

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IGLESIA NI CRISTO,
Plaintiff,
v.
LUISITO E CAYABYAB, et al.,
Defendants.

Case No. 18-cv-00561-BLF

**ORDER DENYING PLAINTIFF’S
MOTION FOR RECONSIDERATION
OR, IN THE ALTERNATIVE,
FOR ENTRY OF FINAL JUDGMENT
PURSUANT TO FED. R. CIV. P. 54**

[Re: ECF 146]

Plaintiff Iglesia Ni Cristo (“INC”) seeks reconsideration of the Court’s Order Granting in Part and Denying in Part Defendants’ Motion for Summary Judgment (“MSJ Order”). In the alternative, INC moves for entry of final judgment on certain claims adjudicated by the MSJ Order. Briefing on INC’s motion was completed on May 29, 2020. The motion was taken under submission without oral argument. *See* ECF 145.

The motion is DENIED for the reasons discussed below.

I. MOTION FOR RECONSIDERATION

INC seeks reconsideration of four aspects of the MSJ Order. First, INC asserts that the Court should have deferred ruling on Defendants’ motion for summary judgment and granted INC time to take additional discovery. Second, INC argues that the Court erred in sustaining Defendants’ evidentiary objections to screenshots of Internet content that INC submitted as Exhibits G and H to the Declaration of Nicole M. Goss. Third, INC contends that the Court erred in granting summary judgment for Defendants on its copyright claims. Fourth, INC asserts that the Court erred in granting summary judgment on the trademark claims asserted against Defendants Ramos, Kuizon, and Mora.

1 **A. Legal Standard**

2 INC brings its motion for reconsideration under Federal Rule of Civil Procedure 54(b),
3 which provides that “any order or other decision, however designated, that adjudicates fewer than
4 all the claims or the rights and liabilities of fewer than all the parties . . . may be revised at any
5 time before the entry of a judgment adjudicating all the claims and all the parties’ rights and
6 liabilities.” Fed. R. Civ. P. 54(b). In this district, a Rule 54(b) motion for reconsideration must
7 satisfy additional requirements, set forth in Civil Local Rule 7-9(b). Specifically, reconsideration
8 may be sought only if one of the following circumstances exists: (1) a material difference in fact
9 or law from that presented to the Court prior to issuance of the order that is the subject of the
10 motion for reconsideration; (2) new material facts or a change of law occurring after issuance of
11 such order; or (3) a manifest failure by the Court to consider material facts or dispositive legal
12 arguments that were presented to the Court before issuance of such order. Civ. L.R. 7-9(b).

13 **B. Discussion**

14 INC does not specify under which subsection of Civil Local Rule 7-9(b) its motion is
15 brought. INC submits more than 200 pages of evidence with its motion brief and more than 400
16 pages of evidence with its reply brief, suggesting that INC may be asserting that reconsideration is
17 warranted based on different or new material facts under Rule 7-9(b)(1) or (b)(2). INC also argues
18 that the Court’s MSJ Order contains several errors, suggesting that INC may be asserting that
19 reconsideration is warranted based on a manifest failure by the Court to consider material facts or
20 dispositive legal arguments under Rule 7-9(b)(3). The Court concludes that INC has failed to
21 establish grounds for reconsideration under any of the applicable subsections of Rule 7-9(b).

22 **1. Decision not to Defer Ruling**

23 INC argues that the Court erred in declining to defer ruling on the summary judgment
24 motion until INC could take additional discovery. Federal Rule of Civil Procedure 56(d) provides
25 a mechanism by which the nonmoving party may request additional time to take discovery
26 necessary to oppose a motion for summary judgment. *See* Fed. R. Civ. P. 56(d). The nonmoving
27 party must “show[] by affidavit or declaration that, for specified reasons, it cannot present facts
28 essential to justify its opposition.” *Id.* As discussed in the MSJ Order, INC neither filed a formal

1 motion for continuance under Rule 56(d) nor made an oral request for a continuance at the
2 summary judgment hearing. *See* MSJ Order at 10-12, ECF 135.

3 The Court nonetheless considered the propriety of granting a continuance in light of
4 references to ongoing discovery made by INC’s counsel at the summary judgment hearing. *See id.*
5 The Court determined that INC had not filed an affidavit or declaration showing that it could not
6 oppose the summary judgment motion absent a continuance, proffered facts showing that ongoing
7 discovery is likely to produce evidence that would prevent summary judgment, or demonstrated
8 diligence in pursuing discovery in the past. *See id.* Under those circumstances, the Court in the
9 exercise of its discretion concluded that no continuance was warranted. *See Chance v. Pac-Tel*
10 *Teletrac Inc.*, 242 F.3d 1151, 1161 n. 6 (9th Cir. 2001) (district court’s refusal to permit further
11 discovery before ruling on summary judgment reviewed for abuse of discretion).

12 INC argues that the Court’s ruling was in error, pointing to language in Federal Rule of
13 Civil Procedure 56(e) providing that “[i]f a party fails to properly support an assertion of fact or
14 fails to properly address another party’s assertion of fact as required by Rule 56(c), the court *may*:
15 (1) give an opportunity to properly support or address the fact” Fed. R. Civ. P. 56(e)
16 (emphasis added). Rule 56(e) also provides that under the circumstances described, the court may
17 consider the fact undisputed, grant summary judgment, or issue any other appropriate order. *Id.*
18 INC’s position appears to be that the Court was required to exercise its discretion under Rule 56(e)
19 to give INC an opportunity to oppose Defendants’ summary judgment motion by granting a
20 continuance that INC never requested, instead of granting summary judgment as also permitted
21 under the rule. None of the authorities cited by INC support this position.

22 As an initial matter, INC’s assertion that it needed additional time for discovery is based
23 on evidence that could have been, but was not, presented to the Court prior to issuance of the MSJ
24 Order. INC now submits evidence that the parties focused exclusively on litigating Defendants’
25 anti-SLAPP motions and Rule 12(b)(6) motions until the pleadings were settled in September
26 2019, when the operative second amended complaint (“SAC”) was filed and answered. *See* Pl.’s
27 Mot. for Recon. at 2-3 and evidence cited therein, ECF 146. In particular, INC asserts that
28 Magistrate Judge van Keulen’s discovery rulings effectively limited INC to discovery on pleading

1 issues. *See id.* at 2. INC contends that “[g]iven the timeline of the litigation to date, Plaintiff has
2 not had sufficient time to conduct adequate discovery needed to oppose Defendants’ MSJ.” *Id.* at
3 3. Defendants dispute INC’s characterization of of the case timeline, stating that there was no
4 outstanding discovery or discovery dispute at the time of the hearing on the summary judgment
5 motion. *See Defs.’ Opp.* at 2, ECF 147. However, even accepting INC’s characterization as true,
6 all of INC’s evidence regarding discovery constraints impose by Judge van Keulen could have
7 been presented to the Court prior to the summary judgment hearing. “A motion for
8 reconsideration may not be used to raise arguments or present evidence for the first time when
9 they could reasonably have been raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v.*
10 *Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (quotation marks and citation
11 omitted); *see also* Civ. L.R. 7-9(b)(1) (A party seeking reconsideration based on facts materially
12 different from those presented to the court “must show that in the exercise of reasonable diligence
13 the party applying for reconsideration did not know such fact or law at the time of the
14 interlocutory order.”). Because INC’s arguments and evidence based on the discovery timeline
15 could have been presented to the Court prior to the summary judgment hearing, they do not
16 provide a basis for reconsideration of the Court’s decision not to grant a continuance.

17 INC ignores its own failure to move for a continuance or to present relevant evidence to
18 the Court, citing Federal Circuit authority for the general proposition that “[t]he Supreme Court
19 has made clear that summary judgment is inappropriate unless a tribunal permits the parties
20 adequate time for discovery.” *Dunkin’ Donuts of Am., Inc. v. Metallurgical Exoproducts Corp.*,
21 840 F.2d 917, 919 (Fed. Cir. 1988). In *Dunkin Donuts*, the Federal Circuit held that the United
22 States Patent and Trademark Office Trademark Trial and Appeal Board erred in granting summary
23 judgment for a trademark applicant where the party opposing registration had not been granted an
24 opportunity to take discovery regarding the applicant’s intent. *See id.* The nonmoving party in
25 *Dunkin’ Donuts* had sought additional time for discovery under Federal Rule of Civil Procedure
26 56(f) – now recodified as Rule 56(d)¹ – and submitted an affidavit stating that it could not present

27 _____
28 ¹ “Federal Rule of Civil Procedure 56(d) was, until December 1, 2010, codified as Federal Rule of
Civil Procedure 56(f).” *Stevens v. Corelogic, Inc.*, 899 F.3d 666, 676 (9th Cir. 2018).

1 sufficient facts to prove its case without discovery. *See id.* The Federal Circuit concluded that
2 evidence of the applicant’s intent was pertinent and thus that the requested continuance should
3 have been granted. *See id.* Unlike the appellant in *Dunkin’ Donuts*, INC did *not* file a Rule 56(d)
4 motion or submit an affidavit showing it needed discovery to oppose summary judgment.
5 Accordingly, *Dunkin’ Donuts* does not support INC’s position here.

6 INC points to the Ninth Circuit’s statement in *TMJ Inc., v. Nippon Tr. Bank*, 16 F. App’x
7 795, 797 (9th Cir. 2001), that “[f]ailure formally to move under Rule 56(f), however, is not fatal to
8 a party’s argument that summary judgment was premature.” In *TMJ*, the district court denied the
9 nonmoving party’s request for a continuance under Rule 56(f) because the request was not
10 presented in a separate motion. *TMJ*, 16 F. App’x at 797. The Ninth Circuit found the denial to
11 be an abuse of discretion because the nonmoving party “adequately complied with the
12 requirements of Rule 56(f)” when it “expressly invoked Rule 56(f) in its memorandum in
13 opposition to summary judgment and attached a detailed sworn declaration from counsel
14 explaining the need for additional time and setting forth particular facts expected to be obtained
15 from Mr. Ishimura that would demonstrate genuine issues of material fact with respect to all
16 claims.” *Id.* INC neither expressly invoked Rule 56(f) – now recodified as Rule 56(d) – nor
17 submitted a sworn declaration explaining what discovery was necessary to oppose summary
18 judgment. *TMJ* thus offers INC no support for its reconsideration motion.

19 INC also relies on *Brae Transp., Inc. v. Coopers & Lybrand*, 790 F.2d 1439, 1443 (9th Cir.
20 1986), in which the nonmoving party argued on appeal that the district court should have allowed
21 further discovery before ruling on summary judgment. Observing that the appellant had never
22 formally moved for a continuance to take further discovery, the Ninth Circuit held that
23 “[r]eferences in memoranda and declarations to a need for discovery do not qualify as motions
24 under Rule 56(f).” *Brae*, 790 F.2d at 1443. The Ninth Circuit emphasized that “Rule 56(f)
25 requires affidavits setting forth the particular facts expected from the movant’s discovery,” and
26 stated unequivocally that “[f]ailure to comply with the requirements of Rule 56(f) is a proper
27 ground for denying discovery and proceeding to summary judgment.” *Id.* *Brae* therefore supports
28 Defendants’ position that no reconsideration is warranted, not INC’s position.

1 In *Garrett v. City & Cty. of San Francisco*, 818 F.2d 1515 (9th Cir. 1987), the district court
2 ignored a pending motion to compel discovery that was timely made by the nonmoving party and
3 set for hearing before the discovery cut-off date. The district court simply granted summary
4 judgment and terminated the motion to compel as moot. *See Garrett*, 818 F.2d at 1519. The
5 Ninth Circuit held that the motion to compel satisfied the requirements of Rule 56(f) and that “[i]n
6 denying the discovery motion as ‘moot’ after having first granted defendants’ summary judgment
7 motion, the district court failed to exercise its discretion with respect to the discovery motion.” *Id.*
8 INC has not identified a motion to compel discovery that was pending at the time of the summary
9 judgment hearing, or demonstrated that this Court was alerted to such a motion. In their
10 opposition to the motion for reconsideration, Defendants assert that “there was no outstanding
11 discovery or discovery disputes at the time of the hearing on the Motion for Summary Judgment.”
12 Defs.’ Opp. at 2, ECF 147. INC does not refute that assertion in its reply. *Garrett*, like the other
13 cases cited by INC, offers no basis for reconsideration.

14 INC string-cites numerous other cases on the discovery issue, many of them from other
15 jurisdictions. None of the authorities from the United States Supreme Court or the Ninth Circuit
16 suggest that it is error for a district court to proceed to summary judgment where the nonmoving
17 party has neither sought a continuance under Rule 56 nor submitted an affidavit setting forth what
18 particular discovery is necessary to oppose summary judgment. For example, while INC relies
19 heavily on the Supreme Court’s interpretation of Rule 56(f) to mean summary judgment should
20 “be refused where the nonmoving party has not had the opportunity to discover information that is
21 essential to his opposition,” *see Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n.5 (1986),
22 *Anderson* did not address a nonmoving party’s failure to seek a continuance under Rule 56(f). In
23 fact, in *Anderson* the Supreme Court “assume[d] that both parties have had ample opportunity for
24 discovery.” *Id.* In *Metabolife Int’l, Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001), the Ninth
25 Circuit held that limits on discovery imposed by California’s Anti-SLAPP statute do not apply in
26 federal court. The Ninth Circuit’s analysis did not implicate the issue presented by INC’s motion
27 for reconsideration, that is, whether a district court errs by proceeding to summary judgment
28 where the nonmoving party has not sought a continuance under Rule 56. In *Foster v. Arcata*

1 *Assocs., Inc.*, 772 F.2d 1453, 1467 (9th Cir. 1985), *overruled on other grounds by Kennedy v.*
2 *Allied Mut. Ins. Co.*, 952 F.2d 262 (9th Cir. 1991), the Ninth Circuit’s ruling was directly contrary
3 to the position INC asserts here: “In the absence of such a motion, there is no abuse of discretion
4 in proceeding to summary judgment.”

5 For these reasons, INC’s motion for reconsideration of the decision not to defer ruling on
6 the summary judgment motion is DENIED.

7 **2. Ruling on Evidentiary Objections**

8 INC next argues that the Court erred in sustaining Defendants’ evidentiary objections to
9 Exhibits G and H to the Declaration of Nicole M. Goss, comprising screen shots of Internet
10 content. The Court determined that Ms. Goss had not provided any information as to who took the
11 screenshots, or when, and that as a result the screenshots were not properly authenticated and
12 could not be considered on summary judgment. *See* MSJ Order at 6-8, ECF 146. In making that
13 determination, the Court relied on Federal Rule of Evidence 901 and cases interpreting that rule.
14 *See id.*

15 INC asserts that the screenshots were authenticated by judicial admissions contained in the
16 answer to the SAC filed by Cayabyab and Dizon (“the Answer”). Evidence may be authenticated
17 by judicial admission. *See Sublime v. Sublime Remembered*, No. CV 06-6059 CAS FMOX, 2013
18 WL 3863960, at *4 (C.D. Cal. July 22, 2013) (“Defendant has admitted that the other two
19 performances actually occurred, and these admissions are sufficient to authenticate the videos.”).
20 However, the Goss Declaration made no reference to the Answer, stating only that the screenshots
21 were produced in discovery by INC. *See* Goss Decl. ¶¶ 9-10, ECF 126. As explained in the MSJ
22 Order, a party may not authenticate evidence simply by producing it in discovery. *See* MSJ Order at 8,
23 ECF 135. To the extent INC contends the asserted judicial admissions in the Answer constitute facts
24 different from those presented to the Court, warranting reconsideration under Rule 7-9(b)(1), INC has
25 not shown that in the exercise of reasonable diligence it could not have raised the asserted admissions
26 to authenticate Exhibits G and H prior to issuance of the MSJ Order. The asserted judicial admissions
27 are not new facts within the scope of Rule 7-9(b)(2), as they are contained in the Answer filed on
28 September 27, 2019. *See* Answer, ECF 113. And, because the asserted judicial admissions were not

1 brought to the Court’s attention previously, there was no “manifest failure” to consider them, as
2 required under Rule 7-9(b)(3).

3 The Court notes that even if the Answer had been referenced in the Goss Declaration, the
4 Answer does not authenticate the screenshots. INC points to general admissions in the Answer, for
5 example “that modern technology has been used in religious meetings that they have attended or
6 been involved in after their expulsion from INC.” Answer ¶ 37, ECF 113. Those general
7 admissions, contained in the Answer filed in September 2019, are not sufficient to authenticate the
8 specific screenshots submitted as Exhibits G and H to the Goss Declaration in February 2020.

9 INC relies on *Barefield v. Bd. of Trustees of CA State Univ., Bakersfield*, 500 F. Supp. 2d
10 1244 (E.D. Cal. 2007), to argue that even if Exhibits G and H are not admissible, the Court should
11 have considered the “substance” of those documents based on statements in the opposition brief.
12 INC’s reliance on *Barefield* is misplaced. In that case, the district court excluded numerous
13 exhibits for lack of authentication. *See id.* at 1258. The district court noted that “although these
14 exhibits themselves are not admissible, evidence proffered by Plaintiff reflecting the substance of
15 these documents may be admissible.” *Id.* Nothing in *Barefield* suggests that the district court’s
16 statement regarding the admissibility of other evidence regarding the substance of exhibits extends
17 to attorney argument contained in an opposition brief.

18 Finally, INC argues that the screenshots have been authenticated, referring to a new
19 declaration of Nicole M. Goss submitted with the motion for reconsideration (“Goss Recon
20 Declaration”). *See* Goss Recon Declaration, ECF 146-1. In the Goss Recon Declaration, Ms.
21 Goss avers for the first time that she took the screenshots. Goss Recon Declaration ¶ 8, ECF 146-
22 1. Ms. Goss’s belated averment is not an appropriate basis for reconsideration where it was
23 wholly within INC’s control to properly authenticate the screenshots when they initially were filed
24 in opposition to summary judgment. As noted above, “[a] motion for reconsideration may not be
25 used to raise arguments or present evidence for the first time when they could reasonably have
26 been raised earlier in the litigation.” *Marlyn Nutraceuticals*, 571 F.3d 873, 880 (9th Cir. 2009)
27 (quotation marks and citation omitted); *see also* Civ. L.R. 7-9(b)(1) (A party seeking
28 reconsideration based on facts materially different from those presented to the court “must show

1 that in the exercise of reasonable diligence the party applying for reconsideration did not know
2 such fact or law at the time of the interlocutory order.”).

3 INC’s motion for reconsideration of the Court’s exclusion of Exhibits G and H to the
4 Declaration of Nicole M. Goss is DENIED.

5 **3. Dismissal of Copyright Claims**

6 INC contends that the Court erred in granting summary judgment on Claim 2, asserting that
7 Defendants Cayabyab, Dizon, and H2O infringed INC’s copyrights in a number of hymns. The Court
8 found that Defendants’ initial burden on summary judgment was satisfied by their declarations stating
9 that Cayabyab and H2O never used the copyrighted hymns and Dizon performed the hymns only
10 during worship services, as permitted under an exemption to the Copyright Act. *See* MSJ Order at 18,
11 ECF 135. The burden thus shifted to INC to come forward with evidence that Cayabyab, Dizon, and
12 H2O used its hymns in an infringing manner. *See id.* The Court held that the evidence submitted by
13 INC was insufficient to meet its burden. *See id.* at 19. Specifically, the Court found that the
14 screenshots submitted as Exhibit H to the Goss Declaration were inadmissible, and that the
15 declarations submitted as Exhibit D to the Goss Declaration failed to establish that Defendants used
16 the hymns in an infringing manner. *See id.*

17 INC argues that its evidence in opposition to the summary judgment motion showed that
18 Cayabyab, H2O, and Dizon all used the copyrighted hymns and that the Court “failed to consider legal
19 authority” that the religious exemption to the Copyright Act does not apply because videos of
20 Defendants’ performances of the copyrighted hymns along with displays of the hymns’ lyrics were
21 posted to the Internet. The Court understands INC to be arguing that there was a “manifest failure by
22 the Court to consider material facts or dispositive legal arguments” under Rule 7-9(b)(3). This
23 argument is without merit. The Court’s MSJ Order specifically acknowledged that posting videos
24 displaying the hymns’ lyrics would fall outside the scope of the religious exemption to the Copyright
25 Act, but it concluded that INC had failed to submit admissible evidence showing that Defendants
26 Cayabyab, H2O, or Dizon posted such videos. *See* MSJ Order at 19. The Court thus considered
27 INC’s evidence and legal arguments, but ruled against INC. That INC disagrees with the Court’s
28 ruling does not constitute a basis for reconsideration.

1 INC's motion for reconsideration of the Court's grant of summary judgment on Claim 2 is
2 DENIED.

3 **4. Dismissal of Trademark Claims**

4 Finally, INC asserts that the Court erred in granting summary judgment on the trademark
5 claims asserted against Defendants Ramos, Kuizon, and Mora. Specifically, INC argues that
6 evidence submitted in opposition to the summary judgment motion establish that there are genuine
7 disputes of fact as to whether Ramos, Kuizon, and Mora used INC's trademarks. The Court
8 understands INC to be arguing that there was a "manifest failure by the Court to consider material
9 facts" under Rule 7-9(b)(3). This argument is without merit. INC points to the declarations that were
10 submitted as Exhibit D to the Goss Declaration, and the screenshots that were submitted as Exhibit G
11 to the Goss Declaration. The Court specifically discussed this evidence in its MSJ Order, excluding
12 the screenshots and finding that the declarations failed to show use by Ramos, Kuizon, or Mora. *See*
13 MSJ Order at 6-8, 17-18. That INC disagrees with the Court's ruling does not constitute a basis for
14 reconsideration.

15 INC's motion for reconsideration of the Court's grant of summary judgment on the
16 trademark claims asserted against Defendants Ramos, Kuizon, and Mora is DENIED.

17 **II. MOTION FOR ENTRY OF FINAL JUDGMENT**

18 In the alternative to its motion for reconsideration, INC seeks entry of final judgment as to
19 the grant of summary judgment for Defendants De La Uso, Ramos, Kuizon, Mora, and Villanueva
20 on all claims, and the grant of summary judgment for Defendants Caybyab, Dizon, and H2O on
21 the copyright claim. Defendants do not oppose entry of final judgment as to De La Uso, Ramos,
22 Kuizon, Mora, and Villanueva, but they assert that entry of final judgment as to Caybyab, Dizon,
23 and H2O would be improper.

24 **A. Legal Standard**

25 The motion for entry of final judgment is governed by Federal Rule of Civil Procedure
26 54(b), which provides as follows:

27 **Judgment on Multiple Claims or Involving Multiple Parties.** When an action
28 presents more than one claim for relief--whether as a claim, counterclaim,
crossclaim, or third-party claim--or when multiple parties are involved, the court

1 may direct entry of a final judgment as to one or more, but fewer than all, claims or
2 parties only if the court expressly determines that there is no just reason for delay.
3 Otherwise, any order or other decision, however designated, that adjudicates fewer
4 than all the claims or the rights and liabilities of fewer than all the parties does not
end the action as to any of the claims or parties and may be revised at any time
before the entry of a judgment adjudicating all the claims and all the parties' rights
and liabilities.

5 Fed. R. Civ. P. 54(b).

6 Consideration of a Rule 54(b) motion involves a two-step process. First, the district court
7 must “determine that it is dealing with a ‘final judgment.’” *Curtiss-Wright Corp. v. Gen. Elec.*
8 *Co.*, 446 U.S. 1, 7 (1980). “It must be a ‘judgment’ in the sense that it is a decision upon a
9 cognizable claim for relief, and it must be ‘final’ in the sense that it is an ultimate disposition of an
10 individual claim entered in the course of a multiple claims action.” *Id.* (quotation marks and
11 citation omitted).

12 Second, “the district court must go on to determine whether there is any just reason for
13 delay.” *Id.* at 8. “Not all final judgments on individual claims should be immediately appealable,
14 even if they are in some sense separable from the remaining unresolved claims.” *Id.* The district
15 court “must take into account judicial administrative interests as well as the equities involved,”
16 which is “necessary to assure that application of the Rule effectively preserves the historic federal
17 policy against piecemeal appeals.” *Id.* (quotation marks and citation omitted). The district court
18 may consider “such factors as whether the claims under review were separable from the others
19 remaining to be adjudicated and whether the nature of the claims already determined was such that
20 no appellate court would have to decide the same issues more than once even if there were
21 subsequent appeals.” *Id.*

22 **B. Discussion**

23 At the first step of the analysis, the Court concludes that the MSJ Order satisfies the “final
24 judgment” requirement as to all claims adjudicated therein. The MSJ Order disposed of all claims
25 against Defendants De La Uso, Ramos, Kuizon, Mora, and Villanueva, and disposed of the
26 copyright claim against Defendants Caybyab, Dizon, and H2O. Defendants do not dispute that the
27 first step of the Rule 54(b) framework is satisfied.

28 INC’s motion therefore turns on the second step of the analysis, which requires the Court

1 to determine whether there is any just reason for delay in entry of final judgment. The Court finds
2 that there are just reasons for delay in this case. There is significant overlap between the
3 trademark claims adjudicated in favor of De La Uso, Ramos, Kuizon, Mora, and Villanueva, as to
4 which INC wishes to file an immediate appeal, and the trademark claims that remain pending
5 against Caybyab, Dizon, and H2O. INC relied on the same theories of liability and the same
6 collection of declarations and screenshots to oppose the summary judgment motion. Entering
7 final judgment on the adjudicated trademark claims now could well give rise to piecemeal appeals
8 involving the same issues and evidence. The Ninth Circuit has indicated that entry of a Rule 54(b)
9 judgment may be inappropriate when such judgment may “give rise to successive appeals that
10 would turn largely on identical, and interrelated, facts.” *Jewel v. Nat’l Sec. Agency*, 810 F.3d 622,
11 630 (9th Cir. 2015).

12 Piecemeal appeals also are likely to result if final judgment is entered on the copyright
13 claim adjudicated in favor of Caybyab, Dizon, and H2O, because INC’s trademark claims against
14 those defendants are not yet resolved. The Ninth Circuit has recognized the complications that
15 result from entry of a Rule 54(b) judgment when the same party is simultaneously an appellant
16 and a litigant below. *See Jewel*, 810 F.3d at 630; *see also Spiegel v. Trustees of Tufts Coll.*, 843
17 F.2d 38, 44 (1st Cir. 1988) (“It will be a rare case where Rule 54(b) can appropriately be applied
18 when the contestants on appeal remain, simultaneously, contestants below.”).

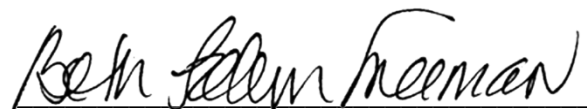
19 While INC has expressed a wish to file an immediate appeal of the MSJ Order, that wish
20 does not outweigh the judicial administrative interests in avoiding piecemeal appeals. INC’s
21 alternative motion for entry of final judgment pursuant to Rule 54(b) is DENIED.

22 **III. ORDER**

23 INC’s Motion for Reconsideration or, in the Alternative, for Entry of Final Judgment
24 Pursuant to Fed. R. Civ. P. 54(b) is DENIED.

25 This order terminates ECF 146.

26
27 Dated: July 8, 2020



BETH LABSON FREEMAN
United States District Judge