court warned that a plausible claim would,  
22 at the very least, identify the exact contract or expectancy at issue. (Doc. 65 at 15).

23 Plaintiff has failed to remedy that flaw in its Amended Complaint. As Defendants  
24 argue, Plaintiff only identifies one contract in his Amended Complaint, for the box trailer  
25 wrap; that contract was completed. (FAVC at ¶¶ 22-26). Accordingly, there is no contract  
26 that Plaintiff claims was interfered with. Plaintiff’s allegations support that every  
27 individual project had its own contract, because Plaintiff would create an estimate for a  
28 project, and the contract was executed when the estimate was signed. (FAVC at ¶ 55).

1 Plaintiff has not alleged that any particular estimate was signed, establishing a contract,  
2 before Defendants allegedly replicated that particular copyrighted design.

3 And while Plaintiff asserts it has sufficiently alleged a “business expectancy” with  
4 each of these clients, the Court disagrees. To allege a valid business expectancy, there must  
5 be an “actual and identifiable understanding or agreement which in all probability would  
6 have been completed if the defendant had not interfered.” *Dube v. Likins*, 167 P.3d 93, 101  
7 ¶ 19 (Ariz. Ct. App. 2007) (quoting *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So.  
8 2d 812, 815 (Fla. 1994)); *see also ReBath LLC v. HD Solutions LLC*, No. CV-19-04873-  
9 PHX-JJT, 2020 WL 4514934, at \*3 (D. Ariz. Jan. 24, 2020) (business expectancy is one  
10 that “in all probability would have been completed” had Defendants not interfered). The  
11 business expectancy alleged must be more than a “speculative hope.” *ThermoLife Int’l*, 871  
12 F. Supp. 2d at 912.

13 Plaintiff argues it alleged the revenue received from those three clients in the past  
14 and that the revenue is now zero, and that he completed vehicle wrap installations as far  
15 back as 2015, establishing an ongoing business relationship. (FAVC at ¶¶ 55, 63). But the  
16 existence of an “ongoing business relationship” at the relevant time does not automatically  
17 establish an “expectancy.” An expectancy looks to the future; an ongoing relationship  
18 describes the past state of affairs. Even if Plaintiff completed every single vehicle wrap for  
19 each of the clients in the past, it has not alleged anything that would suggest “in all  
20 probability” the client would have hired Plaintiff again. To the contrary, Plaintiff’s  
21 allegations suggest its clients in fact did decline to hire Plaintiff for various projects,  
22 belying the argument that there was a concrete business expectancy here. (FAVC at ¶¶ 21-  
23 23) (Nash “signed and executed estimate for the box trailer wrap” but not the “truck”).  
24 Thus, Plaintiff has not alleged enough to show that “in all probability” these clients would  
25 have hired Plaintiff to install future vehicle wraps absent Defendants’ interference.<sup>1</sup>

26 <sup>1</sup> Even if Plaintiff had alleged a valid business expectancy, it “must also prove the defendant  
27 acted with improper motive or improper means.” *Directory Ass’ts, Inc. v. Does 1-10*, No.  
28 MC 11-00096-PHX-FJM, 2011 WL 5335562, at \*3 (D. Ariz. Nov. 4, 2011). Again, an  
“improper” behavior has not been alleged beyond copyright infringement itself. (*See*  
FAVC at ¶¶ 64-65 (alleging Defendants offered to “replicate Wolf Designs’ copyright  
protected work”). Additionally, Plaintiff alleges in at least one circumstance, the client,

1 As already stated, taking Plaintiff’s allegations as true, Defendants’ use of Plaintiff’s  
2 copyrighted materials to recreate those designs on its own vehicle wraps supports a  
3 copyright claim, not a claim for tortious interference with business expectancy. Since  
4 Plaintiff has been given a chance to amend its complaint to state a claim for tortious  
5 interference and has failed to do so sufficiently, Count 2 will be dismissed without leave  
6 to amend. *See, e.g., Abeyta v. U.S. Postal Serv.*, No. CV-21-00331-TUC-RM, 2022 WL  
7 824251, at \*2 (D. Ariz. Mar. 18, 2022) (quoting *Moore v. Kayport Package Express, Inc.*,  
8 885 F.2d 531, 538 (9th Cir. 1989)) (“Leave to amend need not be given if a complaint, as  
9 amended, is subject to dismissal.”).

10 **III. Count 3: Unfair Competition**

11 In response to Defendants’ Motion to Dismiss Count 3, Plaintiff has indicated its  
12 intention to voluntarily dismiss Count 3. (Doc. 76 at 9-10). Accordingly, Defendants’  
13 motion will be granted. Count 3 will be dismissed with prejudice.

14 Accordingly,

15 **IT IS ORDERED** Defendants’ Motion to Dismiss (Doc. 68) is **GRANTED**.

16 Counts 2 and 3 are dismissed with prejudice.

17 Dated this 19th day of May, 2023.

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21 Honorable Roslyn O. Silver  
22 Senior United States District Judge  
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Nash, approached Defendants about installing the vehicle wrap—not the other way around.  
(FAVC at ¶ 30).