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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GOATPIX LLC, a Nevada limited liability company,

Plaintiff,

v.

THE UPPER DECK COMPANY, a Nevada corporation authorized to do business in California; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 21-CV-1815 TWR (JLB)

ORDER (1) GRANTING DEFENDANT’S MOTION TO DISMISS, AND (2) DISMISSING WITHOUT PREJUDICE PLAINTIFF’S REQUEST FOR STATUTORY DAMAGES AND ATTORNEYS’ FEES

(ECF No. 13)

Presently before the Court is Defendant The Upper Deck Company’s (“UDC”) Motion to Dismiss or, in the alternative, Motion to Strike Portions of Plaintiff’s First Amended Complaint (“FAC,” ECF No. 12). (“Mot.,” ECF No. 13). In addition, Plaintiff Goatpix LLC (“Goatpix”) has filed an Opposition to (“Opp’n,” ECF No. 18) and UDC a Reply in support of (“Reply,” ECF No. 22) the Motion. The Court heard oral argument on May 19, 2022. Having carefully reviewed the parties’ arguments, the First Amended Complaint, and the law, the Court **GRANTS** UDC’s Motion and **DISMISSES WITHOUT PREJUDICE** Goatpix’s request for statutory damages and attorneys’ fees.
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BACKGROUND

Goatpix initiated this action against UDC based on alleged copyright infringement of a photograph of Michael Jordan taken by the Chicago Bulls basketball team’s photographer, Bill Smith, during the 1988 All Star NBA Slam Dunk Contest (hereinafter, the “Work”). The first publication of the Work occurred on March 8, 1998. (*See generally* FAC.)

On July 1, 2005, Smith entered into an agreement with the Chicago Bulls confirming his ownership of all copyrights in the Work. (*See id.* ¶¶ 9–10, Exh. A.) The agreement between Smith and the Chicago Bulls also confirmed Smith’s “rights to use and permit others to use the [Work] in any fashion, including selling images” (*See id.*, Exh. A at 3(d).) On March 31, 2021, Smith entered into an agreement with Dwight Manley, Inc. (“DWI”), in which DWI acquired all of Smith’s copyrights in the Work. (*See id.* ¶ 11, Exh. B at 1.1.) DWI subsequently assigned the copyrights in the Work to Goatpix on June 14, 2021. (*See id.* ¶ 12, Exh. C.) As a result, Goatpix is the current owner of the copyrights in the Work. (*See* Opp’n at 3.)

On or about June 11, 2021, Goatpix filed a copyright claim for the Work with the United States Copyright Office (“USCO”). (*See* FAC ¶ 15, Exh. E.) The USCO issued a “Certificate of Registration” for the Work on July 2, 2021, with an effective date of June 11, 2021. (*See id.*, Exh. E.)

On or about June 10, 2021, counsel for Goatpix began communicating with UDC regarding UDC’s sale of the Work. (*See id.* ¶¶ 25–26, Exh. G.) After several email exchanges, Goatpix concluded that UDC did not have a license to use the Work, and, on July 22, 2021, Goatpix sent a letter to UDC asking the company to cease and desist from selling the Work. (*See id.*, Exh. G at 68–78.) In its letter, Goatpix expressed its understanding that UDC had been infringing on the Work for “many years.” (*See id.*, Exh. G, at 68.) As examples of the infringement, the First Amended Complaint attached

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1 screenshots taken from Defendant’s website on August 4, 2021, selling Plaintiff’s protected
2 work.¹ (*See id.* ¶ 25, Exh. F.)

3 In its First Amended Complaint, Goatpix asserts a single claim for copyright
4 infringement under 17 U.S.C. § 501. (*See* FAC ¶ 35–44.) Goatpix alleges, among other
5 things, that “Defendants have willfully and deliberately infringed on Goatpix’s copyrights
6 in the [Work] by copying and distributing [the Work].” (*See* FAC ¶ 39.) UDC does not
7 dispute that Goatpix has adequately stated a valid claim for copyright infringement. (*See*
8 *generally* Mot.) Rather, by its motion, UDC seeks to strike (or dismiss) Goatpix’s demand
9 for attorneys’ fees and statutory damages on the grounds that both remedies are
10 impermissible under copyright law. (*See* Motion at 7.) The principal question before the
11 Court, therefore, is whether Goatpix is barred from seeking attorneys’ fees and statutory
12 damages.

13 LEGAL STANDARD

14 I. Federal Rule of Civil Procedure 12(e)

15 Rule 12(e) provides that a party may move for a more definite statement but only
16 when a pleading “is so vague or ambiguous that a party cannot reasonably be required to
17 frame a responsive pleading.” A motion for a more definite statement pursuant to Rule
18 12(e) “attacks the unintelligibility of the complaint, not simply the mere lack of detail, and
19 is only proper when a party is unable to determine how to frame a response to the issues
20 raised.” *Neveu v. City of Fresno*, 392 F. Supp. 2d 1159, 1169 (E.D. Cal. 2005). In
21 consequence of the stringent standard, motions for a more definite statement are
22 “disfavored and rarely granted.” *Griffin v. Cedar Fair, L.P.*, 817 F. Supp. 2d 1152, 1156
23 (N.D. Cal. 2011).

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27 ¹ Goatpix concedes that some form of copyright infringement occurred prior to the Work’s copyright
28 registration. (*See* Opp’n at 1.) Goatpix’s First Amended Complaint alleges both copyright infringement
before and after the Work was registered. (*See id.*; *see also generally* FAC.)

1 **II. Federal Rule of Civil Procedure 12(b)(6)²**

2 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to
3 state a claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’”
4 *Conservation Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (quoting *Navarro*
5 *v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). “A district court’s dismissal for failure to
6 state a claim under Federal Rule of Civil Procedure 12(b)(6) is proper if there is a ‘lack of
7 a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal
8 theory.’” *Id.* at 1242 (quoting *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
9 Cir. 1988)). The Ninth Circuit applies Rule 12(b)(6) to address legally deficient claims for
10 damages at a pleadings stage. *Whittlestone*, 618 F.3d at 974; *see also, e.g., Powell v. Wells*
11 *Fargo Home Mortg.*, No. 14-CV-04248-MEJ, 2017 WL 2720182, at *7 (N.D. Cal. June 23,
12 2017), *aff’d*, 855 F. App’x. 382 (9th Cir. 2021) (“The Court therefore construes
13 [defendant’s] Motion to Strike as a motion to dismiss Because the UCL only permits
14 restitution or injunctive relief, the Court dismisses any claim for exemplary or punitive
15 damages.”)

16 “Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a ‘short and
17 plain statement of the claim showing that the pleader is entitled to relief.’” *Ashcroft v.*
18 *Iqbal*, 556 U.S. 662, 677–78 (2009) (quoting Fed. R. Civ. P. 8(a)(2)). “[T]he pleading
19 standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands
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21 ² UDC includes Rule 12(f) as a potential legal standard for the instant motion but correctly points
22 out that it is inapplicable here. Rule 12(f) of the Federal Rules of Civil Procedure states that a district
23 court “may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or
24 scandalous matter.” Fed. R. Civ. P. 12(f). *Whittlestone, Inc. v. Handi-Craft Co.*, however, notes that Rule
25 12(f), when used to dismiss some or all of a pleading, creates a redundancy within the Federal Rules of
26 Civil Procedure because Rule 12(b)(6) motions already serve that purpose. *See* 618 F.3d 970, 974 (9th
27 Cir. 2010.) Therefore, the court in *Whittlestone* found that “Rule 12(f) does not authorize district courts
28 to strike claims for damages on the ground that such claims are precluded as a matter of law.” *Id.* at
974–975. Instead, when a party wants to strike or dismiss portions of a pleading, Rule 12(b)(6) or Rule 56
provides the proper procedural mechanism. *See id.*; *see also Jones v. Cty. of San Diego*, No. 20CV1989-
GPC(DEB), 2021 WL 4460788, at *7 (S.D. Cal. Sept. 29, 2021) (“Therefore, under *Whittlestone*,
Defendant’s motion to strike punitive damages as legally barred is improper under Rule 12(f), but the
Court considers its argument under a Rule 12(b)(6) motion.”).

1 more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* at 678
2 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, “[a]
3 pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a
4 cause of action will not do.’” *Id.* (quoting *Twombly*, 550 U.S. at 555).

5 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
6 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting
7 *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads
8 factual content that allows the court to draw the reasonable inference that the defendant is
9 liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). “[W]here the
10 well-pleaded facts do not permit the court to infer more than the mere possibility of
11 misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is
12 entitled to relief.’” *Id.* at 679 (second alteration in original) (quoting Fed. R. Civ. P.
13 8(a)(2)).

14 “If a complaint is dismissed for failure to state a claim, leave to amend should be
15 granted ‘unless the court determines that the allegation of other facts consistent with the
16 challenged pleading could not possibly cure the deficiency.’” *DeSoto v. Yellow Freight*
17 *Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well*
18 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)). “A district court does not err in
19 denying leave to amend where the amendment would be futile.” *Id.* (citing *Reddy v. Litton*
20 *Indus.*, 912 F.2d 291, 296 (9th Cir. 1990), cert. denied, 502 U.S. 921 (1991)).

21 ANALYSIS

22 I. Motion for a More Definitive Statement

23 As an initial matter, UDC argues that, because “Goatpix is being intentionally vague
24 about the timing of the commencement of infringement in this iteration of its operative
25 complaint, a more definite statement is warranted.” (See Mot. at 10); *Casanova v. Ulibarri*,
26 595 F.3d 1120, 1125 (10th Cir. 2010) (“[T]he preferable procedure when a specific date
27 could support a dispositive defense motion is to require the plaintiff to provide a more

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1 definite statement under Fed. R. Civ. P. 12(e).”). Goatpix concedes that the alleged
2 infringement occurred both before and after the Work’s registration. (*See generally* FAC.)

3 Here, the key issue is not the exact date when the Work was used, but rather whether
4 the Work was used before and after registration. As is relevant to this issue, Goatpix
5 adequately alleges the timing of actual and possible infringements of the Work. (*See*
6 *generally* FAC.) Accordingly, the First Amended Complaint is not so unintelligible that
7 UDC cannot reasonably be required to respond, as evidenced by the fact that UDC has filed
8 a responsive motion under Rule 12(b)(6). *See* Federal Rules of Procedure Rule 12(e). The
9 Court therefore **DENIES** UDC’s request for a more definite statement.

10 **II. Motion to Dismiss**

11 UDC argues that Goatpix’s failure to register the Work for decades after its creation,
12 and UDC’s infringement commencing prior to Goatpix’s copyright registration, disqualify
13 Goatpix from seeking attorneys’ fees or statutory damages under the Copyright Act, 17
14 U.S.C. § 412 (“Section 412”). (*See* Mot. at 7; *see also* *Derek Andrew, Inc. v. Poof Apparel*
15 *Corp.*, 528 F.3d 696, 699 (9th Cir. 2008). Accordingly, UDC requests that the Court either
16 dismiss or strike both requests for relief. (*See* Mot. at 7.)

17 **A. Copyright Law Restricts the Types of Damages Available Depending on the** 18 **Timing of Copyright Registration**

19 UDC alleges that Goatpix and its predecessors failed to register the Work until
20 June 11, 2021, decades after initial publication in 1998, thereby forfeiting their ability to
21 be awarded attorneys’ fees and statutory damages. (*See* Mot. at 8.) While the First
22 Amended Complaint alleges acts of infringement that occurred prior to registration,
23 Plaintiff argues that those allegations do not bar the recovery of attorneys’ fees and
24 statutory damages as a matter of law, as independent and distinct acts of infringement
25 occurred after the registration of the Work. (*See* Opp’n at 2.) The Court concludes that
26 UDC is correct.

27 Federal copyright law “carefully circumscribe[s]” who can file a copyright lawsuit,
28 as well as what remedies are available to a copyright owner pursuing an infringement action.

1 *Silvers v. Sony Pictures Ent., Inc.*, 402 F.3d 881, 885 and 888 (9th Cir. 2005). Under the
2 Copyright Act, an aggrieved party may generally obtain statutory damages and attorneys’
3 fees and costs. *See* 17 U.S.C. §§ 504–505. Under Section 412, to recover statutory
4 damages or attorneys’ fees, “the copyrighted work must have been registered prior to
5 commencement of the infringement, unless the registration is made within three months
6 after first publication of the work.” *See Derek Andrew*, 528 F.3d at 699 (citing 17 U.S.C.
7 § 412(2)). The policy behind Section 412 is twofold: (1) Section 412 “provide[s] copyright
8 owners with an incentive to register their copyrights promptly,” and (2) Section 412
9 “encourages potential infringers to check the Copyright Office’s database.” *See Derek*
10 *Andrew*, 528 F.3d at 700.

11 In the Ninth Circuit, “the first act of infringement in a series of ongoing
12 infringements of the same kind marks the commencement of one continuing infringement
13 under § 412.” *See Derek Andrew*, 528 F.3d at 700 (“To allow statutory damages and
14 attorneys’ fees where an infringing act occurs before registration and then reoccurs
15 thereafter clearly would defeat the dual incentives of § 412.”). Consequently, if infringing
16 conduct commences prior to the work’s copyright registration date, to properly seek
17 statutory damages and attorneys’ fees for any infringing conduct after the work’s
18 registration, the conduct must be “separate and distinct” from the conduct that occurred
19 prior to registration. *See id.* at 701

20 Here, it is undisputed that Goatpix’s Work was not registered prior to UDC’s first
21 use of the Work and was not registered within three months after first publication of the
22 Work. *See* 17 U.S.C. § 412(2). Goatpix does not contest that its correspondence with UDC
23 alludes to potential infringement occurring prior to the Work’s copyright registration date
24 of June 11, 2021. (*See* FAC, Ex. G, ¶ 26.) Further, Goatpix’s registration of the Work
25 became effective on June 11, 2021, (*see id.*, Exh. E), while the initial publication of the
26 Work was in 1998. (*See id.*) Thus, the registration of the Work was made more than three
27 months after the first publication of the work. *See Derek Andrew*, 528 F.3d at 699. Thus,
28 for Goatpix to properly seek attorneys’ fees and statutory damages, it must adequately

1 allege that the post-registration infringement was separate and distinct from the
2 infringement that occurred prior to its registration. *See id.*

3 ***B. Section 412 Arguments Are Ripe for Review at the Pleading Stage***

4 Goatpix’s only argument against dismissal is that the determination of whether post-
5 registration infringement is separate and distinct from pre-registration infringement is a
6 factual dispute not ripe for adjudication at the pleading stage. (*See* Opp’n at 2.) Goatpix
7 relies on two cases to support this argument. (*See id.* at 8–12.) First, in *Crytek GmbH v.*
8 *Cloud Imperium Games Corp.*, the defendant moved to dismiss the plaintiff’s claims for
9 attorneys’ fees and statutory damages under Section 412, but the court denied the motion.
10 *See* No. CV 17-9837-DMG (FFMx), 2018 WL 4854652, at *12 (C.D. Cal. Aug. 14, 2018).
11 The court found that it would be inappropriate to grant the motion at the pleading stage
12 because “there may be discoverable post-registration independent acts of infringement not
13 expressly alleged in the FAC.” *See id.* at *13. The court in *Crytek* reasoned that, even if
14 it was “unlikely” for the Plaintiff to recover statutory damages based on the infringing
15 conduct, it “[wa]s not prepared to grant the MTD and preclude recovery of statutory
16 damages as a matter of law before the parties engage[d] in discovery on the copyright
17 infringement allegations th[e] court ha[d] already deemed sufficient under Rule 12(b)(6).”
18 *Id.* at *13–14. Similarly, in *Brighton Collectibles, Inc. v. Coldwater Creek, Inc.*, No. 08-
19 CV-02307-H (POR), 2009 WL10671323, at *5 (S.D. Cal. Feb. 25, 2009), the court denied
20 a motion to dismiss claims for statutory damages and attorneys’ fees in accordance with
21 Section 412 because the complaint and the document referenced therein did not establish
22 that “all or any of the allegedly infringing products . . . were produced prior to the effective
23 registration date.”

24 UDC argues that both cases cited by Goatpix are inapplicable. (*See* Reply at 7.) In
25 *Brighton*, for example, the defendant argued that the plaintiff was not entitled to recover
26 statutory damages or attorneys’ fees because the copyright was registered was after the
27 date of the first infringement. *See* 2009 WL 10671323, at *5. The court found that the
28 “claim [could] not be partially dismissed on a 12(b)(6) motion because the complaint and

1 documents referenced in the complaint d[id] not establish [the defendant]’s infringement
2 commenced pre-registration.” *Id.* Here, however, Goatpix concedes that infringement *did*
3 occur prior to the Work’s registration, thus triggering Section 412 and making *Brighton*
4 inapposite. (*See* Opp’n at 9–10).

5 Further, Defendant correctly points out that *Crytek* relied on only one, non-binding
6 Louisiana case, *Guillot-Vogt Associates, Inc. v. Holly & Smith*, 848 F. Supp. 682 (E.D. La.
7 1994), and used an impermissibly lenient pleading standard. *See Crytek*, 2018 WL
8 4854652, at *13–14. Specifically, *Crytek* reasoned that, although the plaintiff was unlikely
9 to succeed on its claims, attorneys’ fees and statutory damages could survive the pleadings
10 challenge because “sufficient notice” was all that was required. *Id.* at *14. This misstates
11 the current state of the law. The Ninth Circuit in *Whittlestone* found that Rule 12(b)(6) is
12 the proper vehicle to strike a request for damages at the pleading stage, *see* 618 F.3d at
13 974, and, in 2007, the Supreme Court in *Twombly* rejected the “no set of facts” or “notice
14 pleading” standards under Rule 12(b)(6) in favor of the now applicable “plausibility”
15 pleading standard. *See* 550 U.S. at 564. When read together, these cases suggest that it is
16 appropriate to dismiss implausible claims for damages at the pleading stage.

17 The Court agrees with UDC and finds that both of Goatpix’s cases are inapplicable
18 to the instant Motion. Accordingly, UDC’s Section 412 arguments are ripe for review at
19 this stage of the litigation.

20 **C. Goatpix Does Not Meet Its Pleading Standard to Overcome Section 412**

21 UDC argues that Goatpix does not meet its pleading standard because Goatpix does
22 not distinguish between any specific pre- and post-registration infringement that would be
23 different or independent, thereby allowing Goatpix to assert a claim for attorneys’ fees and

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1 statutory damages.³ (See Reply at 4.) Here, Goatpix alleges that a single photo of Michael
2 Jordan is at issue, which has been reproduced in different media. (See FAC ¶¶ 24, 31.)
3 Defendant argues, however that, as alleged, the facts do not support that any post-
4 registration infringement is distinct and separate from the alleged pre-registration
5 infringement. (See Reply at 1, 5.)

6 Defendant cites several cases where claims for attorneys’ fees and statutory damages
7 were dismissed because the distinction between the pre- and post-registration infringement
8 was not alleged sufficiently. In *Marshall v. Babbs*, for example, the plaintiff argued that
9 the defendant’s violation its copyright first via song, prior to registration, and again via
10 video, post-registration, constituted separate acts of infringement not of the same kind such
11 that Section 412 did not bar attorneys’ fees or statutory damages for the post-registration
12 video infringement. See No. 2:18-CV-03822-DDP-AFMX, 2019 WL 1557429, at *2–4
13 (C.D. Cal. Apr. 10, 2019). The court granted the motion to dismiss and concluded that,
14 “[a]lthough the post-infringement Instagram video was published on a different medium,
15 and is separately defined under the Copyright Act, it is a result of the original act of
16 infringement” and, in accordance with Section 412, the plaintiff therefore was not entitled
17 to statutory damages or attorneys’ fees. See *id.* at *4; see also *Por Los Rios, Inc. v. Lions*
18 *Gate Entm’t, Inc.*, No. 2:13-cv-7640-CBM-PLA, 2014 WL 12605374, at *5 (C.D. Cal.
19 May 21, 2014).

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23 ³ UDC partially misinterprets Goatpix’s argument. UDC contends that Goatpix is ignoring the
24 “plain text of Section 412[,] which states that any infringement commenced prior to copyright registration
25 bars the disputed forms of relief.” (See Reply at 2 (citing 17 U.S.C. § 412).) Further, UDC represents
26 that Goatpix is arguing that “*Derek Andrew* is bad law or should be overturned.” (See Reply at 2.) Goatpix
27 writes in its Opposition, however, that “*Derek Andrew* . . . sets the precedent in the Ninth Circuit for the
28 recoverability of fees and statutory damages when a plaintiff claims infringing conduct that occurs before
and after copyright registration.” (See Opp’n at 8.) Consequently, both parties here agree that *Derek Andrew*
is controlling. Further, it is clear that UDC’s alleged infringement occurred both before and after
the Work was registered with the USCO. The crucial issue, therefore, is whether the alleged infringement
that occurred after the registration of the Work was “continuing infringement” or a “separate and distinct
infringement.” See *Derek Andrew*, 528 F.3d at 700.

1 Further, in *Smith v. Weeknd*, the court relied on *Derek Andrews* to dismiss statutory
2 damages and attorneys’ fees at the pleadings stage. *See* No. CV 19-2507 PA (MRWX),
3 2019 WL 6998666, at *7 (C.D. Cal. Aug. 23, 2019). “When . . . continuing infringement
4 commences before registration, as [wa]s alleged in [the p]laintiffs’ Complaint, § 412
5 eliminates the possibility for the recovery of statutory damages and attorneys’ fees.” *Smith*,
6 2019 WL 6998666 at *7. The same was true in *Por Los Rios*, in which the court held that
7 the “[p]laintiffs [had] fail[ed] to allege any new infringements commencing after [the
8 p]laintiffs registered the Statutory Works.” *See* 2014 WL 12605374 at *5. The court noted
9 that the key to determining whether an infringement is separate and distinct is “whether
10 continuing infringements are of the same copyrighted material and by the same
11 defendant[.]” *See id.*

12 Here, Goatpix does not allege any facts to distinguish UDC’s post-registration
13 conduct from its pre-registration conduct. Indeed, it would appear that the pre- and post-
14 registration conduct here involved both the same copyrighted material (the Work) and the
15 same defendant (UDC). *See Por Los Rios*, 2014 WL 12605374 at *5. Without some
16 allegation that there were “separate” and distinct” infringements after the Works’ copyright
17 registration, any statutory damages or attorneys’ fees are impermissible under Section 412.
18 *See, e.g., Marshall*, 2019 WL 1557429 at *4 (denying discovery request to determine
19 whether post-registration infringement was unique because complaint established same
20 work was violated by same party both before and after registration, thereby triggering
21 Section 412’s bar of attorney’s fees and statutory damages as a matter of law).
22 Accordingly, the Court **GRANTS** Defendant’s Motion.

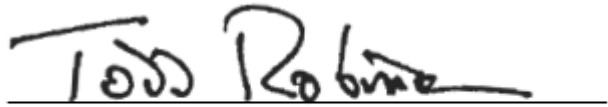
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1 **CONCLUSION**

2 The Court **GRANTS** Defendant's Motion and **DISMISSES WITHOUT**
3 **PREJUDICE** Plaintiff's request for statutory damages and attorneys' fees. Plaintiff has
4 thirty (30) days from the date of this Order to file an amended complaint. *Should Plaintiff*
5 *fail to timely file an amended complaint, the matter will proceed as to Plaintiffs' remaining*
6 *requested remedies.*

7 **IT IS SO ORDERED**

8 Dated: July 19, 2022

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10 Honorable Todd W. Robinson
11 United States District Judge
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