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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GLASS EGG DIGITAL MEDIA,  
Plaintiff,  
v.  
GAMELOFT, INC., et al.,  
Defendants.

Case No. [17-cv-04165-MMC](#)

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANT  
GAMELOFT, INC.'S MOTION TO  
DISMISS**

Re: Dkt. No. 40

United States District Court  
Northern District of California

Before the Court is defendant Gameloft, Inc.'s ("Gameloft USA") motion, filed November 8, 2017, to dismiss plaintiff Glass Egg Digital Media's ("Glass Egg") amended Complaint ("FAC"), filed October 2, 2017. Glass Egg has filed opposition, to which Gameloft USA has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter appropriate for determination on the parties' respective written submissions, hereby VACATES the hearing scheduled for February 9, 2018, and rules as follows.

**FACTUAL AND PROCEDURAL BACKGROUND**

The following factual allegations are taken from the FAC.

Glass Egg, a British Virgin Island corporation with its principal place of business in Ho Chi Minh, Vietnam, is a "3D art production studio servicing the electronic game industry." (See FAC ¶¶ 6, 16.) Gameloft USA, a Delaware corporation with its "principal business office" located in San Francisco, California, is a wholly owned subsidiary of Gameloft SE ("Gameloft France"), a French corporation with its "principal business office" in Paris, France. (See *id.* ¶¶ 7-8, 11.) Defendants Gameloft France and its subsidiaries,

1 with its “principal business office” in Barcelona, Spain, are in the business of  
2 “develop[ing]” and “publish[ing]” mobile games.<sup>1</sup> (See id. ¶ 27, 28, 31.)

3 Gameloft<sup>2</sup> “outsourced” to two companies, Alive Interactive Limited (“AIL”) and  
4 Hung Think 3D (“HT3D”), the production of 3D digital car models for Gameloft’s “Asphalt”  
5 game series. (See id. ¶¶ 76, 93.) AIL and HT3D, through a Glass Egg employee,  
6 “recruit[ed] Glass Egg personnel to work on [3D] digital car models for the Asphalt” game  
7 series (see id. ¶ 99), after which, those Glass Egg personnel, without Glass Egg’s  
8 knowledge or approval, “creat[ed] and produc[ed]” the 3D digital car models using Glass  
9 Egg’s “equipment,” including computers, server network, licensed software, “know-how[,]”  
10 and trade secrets.” (See id. ¶¶ 101, 105.) “AIL and/or HT3D delivered” the 3D digital car  
11 models to Gameloft, which “published, reproduced and distributed” the 3D digital car  
12 models in its Asphalt game series. (See id. ¶¶ 128-29.)

13 Based on the above allegations, Glass Egg asserts the following seven Claims for  
14 Relief: (1) “Copyright Infringement”; (2) “Conversion”; (3) “Unfair Competition,” pursuant  
15 to Cal. Bus. & Prof. Code § 17200 et seq.; (4) “Misappropriation of Trade Secrets,”  
16 pursuant to 18 U.S.C. § 1836 et seq.; (5) “Misappropriation of Trade Secrets,” pursuant to  
17 Cal. Civ. Code § 3426 et seq.; (6) “Intentional Interference with Contractual Relations”;  
18 and (7) “Negligence.”

19 By the instant motion, Gameloft USA moves to dismiss the FAC, as alleged  
20 against Gameloft USA, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

### 21 LEGAL STANDARD

22 Dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure “can be  
23 based on the lack of a cognizable legal theory or the absence of sufficient facts alleged  
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25 <sup>1</sup> Gameloft France is a “wholly owned subsidiary” of a fourth defendant, Vivendi SA  
26 (“Vivendi”), a French corporation with its “principal business office” in Paris, France. (See  
27 ¶¶ 14-15, 43.)

28 <sup>2</sup> In the FAC, “Gameloft” is used to collectively refer to Gameloft France and its  
29 subsidiaries.

1 under a cognizable legal theory.” See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696,  
2 699 (9th Cir. 1990). Rule 8(a)(2), however, “requires only ‘a short and plain statement of  
3 the claim showing that the pleader is entitled to relief.’” See Bell Atlantic Corp. v.  
4 Twombly, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). Consequently, “a  
5 complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual  
6 allegations.” See id. Nonetheless, “a plaintiff’s obligation to provide the grounds of his  
7 entitlement to relief requires more than labels and conclusions, and a formulaic recitation  
8 of the elements of a cause of action will not do.” See id. (internal quotation, citation, and  
9 alteration omitted).

10 In analyzing a motion to dismiss, a district court must accept as true all material  
11 allegations in the complaint, and construe them in the light most favorable to the  
12 nonmoving party. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). “To  
13 survive a motion to dismiss, a complaint must contain sufficient factual material, 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 Twombly, 550 U.S. at 570). “Factual allegations must be  
16 enough to raise a right to relief above the speculative level[.]” Twombly, 550 U.S. at 555.  
17 Courts “are not bound to accept as true a legal conclusion couched as a factual  
18 allegation.” See Iqbal, 556 U.S. at 678 (internal quotation and citation omitted).

## 19 DISCUSSION

20 Gameloft USA’s sole argument in support of dismissal is that the FAC improperly  
21 “lumps” the four defendants together, without establishing a theory of joint liability, and  
22 fails to “allege any conduct, let alone wrongful or unlawful conduct, by” Gameloft USA.  
23 (See Mot. at 5:8-10 (emphasis omitted).) In response, Glass Egg argues that the FAC  
24 sufficiently alleges (1) Gameloft USA’s direct liability for copyright infringement and  
25 conversion, and, (2) for the remaining claims, Gameloft USA’s joint liability with Gameloft  
26 France and Gameloft Spain, under theories of civil conspiracy, alter ego, and agency.<sup>3</sup>

27  
28 <sup>3</sup> Additionally, to the extent Gameloft USA seeks dismissal of the copyright

## 1 A. Direct Liability for Copyright Infringement and Conversion

2 “Copyright owners have the exclusive right ‘to reproduce the copyrighted work in  
3 copies,’ or to authorize another to do so.” See Disney Enterprises, Inc. v. VidAngel, Inc.,  
4 869 F.3d 848, 856 (9th Cir. 2017) (quoting 17 U.S.C. § 106(1)). To plead a claim for  
5 copyright infringement, a plaintiff must allege (1) its “ownership of the allegedly infringed  
6 material,” and (2) the alleged infringer’s “violat[ion] [of] at least one exclusive right  
7 granted to copyright holders.” See id.

8 “Conversion is the wrongful exercise of dominion over the property of another.”  
9 See Lee v. Hanley, 61 Cal. 4th 1225, 1240 (Cal. 2015) (internal quotation and citation  
10 omitted). Under California law, to plead a claim for conversion, a plaintiff must allege “(1)  
11 the plaintiff’s ownership or right to possession of the property; (2) the defendant’s  
12 conversion by a wrongful act or disposition of property rights; and (3) damages.” See id.  
13 (internal quotation and citation omitted).

14 Here, Gameloft USA contends the FAC, by failing to “specify which defendant was  
15 responsible for which alleged wrongful act” (see Reply at 4:10-11), “does not allege that  
16 Gameloft USA actually engaged in any conduct whatsoever, including any acts that might  
17 plausibly establish copyright infringement or conversion” (see id. at 4:16-17). The FAC  
18 alleges, for example, that “[d]efendants . . . have reproduced, without permission, the [3D  
19 digital car models at issue] in several car racing mobile games successfully published,  
20 marketed and distributed globally under the names Asphalt 8: Airborne (“A8”), Asphalt  
21 Xtreme (“AX”), and Asphalt Streetstorm.” (See FAC ¶ 3.) Although not a model  
22 pleading, the FAC does, however, go on to allege facts sufficient to give Gameloft USA  
23 notice of the wrongful acts Gameloft USA allegedly committed. In particular, Glass Egg  
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25 for copyright infringement was alleged in Glass Egg’s original complaint, to which  
26 Gameloft USA filed an answer. (See Opp. at 5:10-20.) An amended complaint,  
27 however, “supersedes the original, the latter being treated thereafter as non-existent,”  
28 see Valadez-Lopez v. Chertoff, 656 F.3d 851, 857 (9th Cir. 2011) (internal quotation and  
29 citation omitted), and, consequently, Gameloft USA’s motion to dismiss the copyright  
30 infringement claim is timely.

1 alleges that “[m]uch of Gameloft’s global revenue generating activities such as marketing,  
 2 sales and public relations . . . are performed from its US offices” (see id. ¶ 34), that those  
 3 activities encompass the “marketing and sales . . . of games for the US, including A8 and  
 4 AX[,]” and that Gameloft France “directly controls the marketing and sales [of said  
 5 games] through its San Francisco office” (see id. ¶ 38), which, as alleged earlier in the  
 6 FAC, is Gameloft USA’s “principal business office” (see id. ¶ 7). Taken together, and  
 7 read in the light most favorable to the nonmoving party,” see NL Indus., Inc., 792 F.2d at  
 8 898, these additional allegations are sufficient to allege, as to copyright infringement and  
 9 conversion, Gameloft USA’s direct liability for its role in marketing and selling the  
 10 infringing games in the United States.<sup>4</sup>

11 The Court next turns to the remaining claims.

12 **B. Joint Liability for Remaining Claims**

13 As noted, for the remaining claims, Glass Egg bases Gameloft USA’s liability on  
 14 theories of civil conspiracy, alter ego, and agency.

15 **1. Civil Conspiracy**

16 Under California law, to plead a civil conspiracy, a plaintiff must allege: “(1) the  
 17 formation and operation of the conspiracy, (2) the wrongful act or acts done pursuant  
 18 thereto, and (3) the damage resulting from such act or acts.” See Wasco Prod., Inc. v.  
 19 Southwall Techs., Inc., 435 F.3d 989, 992 (9th Cir. 2006) (quoting Cellular Plus, Inc. v.  
 20 Superior Court, 14 Cal. App. 4th 1224, 1236 (Cal. Ct. App. 1993)). To plead the  
 21 “formation and operation” of a conspiracy, a plaintiff must allege an “agree[ment] to  
 22 commit wrongful acts.” See id.

23 Here, Glass Egg alleges, “Gameloft and/or its senior management acting on behalf  
 24 of [d]efendants concocted a scheme in agreement with [ALI and HT3D] . . . , resulting in  
 25 harm to Glass Egg,” and that, in “mid-2014, Gameloft signed a tripartite agreement to  
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<sup>4</sup> Given such finding, the Court does not address herein Glass Egg’s alternative theory of liability based on contributory infringement.

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