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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AYSE SEN,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

Case No.: 3:16-CV-01486-JAH-JLB

**ORDER GRANTING DEFENDANT
AMAZON.COM, INC.’S MOTION
FOR SUMMARY JUDGMENT AND
DENYING DEFENDANT’S IN
LIMINE MOTION AS MOOT**

INTRODUCTION

Pending before the Court is Defendant Amazon.com, Inc.’s (“Defendant” or “Amazon”) Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. [Doc. No. 32]. Ayse Sen’s (“Plaintiff”) complaint alleges trademark infringement in violation of 15 U.S.C § 1114(1)(a), unfair competition, false designation of origin, passing off, and false advertising in violation of 15 U.S.C §1125(a), and tortious interference with business relations or an economic advantage. *Id.* After a careful review of the pleadings filed by both parties, and for the reasons set forth below, Defendant’s Motion for Summary Judgment is **GRANTED**.

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1 **BACKGROUND**

2 **I. Factual Background**

3 Plaintiff is the owner of the trademark “Baiden,” and uses the mark in association
4 with the marketing and selling of her “Baiden” skin-exfoliation products. See Doc. No. 1,
5 ¶ 21. Defendant owns and operates Amazon.com which is a prominent e-marketplace. Id.
6 at ¶ 6. Plaintiff uses Amazon’s platform to sell her products. Id. at ¶ 11. Defendant
7 purchases certain keywords for use in sponsored advertising, and as relevant to this case,
8 purchased the keyword “Baiden” through Google’s AdWords¹ program and on similar
9 programs offered by “Bing.com” and “Yahoo.com.” See Doc. No. 32–2, ¶ 2.

10 On December 4, 2012, Plaintiff initiated a lawsuit in this district against Defendant
11 alleging violations of the Lanham Act for trademark infringement and unfair competition
12 (“Initial Action”). See Doc. No. 32-2, Ex A (Case No. 12-cv-2878-AJB-BGS). In the initial
13 action, Plaintiff alleged that Defendant used her “Baiden” mark in online pay-per-click
14 campaigns and keyword advertising on various search engines without Plaintiff’s express
15 authorization. Id. The complaint alleged that the campaigns diverted online traffic to a
16 landing page on Amazon’s website displaying competitor products which reduced her
17 online traffic and decreased sales for her products. Id. On July 9, 2013 the Plaintiff and
18 Defendant reached a settlement agreement in the initial action and executed a Settlement
19 Memorandum of Understanding (“MOU”). Doc. No. 32–2, Ex C. The parties were unable
20 to agree to the terms of the long form agreement and on October 9, 2013, Defendant moved
21 to enforce the MOU. See Doc. No. 32–2, Ex D. On December 19, 2013, the Honorable
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23
24 ¹ “Google AdWords is a program through which the search engine sells ‘keywords,’ or search terms that
25 trigger the display of a sponsor's advertisement. When a user enters a keyword, Google displays the links
26 generated by its own algorithm in the main part of the page, along with the advertisements in a separate
27 ‘sponsored links’ section next to or above the objective results. Multiple advertisers can purchase the same
28 keyword, and Google charges sponsors based on the number of times users click on an ad to travel from
the search results page to the advertiser's own website. Network purchased ‘ActiveBatch’ as a keyword
from Google AdWords and a comparable program offered by Microsoft's Bing search engine.” Network
Automation, Inc. v. Advanced Sys. Concepts, Inc., 638 F.3d 1137, 1142–43 (9th Cir. 2011)

1 Anthony J. Battaglia granted Amazon’s motion to enforce the settlement on the terms set
2 forth in the MOU. Id.

3 **II. Procedural Background**

4 On June 15, 2016, Plaintiff initiated the instant action, again alleging claims for
5 federal trademark infringement in violation of 15 U.S.C. § 114 and federal unfair
6 competition, false designation of origin, passing off and false advertising. Doc. No. 1, ¶¶
7 26–33. Additionally, Plaintiff brings a third claim for tortious interference with Plaintiff’s
8 prospective and actual business relations, and interference with an economic advantage.
9 Id. at ¶¶ 34–35. Defendant filed an Answer to the Complaint alleging twenty-four
10 affirmative defenses, including Release of Claims, Estoppel, and Waiver of Right to Assert
11 Claims. See Doc. No. 5. On November 8, 2016, Defendant filed an amended answer
12 asserting immunity under the Communications Decency Act of 1996 as an additional
13 affirmative defense. See Doc. No. 27. On March 8, 2017, Defendant filed the Motion for
14 Summary Judgment now before the Court. See Doc. No. 39. A hearing was held on May
15 9, 2017 for purposes of oral argument on Defendant’s motion. See Doc. No. 45. However,
16 the matter was taken under submission by the Court without oral argument when Plaintiff
17 failed to appear for that hearing. Id.

18 **LEGAL STANDARD**

19 Summary judgment is properly granted when “there is no genuine issue as to any
20 material fact and . . . the moving party is entitled to judgment as a matter of law.”
21 Fed.R.Civ.P. 56(c). Entry of summary judgment is appropriate “against a party who fails
22 to make a showing sufficient to establish the existence of an element essential to that
23 party’s case, and on which that party will bear the burden of proof at trial.” Celotex Corp.
24 v. Catrett, 477 U.S. 317, 322 (1986). The party moving for summary judgment bears the
25 initial burden of establishing an absence of a genuine issue of material fact. Id. at 323. A
26 material fact is one that is relevant to an element of a claim or defense and the existence of
27 which might affect the outcome of the suit. T.W. Electrical Service, Inc. v. Pacific
28 Electrical Contractors Ass’n, 809 F.2d 626, 630 (9th Cir. 1987) (citing Anderson v. Liberty

1 Lobby, Inc., 477 U.S. 242, 248 (1986)). The materiality of a fact is thus determined by the
2 substantive law governing the claim or defense. Id. Once the moving party meets the
3 requirements of Rule 56, the burden shifts to the party resisting the motion. Anderson, 477
4 U.S. at 256.

5 To demonstrate a genuine issue, the opposing party “must do more than simply show
6 that there is some metaphysical doubt as to the material facts. . . . [T]he nonmoving party
7 must come forward with specific facts showing that there is a genuine issue for trial.”
8 Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586–87 (1986). In
9 deciding a motion for summary judgment, “[t]he evidence of the non-movant is to be
10 believed, and all justifiable inferences are to be drawn in his favor.” Anderson, 477 U.S. at
11 255. Nevertheless, inferences must be made upon a reasonable basis, and it is the opposing
12 party’s obligation to produce a factual predicate from which the inference may be drawn.
13 See Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), *aff’d*,
14 810 F.2d 898, 902 (9th Cir. 1987).

15 DISCUSSION

16 As an initial matter, Defendant requests the Court take judicial notice of certain facts
17 concerning the initial action between the parties. See Doc. No 32–2. Specifically,
18 Defendant requests the Court take judicial notice that Plaintiff filed a lawsuit against
19 Defendant on December 4, 2012, that the parties entered into a MOU on July 9, 2013, and
20 that the court granted Defendant’s motion to enforce the settlement on December 19, 2013.
21 Id., Exhibits A, C, D. The Court may take judicial notice of an adjudicative fact “not subject
22 to reasonable dispute because it can be . . . accurately and readily determined from sources
23 whose accuracy cannot be reasonably questioned.” See Fed. R. Evid. 201; Grason Elec.
24 Co. v. Sacramento Mun. Util. Dist., 571 F. Supp. 1504, 1521 (E.D. Cal. 1983). Moreover,
25 the Ninth Circuit has confirmed that “a court may take judicial notice of its own records.”
26 U.S. v. Author Svcs., Inc., 804 F.2d 1520, 1522 (9th Cir.1986). Accordingly, Defendant’s
27 request for judicial notice is **GRANTED**.

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1 **I. Lanham Act Claims**

2 As stated above, Plaintiff alleges two “Lanham Act” claims for federal trademark
3 infringement in violation of 15 U.S.C. § 1114 and federal unfair competition, false
4 designation of origin, passing off, and false advertising in violation of 15 U.S.C. § 1125(a).
5 Doc. No. 1, ¶¶ 26–33. Plaintiff alleges that her Lanham Act claims arise from two separate
6 and distinct wrongful acts perpetrated by Defendant: (1) the unauthorized use of Plaintiff’s
7 “Baiden” trademark in “online pay-per-click” campaigns; and (2) permitting the use of
8 Plaintiff’s trademark in an online review, which promoted and advertised a competing
9 product. See Doc. No. 1, ¶¶ 8–9. The Court will address each in turn below.

10 **a. Use of Plaintiff’s trademark in online pay-per-click campaigns**

11 Notwithstanding Defendants arguments that Plaintiff’s claims were released in the
12 prior action, the Court finds that Plaintiff’s claims concerning the use of Plaintiff’s
13 trademark in pay-per-click campaigns are barred by the doctrine of claim preclusion. The
14 United States Supreme Court has observed that a federal district court may *sua sponte* raise
15 the issue of claim or issue preclusion under certain circumstances. “Most notably, if a court
16 is on notice that it has previously decided the [claims] presented, the court may dismiss the
17 action *sua sponte*, even though the defense has not been raised. This result is fully
18 consistent with the policies underlying *res judicata*: it is not based solely on the defendant’s
19 interest in avoiding the burdens of twice defending a suit, but is also based on the avoidance
20 of unnecessary judicial waste.” Arizona v. California, 530 U.S. 392, 412 (2000). Under
21 federal law, claim preclusion bars “lawsuits on ‘any claims that were raised or could have
22 been raised’ in a prior action.” Stewart v. U.S. Bancorp, 297 F.3d 953, 956 (9th Cir.2002)
23 (quoting Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 713 (9th Cir.2001)).
24 Claim preclusion is appropriate when the following three elements are satisfied: (1) an
25 identity of the claims, (2) the previous action must have resulted in a final judgment on the
26 merits, and (3) the present action must involve the same parties or persons in privity of
27 interest. Providence Health Plan v. McDowell, 385 F.3d 1168, 1173-1174 (9th Cir.2004).
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1 Identity of claims is determined by considering the following factors: (1) whether
2 the two suits arise out of the same transactional nucleus of facts; (2) whether rights or
3 interests established in the prior judgment would be destroyed or impaired by prosecution
4 of the second action; (3) whether the two suits involve infringement of the same right; and
5 (4) whether substantially the same evidence is presented in the two actions. Mpoyo v.
6 Litton Electro–Optical Systems, 430 F.3d 985, 987 (9th Cir.2005). The “central criterion,”
7 however, in determining whether there is an identity of claims between the first and second
8 adjudications is whether the two suits arise out of the same nucleus of transactional facts.
9 Id. at 987, citing Western Sys., Inc. v. Ulloa, 958 F.2d 864, 871 (9th Cir.1992). Here, it is
10 clear that the claims in the initial action and Plaintiff’s Lanham Act claims in the present
11 action, so far as they concern Defendant’s pay-per-click campaigns, arise out of the same
12 transactional nucleus of facts. The Court notes that all relevant portions of Plaintiff’s
13 complaint concerning Defendant’s use of pay-per-click campaigns are copied verbatim
14 from the complaint in the initial action. See Doc. Nos. 1, 1–2; cf. Doc. No. 32–2, Exhibit
15 A. Additionally, Plaintiff submitted screenshots of search engine results and of Amazon’s
16 landing page that are substantially identical to ones filed in the initial action. Id. Plaintiff
17 fails to distinguish—either factually or temporally—her current trademark infringement
18 claim based on Defendant’s pay-per-click campaign from that which she alleged in the
19 initial action. As such, the Court finds the first factor is satisfied.

20 There can be little dispute regarding the second and third factors. First, the initial
21 action included the identical parties to this case, Ayse Sen and Amazon.com, Inc. See Doc.
22 No. 32–2, Ex. A. Also, the initial action resulted in a final judgment on the merits. The
23 dismissal of an action with prejudice pursuant to a settlement agreement “constitutes a final
24 judgment on the merits.” Int’l Union of Operating Engineers-Employers Const. Indus.
25 Pension, Welfare & Training Tr. Funds v. Karr, 994 F.2d 1426, 1429 (9th Cir. 1993) (citing
26 Lawrence v. Steinfeld Holding B.V., 820 F.2d 313, 316–17 (9th Cir.1987)); see also
27 Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955)). On December 19, 2013,
28 the initial action was dismissed with prejudice when the Honorable Anthony J. Battaglia

1 granted Amazon’s motion to enforce the settlement on the terms set forth in the MOU. See
2 Doc. No. 32–2, Ex D. Because the Court finds that all three factors support claim
3 preclusion, Plaintiff’s Lanham Act claims based on the unauthorized use of Plaintiff’s
4 “Baiden” trademark in “online pay-per-click” campaigns are precluded, and Defendant is
5 entitled to summary judgment on these claims.

6 **b. Use of Plaintiff’s trademark in an online review**²

7 Plaintiff alleges that Defendant is contributory and vicariously liable for trademark
8 infringement stemming from a review of Plaintiff’s product posted on Defendant’s website.
9 Doc. No. 1, ¶ 23. In a review of Plaintiff’s “Baiden Mitten” product, an Amazon user
10 utilizing the name “Nanners,” wrote that she initially purchased the “Baiden Mitten”
11 product which caused her to recall a similar product from her childhood. Doc. No. 1-2, Ex.
12 B. The review uses the “Baiden” name in discussing Plaintiff’s product, as well as
13 declaring that a competing product is cheaper and delivers similar benefits. Id. Plaintiff
14 alleges that “Nanner’s” review infringed her trademark, which has interrupted Plaintiff’s
15 ongoing business and damaged her reputation. Doc. No. 1, ¶ 12-15. By allowing the review
16 to remain displayed under her product, Plaintiff alleges Amazon is contributory and
17 vicariously liable for the resulting harms. Id. at ¶ 33.

18 Defendant argues that Plaintiff’s Lanham Act claims, predicated on “Nanner’s”
19 review of her product, are barred by the nominative fair use doctrine. See Doc. No. 32 – 1,
20 pg. 25. A nominative fair use defense is appropriate when a “defendant has used [a]
21 plaintiff’s mark ‘to describe the plaintiff’s product’ for the purpose of, for example,
22 comparison to the defendant’s product.” Id. (emphasis in original) (quoting New Kids on
23 the Block v. News Am. Pub., Inc., 971 F.2d 302, 308 (9th Cir. 1992)). To establish a
24 nominative fair use defense, the defendant must prove three elements: (1) the [plaintiff’s]
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27 ² Plaintiff’s Lanham Act claim, as supported by the online review, is not subject to claim preclusion
28 because it was not presented in the initial claim and arises out of a facts which were not known to Plaintiff
at the time of the initial action.

1 product or service in question must be one not readily identifiable without use of the
2 trademark; (2) only so much of the mark or marks may be used as is reasonably necessary
3 to identify the [plaintiff's] product or service; and (3) the user must do nothing that would,
4 in conjunction with the mark, suggest sponsorship or endorsement by the trademark holder.
5 New Kids on the Block v. News Am. Publ'g, Inc., 971 F.3d 302, 308 (9th Cir. 1992)).

6 Defendant contends that “Nanner’s” review satisfies the three pronged New Kids on
7 the Block test. First, Defendant argues that Plaintiff’s trademark and product are essentially
8 inseparable, because one cannot identify Plaintiff’s product without using its name, the
9 “Baiden Mitten.” The Ninth Circuit has explained that the use of a trademark to identify a
10 certain product satisfies the first prong of the nominative fair use test particularly in
11 situations “where the [trademark is the] only word reasonably available to describe [that]
12 particular thing.” Id. at 308. That is certainly the case here. “Nanner’s” review uses the
13 Plaintiff’s trademark only to alert her readers as to what fabric exfoliation product she is
14 currently discussing. Also met are the second and third requirements. “Nanner’s” review
15 references Plaintiff’s trademark only to the extent necessary to identify the product she is
16 reviewing. And “Nanner’s” does not use the distinctive logo of Plaintiff’s trademark or any
17 other identifying feature. Finally, nothing in “Nanner’s” review suggests joint sponsorship
18 or endorsement by Plaintiff or the “Baiden Mitten” brand. Quite the contrary as the review
19 actually implies that there are “monumentally cheaper” products available on the market.
20 The Court therefore holds that “Nanner’s” use of Plaintiff’s “Baiden” trademark in her
21 review, and by extension Defendant’s publishing of such a review, was a permissible
22 nominative fair use. Accordingly, the Court **GRANTS** Defendant’s motion for summary
23 judgment as to Plaintiff’s Lanham Act claims.³

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28 ³ Finding summary judgment appropriate on these grounds, the Court will not discuss Defendant’s remaining arguments.

1 **II. Tortious Interference**

2 Plaintiff’s third cause of action is for tortious interference with Plaintiff’s
3 prospective and actual business relations, and interference with an economic advantage.
4 See Doc. No. 1, ¶¶ 34–35. Such a claim requires a showing of: “(1) an economic
5 relationship between the plaintiff and some third party, with the probability of future
6 economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3)
7 intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual
8 disruption of the relationship; and (5) economic harm to the plaintiff proximately caused
9 by the acts of the defendant.” Korea Supply Co. v. Lockheed Martin Corp., 29 Cal. 4th
10 1134, 1153, 63 P.3d 937 (2003). Accordingly, the Plaintiff must establish that the
11 “defendant not only knowingly interfered with the plaintiff’s expectancy, but engaged in
12 conduct that was wrongful by some legal measure other than the fact of interference itself.”
13 Hsu v. OZ Optics, Ltd., 211 F.R.D. 615, 620 (N.D.Cal.2002) (citing Della Penna v. Toyota
14 Motor Sales, U.S.A., Inc., 11 Cal.4th 376, 393, 45 Cal.Rptr.2d 436, 902 P.2d 740 (1995)).
15 Stated differently, “[i]t is ... the plaintiff's burden to prove, as an element of the cause of
16 action itself, that the defendant's conduct was independently wrongful.” Hsu, 211 F.R.D.
17 at 620. Plaintiff has alleged that her business has “experienced [an] interruption of its
18 ongoing business activities . . . and has suffered irreparable damage to its business
19 reputation and good will” as a result of Defendant’s pay-per click campaigns and “allowing
20 advertising under her listing to a competitive product.” Id. Defendant argues that Plaintiff’s
21 tortious interference claim fails as a matter of law because none of Defendant’s alleged
22 conduct was independently wrongful, and as predicated on “Nanner’s” review, Amazon is
23 immune from liability under the Communications Decency Act (“CDA”). See Doc. No.
24 32–1, pgs. 27–31.

25 **a. Tortious interference claim based on Defendant’s pay-pay-click**
26 **campaigns**

27 As discussed in length above, to the extent that Plaintiff’s tortious interference claim
28 is based on Defendant’s use of her trademark in any pay-per-click campaigns, it is

1 precluded. Plaintiff relies on identical allegations to assert both Lanham Act claims and
2 her tortious interference claim, therefore, the Court finds that these two claims share a
3 transactional nucleus of facts and could have been conveniently tried together in the initial
4 action. Mpoyo v. Litton Electro–Optical Sys., 430 F.3d 985, 987 (9th Cir.2005). As such,
5 Plaintiff’s tortious interference claim, as it pertains to Defendant’s pay-per-click
6 advertising is precluded.

7 **b. Tortious interference claim based on “Nanner’s” review**⁴

8 Defendant next contends that Plaintiff’s tortious interference claim, as predicated on
9 “Nanner’s” review, fails as a matter of law because Defendant is immune from liability
10 under the CDA. This Court agrees. Section 230 of the CDA immunizes providers of
11 interactive computer services against liability arising from content created by third parties:
12 “No provider . . . of an interactive computer service shall be treated as the publisher or
13 speaker of any information provided by another information content provider.” 47 U.S.C.
14 § 230(c). “Three elements are required for § 230 immunity: (1) the defendant must be a
15 provider or user of an “interactive computer service”; (2) the asserted claims must treat the
16 defendant as a publisher or speaker of information; and (3) the challenged communication
17 must be “information provided by another information content provider.” Batzel v. Smith,
18 333 F.3d 1018, 1037 (9th Cir. 2003) (quoting 47 U.S.C. § 230(c)(1)).

19 First, the Court finds the rationale of numerous other courts persuasive, and agrees
20 that Defendant is undoubtedly a provider of “interactive computer services.”⁵ See e.g.,
21 Joseph v. Amazon.com, Inc., 46 F. Supp. 3d 1095, 1106 (W.D. Wash. 2014) (“Amazon
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24 ⁴ Again, Plaintiff’s claims concerning “Nanner’s” review are not precluded by the initial action. Plaintiff
25 alleges that she did not become aware of this review until September of 2013, which was several months
26 after she signed the binding MOU. See Doc. No. 1, ¶ 11. Because this claim, based on “Nanner’s” review,
27 could not have been brought in the initial action, claim preclusion is inapplicable. See Vacchiano v.
28 Wessell, No. CV122003DSFVBKX, 2013 WL 12155181, at *1 (C.D. Cal. Nov. 25, 2013).

⁵ The term ‘interactive computer service’ means any information service, system, or access software
provider that provides or enables computer access by multiple users to a computer server, including
specifically a service or system that provides access to the Internet and such systems operated or services
offered by libraries or educational institutions.” 47 U.S.C. § 230(f)(2).

1 constitutes an ‘interactive service provider’’); Schneider v. Amazon, 108 Wash.App.
2 454, 463, (Wash.2001) (finding Amazon to be an interactive service provider and entitled
3 to immunity from claims based on defamatory reviews by third parties); Almeida v.
4 Amazon.Com, Inc., No. 04-20004-CIV, 2004 WL 4910036, at *4 (S.D. Fla. July 30, 2004),
5 aff’d, 456 F.3d 1316 (11th Cir. 2006) (“It is irrefutable that Defendant Amazon is an
6 “interactive computer service.”). Additionally, Defendant has established the second and
7 third elements required for CDA immunity. Plaintiff’s allegation concern a review posted
8 by an Amazon user, “Nanner,” who acted as an independent content provider when she
9 posted her review of Plaintiff’s “Baiden Mitten” product. Plaintiff wishes to hold
10 Defendant liable for failing to remove a review—published by an independent third-party
11 user—which she alleges has infringed her trademark. This is the precisely the type of claim
12 Congress sought to shield “interactive computer services” from with the passage of the
13 CDA. “In passing section 230, Congress sought to spare interactive computer services this
14 grim choice by allowing them to perform some editing on user-generated content without
15 thereby becoming liable for all defamatory or otherwise unlawful messages that they didn’t
16 edit or delete.” Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521
17 F.3d 1157, 1163 (9th Cir. 2008). Accordingly, the Court finds that Plaintiff has failed to
18 show that a genuine issue of material fact exists sufficient to defeat Defendant’s motion for
19 summary judgment on her tortious interference claim. Accordingly, Defendant is entitled
20 to summary judgment in its favor.

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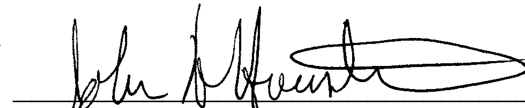
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2 **CONCLUSION**

3 Based on the foregoing, **IT IS HEREBY ORDERED** that:

- 4 1. Defendant's Motion for Summary Judgment [Doc. No. 32] is
5 **GRANTED** in its entirety⁶;
- 6 2. Defendant's In Limine Motion to Exclude Expert Testimony [Doc. No.
7 42] is **DENIED as moot**;
- 8 3. The Clerk of Court shall enter judgment in favor of Defendant and
9 against Plaintiff.

10 **IT IS SO ORDERED.**

11 DATED: September 27, 2018

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14 JOHN A. HOUSTON
15 United States District Judge
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25 ⁶ Plaintiff briefly mentions in her complaint that her claims arise under the Copyright Act of 1976, 17
26 U.S.C. § 101, yet in her opposition to Defendant's motion, she admits she does not own a copyright. See
27 Doc. No. 40, pg. 8. However, she asserts she is still entitled to relief pursuant to California law. Plaintiff
28 is mistaken; relief for copyright infringement is a federal matter, which is only available to owners of a
valid copyright. 17 U.S.C. § 411(a) (2018); Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361
(1991). To the extent that Plaintiff has alleged a claim of copyright infringement, her admission that she
does not own a valid copyright, entitles Defendant to summary judgment on that claim.