

1 for copyright infringement, negligent interference with prospective economic
2 advantage, and intentional interference with prospective economic advantage,
3 respectively. *Id.* On May 24, 2017, Defendants filed a Motion to Dismiss for failure
4 to state a claim. (ECF No. 27). Defendants move to dismiss HAH's Second Claim for
5 Relief for negligent interference with prospective economic advantage and HAH's
6 Third Claim for Relief for intentional interference with prospective economic
7 advantage. (*Id.* at 2). On June 12, 2017, HAH filed a Response in Opposition to the
8 Motion to Dismiss. (ECF No. 29). On June 19, 2017, Defendants filed a Reply In
9 Support of the Motion to Dismiss. (ECF No. 30).

10 **B. Legal Standard**

11 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to state
12 a claim upon which relief can be granted." Federal Rule of Civil Procedure 8(a)(2)
13 provides that "[a] pleading that states a claim for relief must contain . . . a short and
14 plain statement of the claim showing that the pleader is entitled to relief." "A district
15 court's dismissal for failure to state a claim under Federal Rule of Civil Procedure
16 12(b)(6) is proper if there is a 'lack of a cognizable legal theory or the absence of
17 sufficient facts alleged under a cognizable legal theory.'" *Conservation Force v.*
18 *Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (quoting *Balistreri v. Pacifica Police*
19 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990)).

20 **C. Allegations of the FAC**

21 HAH "provides an online marketplace where consumers can find, compare and
22 book an independent service provider for loading and unloading rental trucks or
23 storage space." (ECF No. 23 at ¶ 9). In early 2017, HAH was pursuing a contract with
24 Avis Budget Group, Inc. ("Budget") under which "Budget would refer its customers
25 to HireAHelper's online marketplace." *Id.* at ¶ 17. In March, 2017, MoveLift
26 presented a bid for the same contract with Budget "based in part on MoveLift's
27 website, [which] included material intentionally and wrongfully copied from and
28 infringing upon HireAHelper's copyright in HireAHelper's website." *Id.* at ¶ 20.

1 In support of its Second Claim for Relief for negligent interference with
2 prospective economic advantage, HAH specifically alleges that Defendants “engaged
3 in wrongful conduct by presenting a bid for the Potential Budget Contract that included
4 material wrongfully copied from and infringing upon HireAHelper’s copyright in
5 HireAHelper’s website.” *Id.* at ¶ 38.

6 In support of its Third Claim for Relief for intentional interference with
7 prospective economic advantage, HAH specifically alleges that Defendants “engaged
8 in wrongful conduct by presenting a bid for the Potential Budget Contract that included
9 material intentionally and wrongfully copied from and infringing upon HireAHelper’s
10 copyright in HireAHelper’s website.” *Id.* at ¶ 47.

11 **D. Contentions of the Parties**

12 Defendants contend that HAH’s Second and Third Claims for Relief “fail to state
13 a claim upon which relief can be granted, given that they assert state-law [sic] claims
14 that are preempted by the Copyright Act, 17 U.S.C. § 101 *et seq.*” (ECF No. 27 at 2).

15 HAH contends that the rights asserted in its state law claims are not equivalent
16 to the rights protected by the Copyright Act because “the subject matter of the
17 interference claims is not the subject matter of copyright” and “the gravamen of the
18 . . . interference claims is the disruption of the economic relationship with Budget, not
19 copyright infringement.” *Id.* at 9, 11.

20 **E. Analysis**

21 “The Copyright Act explicitly preempts state laws that regulate in the area of
22 copyright, stating that ‘all legal or equitable rights that are equivalent to any of the
23 exclusive rights within the general scope of copyright as specified by section 106 . . .
24 are governed exclusively by this title.’” *Sybersound Records, Inc. v. UAV Corp.*, 517
25 F.3d 1137, 1150 (9th Cir. 2008) (quoting 17 U.S.C. § 301(a)). In *Laws v. Sony Music*
26 *Entm’t, Inc.*, the Court of Appeals stated that

27 We have adopted a two-part test to determine whether a state law claim
28 is preempted by the Act. We must first determine whether the “subject
matter” of the state law claim falls within the subject matter of copyright

1 as described in 17 U.S.C. §§ 102 and 103. Second, assuming that it does,
2 we must determine whether the rights asserted under state law are
3 equivalent to the rights contained in 17 U.S.C. § 106, which articulates
the exclusive rights of copyright holders.

4 448 F.3d 1134, 1137-38 (9th Cir. 2006).

5 In *Kodadek v. MTV Networks, Inc.*, the Court of Appeals concluded that a state
6 law claim falls within the subject matter of the Copyright Act if the work that forms
7 part of the basis of the state law claim can be copyrighted. 152 F.3d 1209, 1213 (9th
8 Cir. 1998). The *Kodadek* Court reasoned that “Kodadek seeks to protect his 1991
9 drawings. It is undisputed that these drawings are ‘pictorial works’ that can be
10 copyrighted. 17 U.S.C. § 102(a)(5). Thus, the work that he seeks to protect is clearly
11 a work that falls within the ‘subject matter’ of the Copyright Act.” *Id.*

12 HAH’s state law claims are based upon its allegation that Defendants “engaged
13 in wrongful conduct by presenting a bid for the Potential Budget Contract that included
14 material . . . copied from and infringing upon HireAHelper’s copyright in
15 HireAHelper’s website.” (ECF No. 23 at ¶¶ 38, 47). HAH alleged that the work that
16 forms part of the basis for its state law claims for negligent and intentional interference
17 with prospective economic advantage can be copyrighted. Accepting all of HAH’s
18 allegations as true, the work that forms part of the basis for its state law claim for
19 negligent and intentional interference with prospective economic advantage can be
20 copyrighted, and the subject matter of HAH’s state law claims falls within the subject
21 matter of copyright.

22 Deciding whether the right asserted in a state law claim is equivalent to an
23 exclusive right of copyright holder “involves determining whether the state law claim
24 contains an element not shared by the federal law; an element which changes the nature
25 of the action ‘so that it is *qualitatively* different from a copyright [or patent]
26 infringement claim.’” *Summit Mach. Tool Mfg. Corp. v. Victor CNC Sys., Inc.*, 7 F.3d
27 1434, 1439-1440 (9th Cir. 1993) (emphasis and alteration in original) (quoting *Del*
28 *Madera Properties v. Rhodes & Gardner, Inc.*, 820 F.2d 973, 977 (9th Cir. 1987)). In

1 *Sybersound Records, Inc. v. UAV Corp.*, the Court of Appeals applied this test to
2 decide whether Sybersound Records, Inc.’s (“Sybersound”) cause of action for tortious
3 interference with prospective economic relations was preempted by the Copyright Act.
4 517 F.3d 1137 (9th Cir. 2008). Sybersound alleged that the defendants “intended to
5 disrupt, and have disrupted, its business relationships with its Customers.” *Id.* at 1151.
6 The Court of Appeals recited the elements of tortious interference with prospective
7 economic advantage in California, which include “intentional [wrongful] acts on the
8 part of the defendant designed to disrupt” “an economic relationship between the
9 plaintiff and some third party.” *Id.* (alteration in original) (quoting *Korea Supply Co.*
10 *v. Lockheed Martin Corp.*, 63 P.3d 937, 950 (Cal. 2003)). The Court of Appeals
11 concluded that “to the extent an alleged wrongful act by the [d]efendants is based on
12 copyright infringement, it is preempted.” *Id.*

13 The “wrongful conduct” alleged by HAH to support its California state law
14 claims for interference with prospective economic advantage is that Defendants
15 “present[ed] a bid for the Potential Budget Contract that included material . . . copied
16 from and infringing upon HireAHelper’s copyright in HireAHelper’s website.” (ECF
17 No. 23 at ¶¶ 38, 47). This alleged wrongful act is based on Defendants’ alleged
18 infringement of HAH’s copyright to material on its website. Consequently, the rights
19 asserted in HAH’s state-law claims are equivalent to the rights of copyright holders.

20 Because “the ‘subject matter’ of [HAH’s] state law claim falls within the subject
21 matter of copyright” and “the rights asserted [by HAH] under state law are equivalent
22 to the rights . . . of copyright holders,” HAH’s claims for negligent and intentional
23 interference with prospective economic advantage are preempted by the Copyright Act.
24 *Laws v. Sony Music Entm’t, Inc.*, 448 F.3d 1134, 1137-38 (9th Cir. 2006).

25 **II. Motion for Sanctions**

26 HAH filed its initial Complaint on Friday, April 7, 2017 (ECF No. 1). The
27 Complaint alleged that Defendants infringed on HAH’s copyright to material on
28 HAH’s website in an effort to obtain a contract with Budget Truck Rentals, LLC

1 (“Budget”). *Id.* at 3-6. Plaintiff also filed an Ex Parte Application for (1) Temporary
2 Restraining Order; And (2) Order to Show Cause Why Preliminary Injunction Should
3 Not Issue. (ECF No. 2). That same day, this Court issued an Order (1) denying HAH’s
4 Ex Parte Application for Temporary Restraining Order, (2) setting April 24, 2017 as
5 the hearing for HAH’s Request for a Preliminary Injunction, and (3) setting April 17,
6 2017 as the deadline for the filing of Defendants’ opposition to HAH’s Request for a
7 Preliminary Injunction.

8 On Tuesday, April 11, 2017, Defendants’ counsel telephoned HAH’s counsel to
9 ask whether HAH intended to proceed with its Request for a Preliminary Injunction in
10 light of the facts that Defendants had removed the allegedly infringing content from
11 their website and Budget had decided to enter into a contract with HAH, not
12 Defendants. (ECF No. 17-1 at 3-4). Budget had not actually awarded the contract to
13 HAH, but had indicated that it intended to do so. (ECF No. 21 at 6). The next day,
14 HAH’s counsel informed Defendants’ counsel that HAH would withdraw its Request
15 for a Preliminary Injunction if Defendants agreed to HAH’s proposed settlement terms.
16 (ECF No. 22 at 5). On Friday, April 14, 2017, Defendants’ counsel informed HAH’s
17 counsel that Defendants rejected HAH’s proposed settlement. (ECF No. 21 at 7).
18 Later that day, HAH moved to take the hearing for their Request for a Preliminary
19 Injunction off the calendar. (ECF No. 9). Defendants’ counsel did not receive a Notice
20 of Electronic Filing for HAH’s Motion to Take Hearing Off Calendar because
21 Defendants’ counsel had not yet appeared in the action. (ECF No. 21 at 8). On
22 Saturday, April 15, 2017, HAH’s counsel emailed Defendants’ counsel a copy of the
23 Motion. *Id.*

24 On April 17, 2017, Defendants filed a Motion for Sanctions based on the
25 conduct of HAH and its counsel described above. (ECF No. 17). On May 8, 2017,
26 HAH filed a Response in Opposition to the Motion for Sanctions. (ECF No. 21). On
27 May 15, 2017, Defendants filed a Reply to HAH’s Response. (ECF No. 22).

28 Defendants contend that HAH’s conduct “was a bad faith tactic designed merely

1 to unnecessarily drive up Defendants' defense costs." (ECF No. 17-1 at 4). HAH
2 contends that it did not act in bad faith by not withdrawing its request for a preliminary
3 injunction prior to April 14 considering "the potential remained for renewed
4 infringement and further wrongful competition by Defendants for the yet-to-be
5 finalized contract." (ECF No. 21 at 10). Defendants contend that this "potential . . .
6 is not sufficient to establish irreparable harm" and consequently HAH's request for a
7 preliminary injunction was without merit. (ECF No. 22 at 4).

8 Whether the potential that Defendants could "renew[] infringement and further
9 wrongful[ly] compet[e]" was sufficient grounds for granting HAH's Request for a
10 Preliminary Injunction was an issue for this Court to decide. (ECF No. 21 at 10).
11 Defendants' request for sanctions is denied.

12 **III. CONCLUSION**

13 IT IS HEREBY ORDERED that the Motion to Dismiss HAH's Second Claim
14 for Relief and Third Claim for Relief (ECF No. 27) is GRANTED with prejudice.

15 IT IS FURTHER ORDERED that the Defendants' Motion for Sanctions (ECF
16 No. 17) is DENIED.

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18 DATED:

19 10/5/17

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22 **WILLIAM Q. HAYES**
23 United States District Judge
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