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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 UNIVERSAL PROTECTION SERVICE,
12 LP d/b/a ALLIED UNIVERSAL
13 SECURITY SERVICES; and
14 UNIVERSAL PROTECTION
SECURITY SYSTEMS, LP,

Plaintiffs,

15 v.

16 COASTAL FIRE AND INTEGRATION
17 SYSTEMS, INC; DENNIS DON
18 STOVER, JR.; GARY HUTCHESON;
19 and DOES 1-5, inclusive,

20 Defendants.

Case No.: 22-cv-1352-JES-KSC

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS**

[ECF No. 15]

21
22 On October 25, 2022, Defendants filed a motion to dismiss counts 1, 2, and 8 of
23 Plaintiffs' First Amended Complaint ("FAC"). ECF No. 15. On November 15, 2022,
24 Plaintiffs filed an opposition. ECF No. 17. On November 22, 2022, Defendants filed a
25 reply. ECF No. 21. The matter was taken under submission. After due consideration and
26 for the reasons discussed below, the motion to dismiss is **GRANTED IN PART** and
27 **DENIED IN PART**.

28 //

I. BACKGROUND

On September 8, 2022, Plaintiffs Universal Protection Service LP, doing business as Allied Universal Security Services, and Universal Protection Security Systems, LP (collectively, “Allied Universal”) instituted this lawsuit against Defendants Coastal Fire and Integration Systems, Inc. (“Coastal Fire”), Don Stover, Jr. (“Stover”), and Gary Hutcheson (“Hutcheson”). ECF No. 1. On October 4, 2022, Allied Universal filed their FAC, the operative complaint, alleging facts as follows. ECF No. 14 (“FAC”).

Allied Universal is a security services company operating in North America. FAC ¶ 13. Part of the services that it provides through one of its divisions is electronic access control, video surveillance, fire/life safety, alarm monitoring, emergency communications, and hosted/managed services. *Id.* ¶ 17. In building up its brand, Allied Universal owns several trademarks, including the following six trademarks:

- No. 5,136,006: the mark Allied Universal, filed May 6, 2016 and issued February 7, 2017; (*id.* ¶ 20)
- No. 5,302,678: the mark Allied Universal and Design as shown below, filed on June 24, 2016 and issued October 3, 2017; (*id.* ¶ 21)



- No. 5,136,112: the mark Allied Universal Security Services, filed on May 26, 2016 and issued February 7, 2017; (*id.* ¶ 22)
- No. 5,150,269: the mark “Allied Universal Security Services and Design as shown below, filed on June 30, 2016 and issued February 28, 2017; (*id.* ¶ 23)



- 1 • No. 5,146,530: the mark Allied Universal there for you and Design as shown
2 below, filed on July 18, 2016 and issued February 21, 2017; (*id.* ¶ 24)



- 5 • No. 5,136,162: the mark Allied Universal Security Systems, filed on May
6 31, 2016 and issued on February 7, 2017 (*id.* ¶ 25).

7 In addition, Allied Universal owns several copyrights. One of its divisions uses
8 computer-assisted drafting (AutoCAD) to prepare engineering designs of its services.
9 *Id.* ¶ 56. To facilitate this, Allied Universal developed custom AutoCAD templates,
10 which are drawings that contained components unique to Allied Universal. Two of these
11 templates are at issue here and are copyrighted:

- 12 • 2017 Technical Drawing; (*id.* ¶ 33, Exh. A)
13 • 2021 Technical Drawing (*id.* ¶ 34, Exh. B).

14 In addition, Allied Universal developed Quote Builder, which it used to prepare and
15 present estimates and generate proposal of its designs and services, and is also
16 copyrighted:

- 17 • Quote Builder (*id.* ¶ 35, Exh. C).

18 On May 30, 2014, Allied Universal acquired City-Wide Electronic Systems, Inc.
19 (“City-wide”), another security services company. *Id.* ¶ 40. At that time, Defendant
20 Stover was City-wide’s President and Defendant Hutcheson was a System Engineer at
21 City-wide. *Id.* ¶ 41. After the acquisition, Stover continued to serve as Executive Vice
22 President at Allied Universal until June 1, 2020 and Hutcheson in Systems Estimating
23 and Engineering until November 2020. *Id.* ¶¶ 42-43. Allied Universal alleges that during
24 their employment, both defendants executed agreements that prohibited them from
25 disclosing confidential information and required them to return Allied Universal’s
26 property upon termination. *Id.* ¶¶ 44-48, Exhs. D, E.

1 Allied Universal alleges that after the sale and during defendants’ subsequent
2 employment, Stover and Hutcheson directly competed with Allied Universal through
3 their own company. *Id.* at ¶ 50. On June 13, 2014, Allied Universal alleges that Stover’s
4 wife established and incorporated One-Eight, Inc., which later changed its name to
5 Coastal Fire and Integration Systems, the other named defendant in this lawsuit.
6 *Id.* ¶¶ 49, 51. Allied Universal alleges that Stover and Coastal Fire recruited Hutcheson
7 and other employees to perform “side work” for them of the exact or similar nature of
8 what they did for Allied Universal. *Id.* ¶ 53-55. Specifically, Allied Universal alleges
9 that in June 2022, it received a request for bid from an apartment complex in Los Angeles
10 that was looking to install a security system. *Id.* ¶ 59. Allied Universal alleges that
11 Coastal Fire had previously provided services for the same client and during the course of
12 that work, prepared and submitted an AutoCAD design. *Id.* ¶ 60. Allied Universal states
13 that when it received the June 2022 bid materials, the previous design from Coastal Fire
14 (hereinafter, “Coastal Fire design drawing”) was included in the materials and bore the
15 initials “GWH,” which stood for Defendant Hutcheson. *Id.* ¶ 61. Allied Universal alleges
16 that the Coastal Fire design drawing infringes on its copyrighted 2017 and 2021
17 Technical Drawings, and that text on the design drawing infringes on its trademarks.

18 Based on the facts above, Allied Universal alleges nine causes of action including
19 trademark infringement, copyright infringement, violation of the Computer Fraud and
20 Abuse Act, unfair competition, and various breaches of contractual obligations. *Id.* at
21 ¶¶ 73-138.

22 II. LEGAL STANDARDS

23 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to
24 state a claim tests the legal sufficiency of a plaintiff’s claim. *Navarro v. Block*, 250 F.3d
25 729, 732 (9th Cir. 2001). When considering the motion, the court must accept as true all
26 well-pleaded factual allegations in the complaint. *Bell Atlantic Corp. v. Twombly*, 556
27 U.S. 544, 555 (2007). The court need not accept as true legal conclusions cast as factual
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1 allegations. *Id.*; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“[t]hreadbare recitals of the
2 elements of a cause of action, supported by mere conclusory statements” are insufficient).

3 A complaint must “state a claim for relief that is plausible on its face.” *Twombly*,
4 550 U.S. at 570. To survive a motion to dismiss, a complaint must include non-
5 conclusory factual content. *Id.* at 555; *Iqbal*, 556 U.S. at 679. The facts and the
6 reasonable inferences drawn from those facts must show a plausible—not just a
7 possible—claim for relief. *Twombly*, 550 U.S. at 556; *Iqbal*, 557 U.S. at 679; *Moss v.*
8 *U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The focus is on the complaint, as
9 opposed to any new facts alleged in, for example, the opposition to a defendant’s motion
10 to dismiss. *See Schneider v. California Dep’t of Corrections*, 151 F.3d 1194, 1197 n.1
11 (9th Cir. 1998), *reversed and remanded on other grounds as stated in* 345 F.3d 716 (9th
12 Cir. 2003). “Determining whether a complaint states a plausible claim for relief [is] ... a
13 context-specific task that requires the reviewing court to draw on its judicial experience
14 and common sense.” *Iqbal*, 557 U.S. at 679. The “mere possibility of misconduct” or
15 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting
16 this plausibility standard. *Id.*; *see also Moss*, 572 F.3d at 969.

17 **III. DISCUSSION**

18 In the instant motion, Defendants move to dismiss three causes of action: (1) first
19 cause of action for trademark infringement; (2) second cause of action under the
20 Computer Fraud and Abuse Act; and (3) eighth cause of action for copyright
21 infringement. The Court will address each of these in turn.

22 **A. Trademark Infringement**

23 In the first cause of action, Plaintiffs allege that Defendants used its registered
24 trademarks without permission. FAC ¶¶ 73-84. In order to state a claim for trademark
25 infringement, a plaintiff must show that (1) it has a valid, protectable trademark, and (2)
26 that the defendant is using the mark in a way that is likely to cause consumer confusion.
27 *Network Automation, Inc. v. Advanced Sys. Concepts, Inc.*, 638 F.3d 1137, 1144 (9th Cir.
28 2011).

1 As to the first part of this test, Defendants do not appear to contest that Plaintiffs
2 have valid marks. Indeed, Plaintiffs’ FAC includes detailed allegations regarding each of
3 its six marks and provides registration information, numbers, and dates for each of the
4 trademarks. FAC ¶¶ 20-25. Registration of a trademark with the United States Patent and
5 Trademark Office endows it with a rebuttable presumption of validity. 15 U.S.C. §
6 1115(a) (registration is “prima facie evidence of the validity of the registered mark . . . ,
7 of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the
8 registered mark in commerce); *KP Permanent Make-Up, Inc. v. Lasting Impression I,
9 Inc.*, 408 F.3d 596, 604 (9th Cir. 2005). Rather, Defendants argue that Plaintiffs have
10 failed to allege “use” of the marks and that there was any likelihood of consumer
11 confusion.

12 **i. Defendants’ Use of the Marks**

13 Plaintiffs’ allegation of trademark infringement center around the following
14 General Disclaimer text that was on the Coastal Fire design drawing:

15 **ALLIED UNIVERSAL SECURITY SYSTEMS GENERAL DISCLAIMER:**
16 THESE DRAWINGS WERE PREPARED BY ALLIED UNIVERSAL SECURITY SYSTEMS (A.U.S.S.) FOR THIS PROJECT ONLY AND
17 ARE INSTRUMENTS OF A.U.S.S. FOR USE SOLELY BY A.U.S.S. IN THE INSTALLATION OF WORK COVERED BY THESE
18 DRAWINGS. A.U.S.S. SHALL BE DEEMED THE AUTHOR OF THESE DRAWINGS AND SHALL RETAIN ALL COMMON LAWS,
19 STATUTORY AND OTHER RESERVED RIGHTS, INCLUDING BUT NOT LIMITED TO COPYRIGHTS. THESE DRAWINGS SHALL
20 NOT BE REPRODUCED IN ANY WAY OR USED FOR ANY PURPOSE BY ANYONE OTHER THAN A.U.S.S. EXCEPT WITH
21 A.U.S.S.’S EXPRESSED WRITTEN PERMISSION. ALL INFORMATION INCLUDED BUT NOT LIMITED TO THE “DESIGN
22 METHODS”, “PHILOSOPHIES”, CREATED BY A.U.S.S. ON THESE DRAWINGS ARE CONSIDERED TO BE INTELLECTUAL
23 PROPERTY (TRADE SECRET). RELEASE BY A.U.S.S. OF THE RIGHT TO USE THESE PLANS TO OTHERS DOES NOT RELEASE
24 THIS INFORMATION FOR USE BY OTHERS ON OTHER DRAWINGS. A.U.S.S. DOES HEREBY AUTHORIZE THE AHJ TO USE
25 THESE PLANS IN THE ADMINISTRATION OF THEIR RESPECTIVE DUTIES.

26 FAC at 69. As shown above, the text includes the terms “Allied Universal” and “Allied
27 Universal Security Systems.” Thus, Plaintiffs argue in their opposition that the use of
28 these terms in this disclaimer breaches their “Allied Universal Word Marks,” which are
defined to include the “Allied Universal” and “Allied Universal Security Systems”
marks. ECF No. 17 at 10-11.

Defendants repeatedly state in their motion to dismiss and reply brief that there are
three trademarks at issue and that the disclaimer shown above does not use of these
trademarks. ECF No. 15-1 at 11-14. In these references, Defendants appear to be

1 referring to the design trademarks only. *Id.* at 15-1 at 12 (citing the FAC ¶¶ 6, 8, 11, 12,
2 which contain allegations related to the design trademarks). Plaintiffs respond that
3 Defendants inexplicably are limiting their discussion of the trademarks to the *design*
4 trademarks and wholly ignoring the *word* trademarks. ECF No. 17 at 11-12. In the reply
5 brief, Defendants continue to only reference three trademarks. ECF No. 21 at 4-5.

6 A review of the FAC shows that it does include both word trademarks (*see* FAC ¶¶
7 20, 22, 25) and design trademarks (*see* FAC ¶¶ 21, 23, 24). A word trademark versus a
8 design trademark differs in that a word trademark has no design elements. *Pom*
9 *Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1128 (9th Cir. 2014); *Monster Energy Co. v.*
10 *BeastUp LLC*, 395 F. Supp. 3d 1334, 1355 (E.D. Cal. 2019). For example, Plaintiffs have
11 alleged that they own a word trademark in “Allied Universal,” and the registration is for a
12 “standard character mark” that consists of “standard characters without claim to any
13 particular font style, size, or color.”¹ FAC ¶ 20; *see*
14 [https://tsdr.uspto.gov/#caseNumber=5,136,006&caseSearchType=US_APPLICATION&](https://tsdr.uspto.gov/#caseNumber=5,136,006&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=statusSearch)
15 [caseType=DEFAULT&searchType=statusSearch](https://tsdr.uspto.gov/#caseNumber=5,136,006&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=statusSearch) (last visited June 1, 2023). In contrast,
16 Plaintiffs also have alleged that they own a design trademark in the mark Allied
17 Universal and design. FAC ¶ 21. This trademark registration is for an “illustration
18 drawing which includes words/letters/numbers” and is described as consisting of “the
19 word ‘ALLIED’ on top of ‘UNIVERSAL’ with an arc design to the left of the ‘A’ in
20 ‘ALLIED’ and the ‘U’ in ‘UNIVERSAL’ and going through ‘ALLIED.’” *See*
21 [https://tsdr.uspto.gov/#caseNumber=5,302,678&caseSearchType=US_APPLICATION&](https://tsdr.uspto.gov/#caseNumber=5,302,678&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=statusSearch)
22 [caseType=DEFAULT&searchType=statusSearch](https://tsdr.uspto.gov/#caseNumber=5,302,678&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=statusSearch) (last visited June 1, 2023).

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25 ¹ The Court takes judicial notice of the registrations of the trademarks at issue. Federal Rule of Civil
26 Procedure 201 permits a court to take judicial notice on its own regarding any facts that is “not subject
27 to reasonable dispute” where it “can be accurately and readily determined from sources whose accuracy
28 cannot reasonably be questioned.” Fed. R. Civ. P 201(c)(1), (b)(2). Materials in the online files of the
USPTO and other matters of public record are proper subjects of judicial notice. *Reyn’s Pasta Bella,*
LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006) (“We may take judicial notice of court
filings and other matters of public record.”) (citations omitted).

1 As plainly seen from the design disclaimer shown above, the disclaimer includes
2 the terms “Allied Universal” and “Allied Universal Security Systems.” These are word
3 trademarks that have been alleged by Plaintiffs. FAC ¶¶ 20, 25. Defendants’ motion and
4 reply briefs do not give any argument as to why the FAC fails to allege “use” of these
5 work marks. However, the disclaimer does not use the word mark “Allied Universal
6 Security Services,” nor does the disclaimer include any use of the design marks alleged in
7 the complaint. The complaint does not include any other factual allegations as to how
8 Defendants may have infringed those trademarks, other than from the disclaimer in the
9 Coastal Fire design drawing. Indeed, Plaintiffs only reference the above mentioned two
10 word marks in their opposition brief as well. Thus, the Court finds that the complaint has
11 only sufficiently alleged use of the two word marks “Allied Universal” and “Allied
12 Universal Security Systems.”

13 **ii. Likelihood of Confusion**

14 “The test for likelihood of confusion is whether a ‘reasonably prudent consumer’
15 in the marketplace is likely to be confused as to the origin of the good or service bearing
16 one of the marks.” *Entrepreneur Medica, Inc. v. Smith*, 279 F.3d 1135, 1140 (9th Cir.
17 2002). Likelihood of confusion is evaluated using an eight-part test that is
18 “predominantly factual in nature.” *Id.* These factors, known as the *Sleekcraft* factors,
19 include (1) the strength of the mark; (2) the relatedness or proximity of the goods or
20 services; (3) the similarity of the marks; (4) the evidence of actual confusion; (5) the
21 marketing channels used; (6) the type of goods and degree of care likely to be exercised
22 by the purchaser; (7) the defendant’s intent in selecting the mark; and (8) the likelihood
23 of expansion in product lines. *See AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49
24 (9th Cir. 1979).

25 This fact extensive inquiry is often not appropriate at the motion to dismiss stage.
26 *See, e.g., RCRV, Inc. v. Gracing Inc.*, No. CV 16-2829-R, 2016 WL 11000048, at *2
27 (C.D. Cal. July 20, 2016) (“Many courts have held that the likelihood of consumer
28 confusion is not appropriate to determine at the motion to dismiss stage.”); *Lucent Techs.*

1 *v. Johnson*, 2000 WL 1604055, at *2 (C.D. Cal. 2000) (“[T]he likelihood of confusion
2 inquiry is a fact-intensive evaluation ill-suited for disposition on a motion to dismiss.”);
3 *Visual Changes Skin Care Int’l, Inc. v. Neways, Inc.*, No. CVF08-0959LJODLB, 2008
4 WL 4723603, at *6 (E.D. Cal. Oct. 24, 2008). Courts have granted dismissal at the
5 pleading stage on likelihood of confusion, but only in limited circumstances. *Mastro’s*
6 *Restaurants LLC v. Dominick Grp. LLC*, No. CV 11-1996-PHX-PGR, 2012 WL
7 2091535, at *7 (D. Ariz. June 11, 2012) (“A dismissal on the pleadings because a
8 likelihood of confusion is impossible from the face of the Complaint is highly unusual,
9 but not unheard of.”) (citing *McCarthy on Trademarks and Unfair Competition* §
10 32:121.25). For example, dismissal may be granted where the parties’ goods are not
11 related. *Murray v. Cable Nat. Broad. Co.*, 86 F.3d 858, 861 (9th Cir. 1996), *as amended*
12 (Aug. 6, 1996) (affirming district court’s dismissal where “the parties’ services are
13 unrelated and there is no likelihood of confusion); *Robinson v. Hunger Free Am., Inc.*,
14 No. 118CV00042LJOBAM, 2018 WL 1305722, at *4 (E.D. Cal. Mar. 13, 2018)
15 (dismissing trademark infringement claim where the types of goods utilizing the mark
16 were dissimilar). Dismissal may also be granted if the parties’ respective geographical
17 locations prevent a finding of confusion, or where the defendant has specifically
18 disclaimed any affiliation with the plaintiff’s goods and services. *Mastro’s Restaurants*
19 *LLC*, 2012 WL 2091535, at *7 (collecting cases).

20 Defendants argue that Plaintiffs have not sufficiently alleged likelihood of
21 confusion, nor could they, since the apartment complex included the allegedly infringing
22 Coastal Fire design drawing in a solicitation for a bid to Plaintiffs, clearly showing that
23 the apartment complex did not select to give the business to Defendants and that they
24 were not confusing Plaintiffs with Defendants. ECF No. 15-1 at 14; ECF No. 21 at 5.
25 Plaintiffs counter that they sufficiently alleged that Defendants’ use was “confusingly
26 similar in sound, appearance, and overall commercial impression” to its marks and the
27 use was “likely to cause consumer confusion.” FAC ¶¶ 77-78. Further, Plaintiffs also
28 argue that likelihood of confusion can also be established if a consumer may purchase a

1 defendant's services under the mistaken belief that the defendant is associated with the
2 trademark's owner when they are not. ECF No. 17 at 12.

3 Plaintiffs' FAC includes the following allegations related to likelihood of
4 confusion: that Defendants are using the trademarks in the disclaimer in connection with
5 identical goods and services; that the disclaimer is "confusingly similar in sound,
6 appearance, and overall commercial impression" to Plaintiffs' marks; that the use is
7 likely to cause consumer confusion; and that the use has caused Plaintiffs damage to their
8 business, reputation and goodwill. FAC ¶¶ 76-81. The Court finds that these allegations
9 as to likelihood of confusion are sufficient to survive a motion to dismiss. Defendants are
10 alleged to have used the word trademarks in connection with the exact services that
11 Plaintiffs provide, from the same consumer. Likelihood of confusion also encompasses
12 the situation where a consumer is led to wrongly believe that the defendant is affiliated,
13 endorsed by, or sponsored by the plaintiff through use of the plaintiff's trademark. *See*
14 *KEMA, Inc. Koperwhats*, No. C 09-1587 MMC, 2010 WL 11417911, at *3 (N.D. Cal.
15 Sept. 1, 2010); *Facebook, Inc. v. Power Ventures, Inc.*, 2009 WL 1299698 (N.D. Cal.
16 May 11, 2009); *see also Toyota Motor Sales, U.S.A., Inc. v. Tabari*, 610 F.3d 1171, 1175-
17 76 (9th Cir.2010) (noting false suggestion of sponsorship or endorsement by trademark
18 holder "speaks directly to the risk of [consumer] confusion"). Moreover, the
19 circumstances where courts in this district have found it appropriate to grant a motion to
20 dismiss on likelihood of confusion (*i.e.*, unrelated goods, dissimilar geographic regions,
21 and express disclaimer of no relation) are not present here.

22 Defendants' arguments against likelihood of confusion are relevant to certain
23 factors in the *Sleekcraft* inquiry, but are factual arguments not appropriate at this
24 juncture. For example, Defendants argue that there was no actual confusion because the
25 apartment complex did not give business to Defendants. Actual confusion is one of the
26 *Sleekcraft* factors, but it is not dispositive or necessary. *Network Automation, Inc. v.*
27 *Advanced Sys. Concepts, Inc.*, 638 F.3d 1137, 1151 (9th Cir. 2011) ("[A]ctual confusion
28 is not necessary to a finding of likelihood of confusion under the Lanham Act.") (quoting

1 *Academy of Motion Picture Arts & Sciences v. Creative House Promotions, Inc.*, 944
2 F.2d 1446, 1456 (9th Cir. 1991)); *Rearden LLC v. Rearden Com., Inc.*, 683 F.3d 1190,
3 1216–17 (9th Cir. 2012) (noting that actionable confusion does not solely arise from
4 confusion of consumers that could cause a direct loss of sale). Defendants also argue that
5 the use of the disclaimer “erroneous” and an “inadvertent one-time error.” ECF No. 15-1
6 at 14. Intent to use a mark to confuse consumers is a *Sleekcraft* factor but it is similarly
7 not required to find trademark infringement. *See Entrepreneur Media, Inc. v. Smith*, 279
8 F.3d 1135, 1148 (9th Cir. 2002) (noting that intent to confuse consumers is not required
9 to find infringement but may be strong evidence of likelihood of confusion). Thus, while
10 Defendants’ arguments are well-taken, they go to the factual-intensive inquiry of
11 likelihood of confusion and are not sufficient to permit a dismissal at the motion to
12 dismiss stage.

13 Because Plaintiffs have plausibly pled both elements of a trademark infringement
14 claim—that they have valid, protectable trademarks and there is likelihood of
15 confusion—on its word trademarks “Allied Universal” and “Allied Universal Security
16 Systems,” Defendants’ motion to dismiss is **DENIED** as to this claim on those marks.
17 The motion to dismiss the trademark infringement claim as to the three design trademarks
18 and the word trademark for “Allied Universal Security Services” is **GRANTED** because
19 the FAC fails to allege use of these marks by Defendants.

20 **B. Violation of Computer Fraud and Abuse Act**

21 In the second cause of action, Plaintiffs alleged that Defendants have violated
22 various provisions of the Federal Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. §
23 1030. This statute was originally enacted to “enhance the government’s ability to
24 prosecute computer crimes” and is designed to “target hackers who accessed computers
25 to steal information or to disrupt or destroy computer functionality, as well as criminals
26 who possessed the capacity to access and control high technology processes vital to our
27 everyday lives.” *LVRC Holdings LLC v. Brekka*, 581 F.3d 1127, 1130 (9th Cir. 2009).
28 The CFAA is primarily a criminal statute, but includes a private civil cause of action:

1 “Any person who suffers damage or loss by reason of a violation of this section may
2 maintain a civil action against the violator to obtain compensatory damages and
3 injunctive relief or other equitable relief.” 18 U.S.C. § 1030(g). Specifically, Plaintiffs
4 alleged violations of the followings subsections:

5 **18 U.S.C. § 1030(a)(2)(C):** “whoever . . . intentionally accesses a computer
6 without authorization or exceeds authorized access, and thereby obtains . . .
7 (C) information from any protected computer;”

8 **18 U.S.C. § 1030(a)(4):** “whoever . . . knowingly and with intent to defraud,
9 accesses a protected computer without authorization, or exceeds authorized
10 access, and by means of such conduct furthers the intended fraud and obtains
11 anything of value, unless the object of the fraud and the thing obtained
12 consists only of the use of the computer and the value of such use is not
13 more than \$5,000 in any 1-year period;”

14 **18 U.S.C. § 1030(a)(5)(C):** “whoever . . . intentionally accesses a protected
15 computer without authorization, and as a result of such conduct, causes
16 damage and loss.”

17 FAC ¶¶ 86-89. In addition, in order to establish civil liability, the conduct must
18 also “involve[] 1 of the factors set forth in subclauses (I), (II), (III), (IV), or (V) of
19 subsection (c)(4)(A)(i).” 18 U.S.C. § 1030(g). The factor that has been alleged by
20 Plaintiffs in the FAC is in 18 U.S.C. § 1030(c)(4)(A)(i)(I), requiring “loss to 1 or
21 more persons during any 1-year period . . . aggregating at least \$5,000 in value.

22 FAC ¶ 91.

23 **i. Protected Computer**

24 The violations alleged by Plaintiffs all require accessing a “protected
25 computer.” The CFAA defines the term “protected computer” as follows:

26 “a computer . . . which is used in or affecting interstate or foreign commerce or
27 communication, including a computer located outside the United States that is
28 used in a manner that affects interstate or foreign commerce or communication
of the United States.”

1 18 U.S.C. § 1030(e)(2)(B).² Plaintiffs allege in the FAC that Defendants violated the
2 CFAA by accessing “a computer used for interstate commerce or communication” and
3 that the Allied Universal computer system accessed by Defendants “is a ‘protected
4 computer’ as the term is used in 18 U.S.C. § 1030(e)(2).” FAC ¶¶ 86, 90. Defendants
5 argue that the FAC fails to allege any facts to support this contention. ECF No. 15-1 at
6 16.

7 The Court agrees that the FAC only contains conclusory statements as to how the
8 computer that Defendants allegedly used to violate the CFAA are “protected computers.”
9 *See Connelly v. Blacksexfinder Corp.*, No. SACV1501255CJCJCGX, 2017 WL
10 11635875, at *2 (C.D. Cal. Sept. 12, 2017) (finding that the allegation that “Plaintiffs’
11 computers are protected computers . . . in that they are used in and affect interstate
12 commerce and communication” was too conclusory and insufficient to satisfy Rule 8)
13 (citing *Ashcroft*, 556 U.S. at 662). Even looking beyond these specific allegations
14 regarding how the computer may qualify as “protected,” a review of the other factual
15 allegations in the FAC fails to reveal any other facts that the Court may use to infer that
16 the computer was used in interstate commerce. *See, e.g., Merritt Hawkins & Assocs., LLC*
17 *v. Gresham*, 948 F. Supp. 2d 671, 674 (N.D. Tex. 2013) (courts may reasonably infer
18 from other factual allegations that the accessed computer was used in interstate
19 commerce, and is therefore “protected”).

20 **ii. 18 U.S.C. §§ 1030(a)(2)(C), (a)(4)**

21 These two sections both require a showing that Defendants accessed the protected
22 computer “without authorization” or “exceeds authorized access.” 18 U.S.C.
23 §§ 1030(a)(2)(C), (a)(4). In a series of two cases, the Ninth Circuit has established the
24
25

26 ² 18 U.S.C. § 1030(e)(2) also includes additional definitions of a “protected computer” to includes
27 computers exclusively for the use of financial institutions, the United States Government, or as part of a
28 voting system, but the section alleged by Plaintiffs in the FAC relate to interstate commerce. FAC ¶ 86;
see 18 U.S.C. § 1030(e)(2)(A), (C).

1 bounds of what “without authorization” and “exceeds authorized access” means under
2 these sections.

3 First, in *Brekka*, the defendant was employed by plaintiff and was alleged to have
4 emailed himself company documents during the course of his employment, and after his
5 employment ended, alleged to have continued to access plaintiff’s computer systems. 581
6 F.3d at 1129-31. The *Brekka* plaintiff sued under 18 U.S.C. §§ 1030(a)(2), (a)(4). The
7 Ninth Circuit held that a person accesses a computer “without authorization” under the
8 CFAA where a person “accesses a computer without any permission at all,” whereas a
9 person “exceeds authorized access” where the person “has permission to access the
10 computer, but accesses information on the computer that the person is not entitled to
11 access.” *Id.* at 1133. Applying these definitions, the court found that if it could be shown
12 factually that Brekka accessed plaintiff’s computers after his employment ended, this
13 would have satisfied the requirement that he accessed the computers “without”
14 authorization. *Id.* at 1136. In contrast, however, Brekka emailing himself company
15 documents while he was employed did not “exceed” authorization because he was
16 authorized to access the company’s computers and the documents during his
17 employment, and so was not actionable under sections (a)(2) and (a)(4). *Id.* at 1135.

18 The employee and employer in *Brekka* did not have a written employment
19 agreement, and the company did not have any employee guidelines that would have
20 explicitly prohibited the employee from emailing himself company documents to
21 personal computers. *Id.* at 1129. The Ninth Circuit next addressed what it means to
22 “exceed authorized access” in a situation where the defendant *did* violate guidelines by
23 his access. *United States v. Nosal*, 676 F.3d 854 (9th Cir. 2012) (en banc). In *Nosal*, the
24 defendant, after leaving the company, convinced his former colleagues who were still
25 current employees to use “their log-in credentials to download source lists, names and
26 contact information from a confidential database on the company’s computer” and share
27 the documents with Nosal. *Id.* at 856. The employees were authorized to access the
28 information but the company had a policy that prohibited them from disclosing

1 confidential information. *Id.* Nosal was charged with violation of 18 U.S.C. § 1030(a)(4)
2 for aiding and abetting the current employees in “exceeding” their authorized access. *Id.*
3 Nosal argued that “exceeds authorized access” referred to “someone who’s authorized to
4 access only certain data or files but accesses unauthorized data or files.” *Id.* at 857
5 (giving the example of where an employee is permitted to access product information on
6 a company computer but accesses customer lists). The government, on the other hand,
7 argued that “exceeds authorized access” referred to “someone who has unrestricted
8 physical access to a computer, but is limited in the use to which he can put the
9 information.” *Id.* (giving the example of where an employee may be authorized to access
10 customer lists in order to do his job, but not to send them to a competitor). The Ninth
11 Circuit adopted Nosal’s position, finding that the government’s position would
12 “transform the CFAA from an anti-hacking statute into an expansive misappropriation
13 statute.” *Id.* Thus, the court held that “‘exceeds authorized access’ in the CFAA is limited
14 to violations of restrictions on access to information, and not restrictions on its use.” *Id.* at
15 863-64. The court also explicitly stated that its definition is not limited to § 1030(c)(4),
16 but anywhere else in the statute where the phrase “exceeds authorized access” is found in
17 the statute, including § 1030(c)(2). *Id.* at 859. Applying the definition to the facts of the
18 case, the court held that the charges failed because “Nosal’s accomplices had permission
19 to access the company database and obtain the information contained within.” *Id.* at 864.

20 District courts within this district have applied *Brekka* and *Nosal*, holding the line
21 between when access to a computer and files are permitted—regardless of what actions
22 are taken with the retrieved information thereafter—and when access to a computer and
23 files are not permitted. For example, in *Oracle Am., Inc. v. Serv. Key, LLC*, No. C 12-
24 00790 SBA, 2012 WL 6019580, at *5 (N.D. Cal. Dec. 3, 2012), the court found no
25 violation under §1030(a)(2)(C) or § 1030(a)(4) where the FAC did not allege that
26 defendant accessed plaintiff’s website without authorization, but only that the access was
27 “for the ostensibly improper ‘purpose’ of using its authorized access to provide support
28 services to third parties.” The court held that squarely fell within *Nosal*’s holding: “using

1 legitimate access credentials to access websites and then distributing information
2 obtained from such access to third parties who have no right to receive such
3 information.” *Id.* In contrast, courts have allowed cases to proceed under these sections of
4 the CFAA where the complaint alleged no authorized access to the computer or data.
5 *See, e.g., Craigslist Inc. v. 3Taps Inc.*, 964 F. Supp. 2d 1178, 1184 (N.D. Cal. 2013)
6 (defendant’s permission to access the website had been explicitly revoked in cease-and-
7 desist letter); *Oracle Am., Inc. v. TERiX Computer Co., Inc.*, No. 5:13-CV-03385-PSG,
8 2014 WL 31344, at *7 (N.D. Cal. Jan. 3, 2014) (defendants were alleged to “have no
9 access rights whatsoever and yet proceeded to login to Oracle’s secure support website
10 anyway”).

11 Here, a review of the FAC reveals that the facts pled fall squarely within *Nosal* as
12 misappropriation claims. Plaintiffs allege that they had executed agreements with both
13 Defendant Stover and Defendant Hutcheson during their employment that governed their
14 receipt, use, and disclosure of confidential and proprietary information, including
15 prohibiting each from disclosing confidential information and returning company
16 property when requested. FAC ¶¶ 44-48. Plaintiffs allege that during Defendants’
17 employment, they engaged in “side work” of the same nature for a competing company.
18 FAC ¶¶ 49-53. Plaintiffs allege that Defendants “had access” to the 2017 and 2021
19 Technical drawings while employed by Allied Universal. FAC ¶ 57. Plaintiffs then allege
20 that Defendants created an infringing drawing based on these two drawings. FAC ¶¶ 60-
21 64. Taken together, these allegations do not establish that Defendants did not have
22 permission to access the computer systems when the access occurred or that they did not
23 have the right to access the files during the course of their employment. Rather,
24 Plaintiffs’ allegations of misconduct center around Defendants’ subsequent *use* of the
25 files they accessed, which are alleged to be in violation of their employment agreements
26 and trademark and copyright infringement. But, these are precisely the restrictions on
27 “use” of information appropriately accessed in the first place that cannot be the basis of a
28 CFAA under *Nosal*. The complaint includes no other mention of potential access by

1 Defendants of Allied Universal’s computer systems, either during their employment or
2 afterwards. Thus, the Court finds that Plaintiffs failed to adequately plead causes of
3 action under either 18 U.S.C. § 1030(a)(2)(C) or § 1030(a)(4) for this reason as well.

4 **ii. 18 U.S.C. §§ 1030(a)(5)**

5 Unlike the previous two sections, under § 1030(a)(5), access to the protected
6 computer must be “without authorization” and such conduct must cause “damage and
7 loss.” The requirement for “without authorization” is problematic for the same reasons
8 discussed above—the FAC is devoid of any facts suggesting that Defendants accessed
9 Plaintiffs’ computer systems outside their employment or without permitted access.

10 Moreover, the “damage” that is required under this section of the CFAA is narrow.
11 Section 1030(e)(8) of the CFAA defines “damage” as “any impairment to the integrity or
12 availability of data, a program, a system, or information.” Courts have interpreted this
13 term to be limited to “damage” in the form of “harm to computers or networks, not
14 economic harm due to the commercial value of the data itself.” *NetApp, Inc. v. Nimble*
15 *Storage, Inc.*, 41 F. Supp. 3d 816, 834 (N.D. Cal. 2014) (collecting cases); *see also*
16 *Farmers Ins. Exchange v. Steele Ins. Agency, Inc.*, No. 2:13-cv-00784, 2013 WL
17 3872950, at *21 (E.D. Cal. July 25, 2013) (“Indeed, a number of courts have noted that
18 ‘costs not related to computer impairment or computer damages are not compensable
19 under the CFAA.’”) (citation omitted). In *NetApp*, plaintiff only alleged that defendant
20 “accessed its databases without permission, not that he damaged any systems or
21 destroyed any data.” *NetApp*, 41 F. Supp. 3d at 834. The court concluded that “damage”
22 was inadequately pled because the complaint only alleged “harm to the integrity of its
23 data, programs, and computer system” and dismissed the claim. *Id.*

24 Unfortunately for Plaintiffs, the FAC fares no better. Plaintiffs only allege that they
25 suffered “damage and loss” in the form of “harm to Allied Universal’s data, programs,
26 and computer system and other losses and damage.” FAC ¶ 91. Plaintiff fails to factually
27 allege what damages its actual computers or computer systems or computer networks
28 suffered as a result of Defendants’ access. Allegations of any damages related to the

1 value of data that might have been taken, competitive harm in the form of lost business,
2 or lost revenue from misappropriation claims cannot form the basis of “damage” under
3 this section. *NetApp*, 41 F. Supp. 3d at 834.

4 Thus, the Court finds that Plaintiffs fail to adequately plead a cause of action under
5 18 U.S.C. § 1030(a)(5) for failing to allege access “without authorization” and causing
6 “damage” as well.

7 **C. Copyright Infringement**

8 In the eighth cause of action, Plaintiffs allege that Defendants used its copyrighted
9 materials without permission. FAC ¶¶ 124-133. Plaintiff’s FAC alleges three copyrighted
10 works at issue: 1) a Quote Builder, 2) a 2017 Technical Drawing, and 3) a 2021
11 Technical Drawing. FAC ¶¶ 32.

12 In order to state a claim for copyright infringement, a plaintiff must show: 1)
13 ownership of the copyrighted work; and 2) that defendant copied the protected elements
14 of the work. *Unicolors, Inc. v. Urb. Outfitters, Inc.*, 853 F.3d 980, 984 (9th Cir. 2017).
15 Copying may be shown by direct evidence or circumstantial evidence establishing that
16 (1) the defendant had access to the copyrighted work prior to the creation of defendant’s
17 work and (2) there is substantial similarity of the general ideas and expression between
18 the works. *Id.*

19 Plaintiffs allege that it uses a computer-aided drafting program (AutoCAD) to
20 prepare engineering design of its services, and in order to efficiently do this, created
21 custom AutoCAD engineering templates—which are the 2017 and 2021 Technical
22 Drawings. FAC ¶ 56. These drawings “include symbols, formats, illustrations, layouts,
23 blocks, icons, notes, descriptions, disclaimers, and images” which are unique to
24 Plaintiffs. *Id.* Plaintiffs allege that Defendants had access to these Technical Drawings
25 during the course of their employment. FAC ¶ 57. Plaintiffs also allege that the Coastal
26 Fire design drawing received from the Los Angeles apartment complex authored by
27 Defendants is derivative of the 2017 and 2021 Technical drawings in that it “reflects the
28 same layout,” “utilizes the same symbols and legends,” “contains identical stock photos,”

1 and includes the disclaimer language discussed above that reference Allied Universal
2 Security Services. FAC ¶¶ 62-63.

3 Based on these allegations, Plaintiffs have sufficiently alleged a cognizable claim
4 for copyright infringement of the 2017 and 2021 Technical Drawings. As to the first
5 factor, Plaintiffs include copyright registration certifications for the drawings. FAC ¶¶ 33,
6 34, Exhs. A, B. “[T]he certificate of a registration made before or within five years after
7 first publication of the work shall constitute prima facie evidence of the validity of the
8 copyright and of the facts stated in the certificate.” 17 U.S.C. § 410(c). The 2017
9 Technical Drawing is alleged to have first been published in 2017 and received the
10 registration on September 1, 2022. FAC ¶ 33, Ex. A. The 2021 Technical Drawing is
11 alleged to have first been published in 2021 and received the registration on August 31,
12 2022. FAC ¶ 34, Ex. B. This is sufficient for a *prima facie* showing that Defendants fail
13 to rebut. As to the second factor showing “use” by Defendants, Plaintiffs have also
14 alleged that Defendants had access to the templates during their course of employment.
15 FAC ¶ 57. Further, Plaintiffs have alleged that there are substantial similarities between
16 the drawings and the allegedly infringing design. FAC ¶¶ 62-63; *see Unicolors*, 853 F.3d
17 at 984 (copying may be shown by access coupled with substantial similarity of the
18 general ideas and expression between the works).

19 Defendants argue that Plaintiffs’ copyright claim must fail because the complaint
20 fails to allege that they “used any of plaintiffs’ copyrighted AutoCAD engineering
21 templates software to create a new AutoCAD engineering template.” ECF No. 15-1.
22 Defendants contend that the templates are computer programs and that the only way they
23 could have infringed is by creating a “new version of the existing computer program,”
24 and not by using the software to create an alleged infringing drawing. *Id.* at 18-19.
25 Defendants argue Hutcheson used his own CAD software, obtained the General
26 Disclaimer from the internet, and created the allegedly infringing design drawing in this
27 manner. *Id.* at 20.
28

1 Defendants' arguments seem to be based on a misunderstanding regarding what
2 templates in AutoCAD are and how they work. They are not software programs in the
3 sense that they are source code. Rather, templates are custom drawings that store default
4 settings, styles, layouts, and other data. *See*
5 [https://help.autodesk.com/view/ACD/2023/ENU/?guid=GUID-02979F86-385F-4A53-](https://help.autodesk.com/view/ACD/2023/ENU/?guid=GUID-02979F86-385F-4A53-A3FB-7202F1225CDA)
6 [A3FB-7202F1225CDA](https://help.autodesk.com/view/ACD/2023/ENU/?guid=GUID-02979F86-385F-4A53-A3FB-7202F1225CDA) (last visited June 7, 2023). These templates are used by
7 companies to maintain consistent standards and styles across the organization. *Id.* Thus,
8 they serve as a starting point for creating a drawing, and the user can then fill in and
9 customize the template further as needed for the given project.

10 At least one court has found a cognizable copyright infringement claim involving
11 similar templates. *Dtech Commc 'ns, LLC v. OSC Eng 'g, Inc.*, No. 11CV1425-MMA-
12 BLM, 2013 WL 12094839 (S.D. Cal. Jan. 11, 2013). The copyrighted works there were
13 templates used to generate reports for clients, where the templates included "fillable
14 fields for technical specifications, customer names, addresses, GPS coordinates, and other
15 parameters depending on the particular needs of each [report] requested." *Id.* at *1 ("The
16 Template streamlined the process of creating EME reports at Dtech, which resulted in an
17 EME report with a consistent format, reliable results, a reduced time to produce, and an
18 overall increased efficiency."). On summary judgment, the court held that copying was
19 found where defendant used the copyrighted template to create the allegedly infringing
20 reports, and there were significant similarities between the template and the allegedly
21 infringing reports based on wording and the "look and feel" of the documents. *Id.* at *6
22 (finding that many paragraphs were copied word for word or paraphrased, identical
23 grammar mistakes occurred in the same places, headings appeared in same place,
24 formatting was identical, and charts and tables were indistinguishable).

25 Plaintiffs' theory of copyright infringement alleged in the FAC with regards to the
26 2017 and 2021 Technical Drawings are similar. Whether there is sufficient similarity
27 between the templates and Defendants' Coastal Fire design drawing will be a factual
28

1 determination not appropriate on a motion to dismiss. However, the allegations are
2 sufficient to allege a copyright claim at this stage of the proceedings.

3 Plaintiff's FAC does also include copyright allegations regarding its Quote
4 Builder.³ FAC ¶ 32 (including Quote Builder in the definition of the "Works"); ¶ 35
5 (discussing copyright registration to Quote Builder); ¶ 58 (discussing how Quote Builder
6 is used to prepare and present estimates of costs and generates proposals of engineering
7 designs); ¶¶ 124-133 (generally alleging copyright infringement of the "Works").
8 However, the complaint is devoid of any actual factual allegations as to how Defendants
9 had access to Quote Builder to generate any quotes or how Defendants "copied" or
10 otherwise used Quote Builder in a way that constitutes copyright infringement.

11 Accordingly, Defendants' motion to dismiss is **DENIED** as to the 2017 and 2021
12 Technical Drawing copyright claims. The motion to dismiss the copyright infringement
13 claim as to the Quote Builder copyright is **GRANTED**.

14 **IV. REQUEST FOR SANCTIONS**

15 In Plaintiffs' opposition to Defendants' motion to dismiss, Plaintiffs include a
16 request for sanctions in the form of attorney's fees for having to file a response to the
17 motion. ECF No. 17 at 20-21. Plaintiffs argue that Defendants' motion was based on
18 "frivolous arguments" that they "knew were legally unfounded" and were based on
19 "unfamiliarity with intellectual property law." *Id.* at 20. Further, Plaintiffs argue that
20 Defendants failed to meet and confer as were required by the Chambers Rules⁴ and
21 generally, for failing to respond to emails and otherwise engage with counsel in
22 attempting to resolve the issue before a motion was filed. *Id.* at 21. Defendants respond
23 by arguing that schedules prevented an immediate meet and confer, but that they did
24

25
26 ³ It is unclear from the FAC what Quote Builder is—whether it is a software program or application that
27 is used to generate quotes or proposals, or whether it is another type of template that users can fill in to
28 generate quotes or proposals.

⁴ The Chambers Rules in effect at the time that Defendants filed their motion were those of Judge Linda Lopez. This case was subsequently transferred to the undersigned on March 20, 2023. ECF No. 22.

1 attempt to initiate a meet and confer prior to the motion. ECF No. 21 at 8-9. Defendants
2 further argue that their motion is not groundless for the reasons stated in their motion and
3 reply brief. *Id.* at 9.

4 The Court has the inherent power to impose sanctions. *Chambers v. NASCO, Inc.*,
5 501 U.S. 32, 45 (1991). However, the Court’s “inherent powers must be exercised with
6 restraint and discretion.” *Advantacare Health Partners v. Access IV*, 2004 WL 1837997,
7 at *4, 2004 U.S. Dist. LEXIS 16835, at *12 (N.D. Cal. Aug. 17, 2004) (citing *Roadway*
8 *Exp., Inc. v. Piper*, 447 U.S. 752, 764 (1980)). Exercising its sound discretion, the Court
9 declines to impose sanctions here. As outlined above, the Court is granting in part some
10 of Defendants’ motion to dismiss. Under these circumstances, not all of Defendants’
11 arguments were groundless and the conduct does not warrant sanctions. Thus, Plaintiff’s
12 request for sanctions is **DENIED**.

13 V. CONCLUSION

14 After due consideration and for the reasons discussed above, the Court **GRANTS**
15 **IN PART** and **DENIES IN PART** Defendants’ motion to dismiss as summarized below:

- 16 1) Defendants’ motion to dismiss Plaintiffs’ trademark infringement claim as to
17 the word trademarks “Allied Universal” and “Allied Universal Security
18 Systems” is **DENIED**. The motion to dismiss the trademark infringement
19 claim as to the three design trademarks and the word trademark for “Allied
20 Universal Security Services” is **GRANTED**.
- 21 2) Defendants’ motion to dismiss Plaintiffs’ claim under the Computer Fraud
22 and Abuse Act is **GRANTED**.
- 23 3) Defendants’ motion to dismiss Plaintiffs’ copyright infringement claim as to
24 the 2017 and 2021 Technical drawings is **DENIED**. The motion to dismiss
25 the copyright infringement claim as to the Quote Builder copyright is
26 **GRANTED**.

27 Plaintiffs are permitted to file an amended complaint if they wish to cure the deficiencies
28 in these causes of action **within 30 days of this order**. If Plaintiff fails to file an amended

1 complaint by that deadline, Defendant must respond to the new amended complaint
2 **within 14 days of that deadline.** Plaintiffs' request for sanctions against Defendants is
3 **DENIED.**

4 **IT IS SO ORDERED.**

5 Dated: June 15, 2023

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7 _____
8 Honorable James E. Simmons, Jr.
9 Unites States District Judge

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