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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOE HAND PROMOTIONS, INC.,

Plaintiff,

v.

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

Defendant.

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

MEMORANDUM AND ORDER

In initiating this action against Defendant Roseville Lodge No. 1293, Loyal Order of Moose, Inc., an unknown business entity doing business as Moose Lodge 1293 (“Defendant”), Plaintiff Joe Hand Promotions, Inc. (“Plaintiff”) alleges that Defendant unlawfully intercepted and broadcasted a television program to which Plaintiff had exclusive commercial distribution rights to pursuant to a Distributorship Agreement. Now pending before the Court is Defendant’s Motion for Judgment on the Pleadings arguing that Plaintiff lacks standing to bring this lawsuit. For the following reasons, Defendant’s Motion is DENIED without prejudice.¹

¹ Because oral argument would not be of material assistance, the Court ordered this matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

1 **BACKGROUND²**

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3 Plaintiff Joe Hand Promotions, Inc., is a commercial distributor and licensor of
4 sporting events. Pursuant to a Distributorship Agreement, Plaintiff was granted the
5 exclusive nationwide commercial distribution rights to *Ultimate Fighting Championship*
6 *157: Ronda Rousey v. Liz Carmouche* (“the Program”), which was telecast nationwide
7 on February 22, 2013. Through sublicensing agreements with various commercial
8 entities throughout the country, Plaintiff granted those entities the rights to publicly
9 exhibit the Program within their respective commercial establishments. Plaintiff claims
10 that it spent a substantial sum on marketing, advertising, promoting, administering, and
11 transmitting the Program to its customers.

12 Plaintiff alleges that on February 22, 2013, Defendant unlawfully intercepted and
13 broadcasted the Program at Moose Lodge 1293 with the knowledge that this was
14 unlawful, and for the purpose of commercial and/or financial gain. Plaintiff filed this
15 instant action on February 5, 2014, alleging causes of action for violations of 47 U.S.C
16 §§ 605, 553 and Cal. Bus. & Prof. Code § 17200, *et seq.*, as well as a cause of action for
17 conversion.

18 On July 11, 2014, Defendant moved for judgment on the pleadings pursuant to
19 Federal Rule of Civil Procedure³ 12(c) on the grounds that Plaintiff lacks standing
20 because Plaintiff does not have rights to the Program in non-commercial establishments
21 such as Defendant’s. ECF No. 8 at 3.

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26 ² Unless otherwise noted, the following recitation of facts is taken, sometimes verbatim, from
27 Plaintiff’s Complaint. ECF No. 1.

28 ³ All references to “Rule” or “rules” are to the Federal Rules of Civil Procedure unless otherwise
noted.

1 **ANALYSIS**

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3 Defendant argues that Plaintiff lacks standing because the Distributorship
4 Agreement at issue only granted Plaintiff exclusive distribution rights with respect to
5 commercial establishments, and Plaintiff therefore may not bring this action against
6 Defendant. In support of this argument, Defendant relies exclusively on the Declaration
7 of Cary Warner (“Warner Declaration”), which it attached to its Motion. See ECF No. 8-4.
8 Defendant cites the Warner Declaration for the proposition that “Defendant’s
9 establishment is part of a fraternal organization dedicated to serving needy children,
10 designated as a fraternal beneficiary society for tax purposes” and therefore is not a
11 commercial entity. ECF No. 8 at 5. Defendant further argues that it is proper for the
12 Court to consider the Warner Declaration when ruling on its motion, because “the Court
13 can consider and treat the motion as one for summary judgment” Id. at 8.

14 When ruling on a Rule 12(c) motion, the Court may consider certain documents
15 outside of the pleadings, such as “documents attached to the complaint [and] documents
16 incorporated by reference in the complaint,” without converting the motion into a motion
17 for summary judgment. U.S. v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003). A document
18 is considered incorporated by reference if the plaintiff “refers extensively to the
19 document or the document forms the basis of the plaintiff’s claim.” Id. However, if the
20 Court decides to consider other documents outside of the pleadings, the Court “must
21 normally convert the motion into a Rule 56 motion for summary judgment, and must give
22 the nonmoving party an opportunity to respond.” Id. at 907.

23 Here, it is clear that the Warner Declaration is neither a document attached to the
24 Complaint nor a document incorporated by reference, since Plaintiff neither attached the
25 document nor referenced it in its Complaint. See ECF No. 1. Thus, if the Court were to
26 consider this document, as Defendant suggests, in ruling on the instant motion, it would
27 have to convert this motion into a Rule 56 motion for summary judgment. The Court
28 finds that it would be inappropriate to convert this motion into one for summary judgment

1 at this time, given the early stage of the case and the fact that discovery has not
2 commenced.⁴ The Complaint alleges that Defendant is a commercial establishment.
3 Because the Court must take all factual allegations in the complaint as true in reviewing
4 the propriety of a Rule 12(c) motion, this motion must be denied.

5 However, even if the Court considered the Warner Declaration and were to find
6 Defendant to be a non-commercial entity, Defendant could still not prevail at this time.
7 As set forth in Plaintiff's briefing, the Distributorship Agreement is governed by Nevada
8 law. Under that state's law, "it is well-established that a course of dealing may modify an
9 agreement." Wal-Go Associates v. Leon, 624 P.2d 507, 510 (Nev. 1981). Therefore,
10 Plaintiff argues that the course of conduct between the parties to the Distributorship
11 Agreement confirms that the intent of the parties was for the agreement to cover all non-
12 residential use. If correct, the Distributorship Agreement would cover the exhibition of
13 the Program at Defendant's Lodge, whether or not Defendant is deemed to be a
14 commercial entity. Thus, even if the Court considered the Warner Declaration, denial of
15 Defendant's motion is warranted.

16 Because the Complaint alleges that Defendant is "a commercial establishment
17 doing business as Moose Lodge 1293," and that Defendant unlawfully intercepted and
18 broadcasted the Program without authorization from Plaintiff, the exclusive rights holder,
19 Plaintiff has sufficiently alleged standing. See, e.g., J & J Sports Productions, Inc. v.
20 Mendoza-Gowan, 2011 WL 1544886 (N.D. Cal. Apr. 25, 2011) ("The complaint alleges
21 that plaintiff has exclusive distribution rights to the program, but defendant unlawfully
22 intercepted its transmission and displayed it without authorization. Plaintiff has therefore
23 adequately alleged standing."). Given Plaintiff has sufficiently alleged standing,
24 Defendant's Rule 12(c) motion is denied.

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27 ⁴ Moreover, whether Defendant is a commercial establishment is a material disputed question of
28 fact at this stage in the litigation. Judgment on the pleadings is warranted "only if it is clear that no relief
could be granted under any set of facts that could be proved consistent with the allegations." Deveraturda,
454 F.3d at 1046.


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CONCLUSION

As set forth above, Defendant's Motion for Judgment on the Pleadings (ECF No. 8) is DENIED without prejudice.

IT IS SO ORDERED.

Dated: September 29, 2014


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