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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 G&G CLOSED CIRCUIT EVENTS,  
12 LLC,

13 Plaintiff,

14 v.

15 TIMOTHY PARKER and DIEGO &  
16 DANTE, LLC dba Chula Vista Brewery,

17 Defendants.

Case No.: 20-CV-1017-CAB-MDD

**ORDER DENYING MOTION TO  
DISMISS**

[Doc. No. 4]

18 This matter is before the Court on the Defendants' partial motion to dismiss  
19 Plaintiff's claims for conversion and for violation of California's Unfair Competition Law  
20 ("UCL"), California Business and Professions Code § 17200 et seq. The motion has been  
21 fully briefed, and the Court deems it suitable for submission without oral argument. The  
22 motion is denied.

23 **I. Background**

24 According to the complaint, pursuant to contract, Plaintiff G & G Closed Circuit  
25 Events, LLC ("G&G") held the exclusive nationwide distribution (closed-circuit) rights to  
26 the Gennady Golovkin v. Steve Rolls Fight Program event telecast nationwide on Saturday,  
27 June 8, 2019 (the "Program"). [Doc. No. 1 at ¶ 18.] G&G entered into sublicense  
28 agreements with various commercial entities throughout the country granting limited

1 sublicensing rights to publicly show the Program at their establishment. [Id. at ¶ 19.<sup>1</sup>] The  
2 complaint alleges that Defendants “intercepted, received and published the Program at  
3 Chula Vista Brewery” on June 8, 2019, without authorization from G&G. [Id. at ¶ 23.]

4 Based on these alleged facts, G&G filed this suit against the alleged owner and  
5 operator of Chula Vista Brewery, Diego & Dante, LLC [Id. at ¶ 15], and its managing  
6 member and the manager on duty the night of the Program, Timothy Parker [Id. at ¶¶ 9-  
7 14]. The complaint asserts four claims: (1) violation of 47 U.S.C. § 605; (2) violation of  
8 47 U.S.C. § 553; (3) conversion; and (4) violation of California Business and Professions  
9 Code § 17200. Defendants move to dismiss only the two state law claims on the ground  
10 that they are preempted by the Copyright Act, 17 U.S.C. § 301.

## 11 II. Legal Standard

12 The familiar standards on a motion to dismiss apply here. To survive a motion to  
13 dismiss under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted  
14 as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S.  
15 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Thus,  
16 the Court “accept[s] factual allegations in the complaint as true and construe[s] the  
17 pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire*  
18 *& Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). On the other hand, the Court is  
19 “not bound to accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 556  
20 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). Nor is the Court “required to accept as  
21 true allegations that contradict exhibits attached to the Complaint or matters properly  
22 subject to judicial notice, or allegations that are merely conclusory, unwarranted deductions  
23 of fact, or unreasonable inferences.” *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998  
24 (9th Cir. 2010). “In sum, for a complaint to survive a motion to dismiss, the non-conclusory  
25 factual content, and reasonable inferences from that content, must be plausibly suggestive  
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28 <sup>1</sup> Document numbers and page references are to those assigned by CM/ECF for the docket entry.

1 of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969  
 2 (9th Cir. 2009) (quotation marks omitted).

### 3 **III. Discussion**

4 Defendants contend the Copyright Act preempts G&G’s state law causes of action.  
 5 Defendants also contend that because copyright infringement does not constitute  
 6 conversion, G&G’s conversion claim should be dismissed for this additional reason.

#### 7 **A. Preemption under the Copyright Act**

8 “The Ninth Circuit has determined that the Copyright Act does not preempt a state  
 9 law claim unless the following two conditions are satisfied: 1) ‘the “subject matter” of the  
 10 state law claim falls within the subject matter of copyright’ and 2) ‘the rights asserted under  
 11 state law are equivalent to . . . the exclusive rights of copyright holders.’” *Echostar*  
 12 *Satellite, L.L.C. v. Viewtech, Inc.*, 543 F. Supp. 2d 1201, 1209 (S.D. Cal. 2008) (quoting  
 13 *Laws v. Sony Music Entm’t, Inc.*, 448 F.3d 1134, 1137–38 (9th Cir. 2006)).

##### 14 1. Subject Matter of Copyright

15 As to whether the subject matter falls within the subject matter of copyright,  
 16 Defendants contend G&G cannot reasonably dispute this prong, citing to 17 U.S.C. §  
 17 102(a)(6), listing “motion pictures and other audiovisual works.” Indeed, G&G cannot  
 18 reasonably dispute that the Program falls under the label of a motion picture. See Doc. No.  
 19 4-2<sup>2</sup> at 4. G&G instead argues that the fact that a motion picture may be subject to  
 20 copyright protection does not mean that G&G’s rights as alleged fall within the Copyright  
 21 Act. The Court agrees with Defendants as to the subject matter prong. G&G appears to  
 22 conflate its argument with the second prong related to the rights asserted which is discussed  
 23 further below. Here, the Court must simply determine, in this case, whether the Program  
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 26 <sup>2</sup> Defendants request the Court take judicial notice of the United States Copyright Office Public Catalog  
 27 search record of the Program, and G&G did not oppose. [Doc. No. 4-2.] Accordingly, Defendants’ request  
 28 for judicial notice is granted. See *Lee v. City of L.A.*, 250 F.3d 668, 689 (9th Cir. 2001) (“A court may  
 take judicial notice of ‘matters of public record’ without converting a motion to dismiss into a motion for  
 summary judgment. (internal citation omitted)).

1 falls within the subject matter of copyright as described in 17 U.S.C. §§ 102 and 103. There  
2 is no dispute that the Program is a motion picture, and motion pictures are listed under §  
3 102(a)(6) as a subject matter of copyright. Therefore, Defendants have satisfied the first  
4 prong.

## 5 2. The Rights Asserted

6 The next issue is whether the rights asserted under state law are equivalent to the  
7 rights contained in Section 106 of the Copyright Act. Section 106 provides a copyright  
8 owner with the “exclusive rights” of reproduction, preparation of derivative works,  
9 distribution, and display. 17 U.S.C. § 106. “Where Plaintiff does not allege ownership of  
10 a copyright, the Copyright Act does not then preempt a state law conversion claim.” Joe  
11 Hand Promotions, Inc. v. Rajan, No. 10-40029-TSH, 2011 WL 3295424, at \*6 (D. Mass.  
12 July 28, 2011). A state law unfair competition claim can be preempted by copyright law  
13 if the unfair competition claim is based solely on rights that are protected by federal  
14 copyright law. See *Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1212–13 (9th Cir.  
15 1998).

16 In this case, G&G does not allege copyright infringement. G&G’s primary causes  
17 of action, which are incorporated by reference in its state law claims, arise under 47 U.S.C.  
18 § 553 (“Section 553”) and 47 U.S.C. § 605 (“Section 605”) pursuant to the Federal  
19 Communications Act (“FCA”). Section 553 prohibits persons from receiving or assisting  
20 in intercepting or receiving “any communications service offered over a cable system,  
21 unless specifically authorized by law.” 47 U.S.C. § 553(a)(1). Section 605 similarly  
22 prohibits the unauthorized interception and publication or use of radio communications,  
23 including satellite broadcasts. 47 U.S.C. § 605(a); *DirecTV v. Webb*, 545 F.3d 837, 843  
24 (9th Cir.2008); *J & J Sports Prods., Inc. v. Walia*, 2011 WL 902245 (N.D. Cal. Mar.14,  
25 2011). Moreover, the complaint does not allege that G&G is the exclusive owner of a  
26 copyright, but rather asserts its rights pursuant to contract. The Ninth Circuit has held that  
27 “because contractual rights are not equivalent to the exclusive rights of copyright, the  
28 Copyright Act’s preemption clause usually does not affect private contracts.” *MDYIndus.,*

1 LLC v. Blizzard Entm't, Inc., 629 F.3d 928, 957 (9th Cir. 2010); see also Altera Corp. v.  
2 Clear Logic, Inc., 424 F.3d 1079, 1089 (9th Cir. 2005) (“Most courts have held that the  
3 Copyright Act does not preempt the enforcement of contractual rights.). In Allarcom Pay  
4 Television, Ltd. v. Gen. Instrument Corp., 69 F.3d 381, 386 (9th Cir. 1995), the Ninth  
5 Circuit concluded that the FCA did not preempt state law claims for unfair competition,  
6 interference with contract, and interference with prospective economic advantage because  
7 Section 605’s language “indicate[d] that Congress did not intend to occupy the entire field”  
8 and state law did not “impose[ ] . . . obligations inconsistent with the FCA” and did not  
9 “frustrate any congressional objective.”

10 Ultimately, G&G’s claims under Sections 553 and 605 arise from the enforcement  
11 of its contractual rights to distribute the Program and therefore the rights asserted under  
12 G&G’s state law claims are not equivalent to the exclusive rights of copyright holders.  
13 Accordingly, G&G’s state law claims are not preempted under the Copyright Act.

#### 14 **B. Conversion**

15 Defendants also contend that G&G’s conversion claim should be dismissed because  
16 copyright infringement does not constitute conversion. To state a claim for the tort of  
17 conversion under California law, a plaintiff must allege: “(1) ownership or right to  
18 possession of property; (2) wrongful disposition of the property right of another; and (3)  
19 damages.” *Kingvision Pay-Per-View, Ltd. v. Chavez*, 2000 WL 1847644, at \*4 (N.D. Cal.  
20 Dec.11, 2000) (citing *G.S. Rasmussen & Assoc. v. Kalitta Flying Serv.*, 958 F.2d 896, 906  
21 (9th Cir. 1992)). Intangible property rights, such as the right to program distribution, are  
22 sufficient to support the ownership or possession element of conversion under California  
23 law. See *Don King Prods./ Kingvision v. Lovato*, 911 F.Supp. 419, 423 (N.D. Cal. 1995).

24 As discussed above, G&G alleges that pursuant to contract, it held the exclusive  
25 nationwide distribution rights to the Program, Defendants intercepted, received and  
26 published the Program at Chula Vista Brewery without authorization from G&G, and that  
27 it is therefore entitled to damages. G&G does not base any of its claims on copyright  
28 infringement. Accordingly, G&G has adequately alleged facts to support each of the

1 elements of a conversion claim.

2 **IV. Conclusion**

3 For the foregoing reasons, it is hereby **ORDERED** that Defendants' motion to  
4 dismiss is **DENIED**.

5 Dated: July 30, 2020



6  
7 Hon. Cathy Ann Bencivengo  
8 United States District Judge  
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