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NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Experian Information Solutions Inc.,
Plaintiff,
v.
Nationwide Marketing Services, Inc.,
Defendant.

No. CV-13-00618-PHX-SRB
ORDER

At issue is Defendant Nationwide Marketing Services, Inc.’s Motion for Judgment on the Pleadings Pursuant to Fed. R. Civ. P. 12(c) (“Def.’s Mot.”) (Doc. 46).

I. BACKGROUND

Plaintiff brings this case to vindicate its copyright on a database of consumer information. (*See* Doc. 1, Compl. ¶¶ 1-3.) Plaintiff “compiles and analyzes data related to consumer socio-demographics, lifestyles, culture and behavior, and then employs a proprietary analytical system to accurately and comprehensively categorize millions of consumers into a compilation of datasets into what is known as the InSource Database.” (*Id.* ¶ 15.) Plaintiff “created, designed, and authored the collection, selection, arrangement and segmentation of the information contained within the InSource Database,” which comes from “data [purchased] directly from its original sources, as well as . . . proprietary information from [its] customers.” (*Id.* ¶¶ 17, 21.) Plaintiff alleges that Defendant has infringed its copyright of the InSource Database by taking “data elements from other sources and commingl[ing] those elements with data from the InSource Database to create a database of children’s birth data from the ages of 2 through 17.” (*Id.*

1 ¶ 26.)

2 Defendant moves for judgment on the pleadings arguing that Plaintiff alleges only
3 that it copied non-copyrightable data from the InSource Database—not that it copied the
4 design, arrangement, segmentation, or other copyrightable portions of the database.
5 (Def.’s Mot. at 1-2.) Plaintiff argues that Defendant’s interpretation of the Complaint is
6 unjustifiably narrow and that it does allege that Defendant copied those aspects of the
7 database. (Doc. 48, Experian’s Resp. to Def.’s Mot. (“Pl.’s Resp.”) at 7-9.)

8 **II. LEGAL STANDARDS AND ANALYSIS**

9 “A judgment on the pleadings is properly granted when, taking all the allegations
10 in the pleadings as true, [a] party is entitled to judgment as a matter of law.” *Lyon v.*
11 *Chase Bank USA, N.A.*, 656 F.3d 877, 883 (9th Cir. 2011) (internal quotation marks
12 omitted). The standard that applies to motions for judgment on the pleadings made under
13 Federal Rule of Civil Procedure 12(c) is the same standard that governs motions to
14 dismiss made under Rule 12(b)(6). *See Dworkin v. Hustler Magazine Inc.*, 867 F.2d
15 1188, 1192 (9th Cir. 1989).

16 A Rule 12(b)(6) dismissal for failure to state a claim can be based on either (1) the
17 lack of a cognizable legal theory or (2) insufficient facts to support a cognizable legal
18 claim. *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011), *cert. denied*,
19 *Blasquez v. Salazar*, 132 S. Ct. 1762 (2012). Courts must consider all well-pleaded
20 factual allegations as true and interpret them in the light most favorable to the plaintiff.
21 *Schlegel v. Wells Fargo Bank, NA*, 720 F.3d 1204, 1207 (9th Cir. 2013). “[A] well-
22 pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those
23 facts is improbable, and ‘that a recovery is very remote and unlikely.’” *Bell Atl. Corp. v.*
24 *Twombly*, 550 U.S. 544, 556 (2007) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236
25 (1974)). However, “for a complaint to survive a motion to dismiss, the non-conclusory
26 ‘factual content,’ and reasonable inferences from that content, must be plausibly
27 suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d
28 962, 969 (9th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

1 The crux of Defendant’s argument is that Plaintiff has not stated a claim for
2 copyright infringement against it because Plaintiff has alleged only that it copied non-
3 copyrightable data. (Def.’s Mot. at 1-2.) The parties agree that the underlying data in
4 Plaintiff’s database is not copyrightable. (See Def.’s Mot. at 4; Pl.’s Resp. at 8); *Feist*
5 *Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 354-61 (1991) (“[17 U.S.C. § 103]
6 explains that the subject matter of copyright includes compilations, but that copyright
7 protects only the author’s original contributions—not the facts or information conveyed.”
8 (internal quotation marks and citation omitted; alterations incorporated)). Although
9 Plaintiff adequately alleges that its copyright is based on its form of compiling data and
10 not the data itself, it alleges merely that Defendant “has taken data elements from other
11 sources and commingled those elements with data from the InSource Database to create a
12 database of children’s birth data from the ages of 2 through 17.” (Compl. ¶¶ 15-23, 26.)
13 This allegation cannot plausibly be read to state that Defendant copied anything other
14 than the non-copyrightable data in Plaintiff’s database. Furthermore, Plaintiff never
15 explains how its method of compiling the data was unique or how Defendant copied that
16 unique method. Without such allegations, Plaintiff cannot state a claim for copyright
17 infringement because it has not alleged that Defendant infringed one of its rights to the
18 exclusive use of something on which it actually holds a copyright. See *Perfect 10, Inc. v.*
19 *Amazon.com, Inc.*, 508 F.3d 1146, 1159 (9th Cir. 2007) (“Plaintiffs must satisfy two
20 requirements to present a prima facie case of direct infringement: (1) they must show
21 ownership of the allegedly infringed material and (2) they must demonstrate that the
22 alleged infringers violate at least one exclusive right granted to copyright holders under
23 17 U.S.C. § 106.” (internal quotation marks omitted)).¹ Consequently, the Court grants
24 Defendant’s Motion.²

25
26 ¹ For this reason, the Court rejects Plaintiff’s argument that it could address
27 Defendant’s concerns merely by replacing the word “data” in paragraph twenty-six of the
28 Complaint with the phrase “selection, arrangement, coordination, or compilation of data.”
(See Def.’s Resp. at 9.)

² Plaintiff requests leave to file an amended complaint. (Def.’s Resp. at 14.) The

