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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Phil Degginger,	)	
	)	CV-14-2429-TUC-DCB
Plaintiff,	)	
v.	)	
	)	
McGraw-Hill Global Education Holdings,	)	<b>ORDER</b>
et al.,	)	
	)	
Defendants.	)	
	)	

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This matter was referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1)(B) and the local rules of practice of this Court for hearing and a Report and Recommendation (R&R) on the Defendants' Motion for Partial Summary Judgment. Before the Court is the Magistrate Judge's Report and Recommendation on the Defendants' Motion for Partial Summary Judgment. The Magistrate Judge recommends, after hearing oral argument, to the Court that the Motion for Partial Summary Judgment should be denied. The Defendants filed Objections to this Recommendation and Plaintiff responded to these Objections.

**STANDARD OF REVIEW**

When objection is made to the findings and recommendation of a magistrate judge, the district court must conduct a de novo review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

1 **DEFENDANTS' OBJECTIONS**

2 Defendants object, as follows: (1) the Magistrate Judge erred in  
3 holding that Defendants did not adequately differentiate the in-suit  
4 infringements for which it claims Plaintiff had actual knowledge; (2) the  
5 Magistrate Judge erred in finding there is a dispute of fact as to  
6 whether Plaintiff had constructive knowledge of all of Defendants' other  
7 infringements; (3) Defendants dispute the Magistrate Judge's finding that  
8 Defendants failed to show Plaintiff's attorneys had knowledge of  
9 Defendants' infringement of Plaintiff's photographs, because of  
10 information obtained in representing a different client in April 2011;  
11 and, (4) the Magistrate Judge incorrectly found a dispute of fact as to  
12 whether Plaintiff conducted a sufficient investigation of Defendants  
13 based on what he knew of Defendants' infringements. Defendants argue that  
14 no investigation was conducted.

15 **DISCUSSION**

16 After conducting a de novo review of the record, the Court finds  
17 that none of the lodged Objections merit a conclusion other than that the  
18 Report and Recommendation should be adopted completely. Defendants are  
19 not entitled to summary judgment on the basis of actual knowledge and  
20 resolution of the constructive knowledge issue is one that poses a  
21 genuine issue of material fact, as well as credibility assessments. A  
22 jury will need to resolve these questions. This also applies to the duty  
23 to investigate issue. Notice and knowledge are all material questions  
24 of fact and not resolvable by dispositive motion, based on the record  
25 before this Court. The record completely supports the factual findings  
26 and legal conclusions contained in the Report and Recommendation.

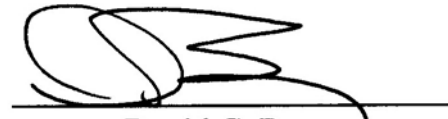
1 **CONCLUSION**

2 Accordingly, after conducting a de novo review of the record,

3 **IT IS ORDERED** that the Court **ADOPTS** the Report and Recommendation  
4 (Doc. 96) in its entirety. The Objections (Doc. 97) raised by the  
5 Defendants are **OVERRULED**.

6 IT IS FURTHER ORDERED that Defendants' Motion for Partial Summary  
7 Judgment (Doc. 65) is **DENIED**. This matter is **REFERRED BACK** to the  
8 Magistrate Judge to continue pretrial management through discovery and  
9 dispositive motions.

10 DATED this 5<sup>th</sup> day of January, 2016.

11   
12 \_\_\_\_\_  
13 David C. Bury  
14 United States District Judge