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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DR. SEUSS ENTERPRISES, L.P., a
California limited partnership,

Plaintiff,

v.

COMICMIX LLC, a Connecticut
limited liability company; MR.
GLENN HAUMAN, an individual;
MR. DAVID JERROLD
FRIEDMAN A/K/A DAVID
GERROLD, an individual; and MR.
TY TEMPLETON, an individual,

Defendants.

CASE NO.: 3:16-cv-02779-JLS-BGS

**PLAINTIFF DR. SEUSS
ENTERPRISES, L.P.'S NOTICE OF
MOTION AND RENEWED
MOTION FOR SUMMARY
JUDGMENT**

Date: June 10, 2021
Time: 1:30 pm
Cttrm: 4D
Judge: Hon. Janis L. Sammartino

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on June 10, 2021 at 1:30 p.m. in the
 3 Courtroom of the Honorable Janis L. Sammartino of the above-entitled court,
 4 located at 221 W. Broadway, San Diego, California 92101, or via teleconference at
 5 the Court's instance, Plaintiff Dr. Seuss Enterprises, L.P ("DSE") will and hereby
 6 does renew its motion for summary judgment on DSE's copyright infringement
 7 claim, seeking a finding of willful copyright infringement, and the imposition of
 8 enhanced statutory damages under 17 U.S.C. § 504(c).

9 Summary judgment of copyright infringement against Defendants and in
 10 favor of DSE is warranted in this case because, as a matter of law, Defendants have
 11 infringed three of DSE's copyrights. DSE's prior motion for summary judgment
 12 was denied solely on the basis of Defendants' claim that their copying of DSE's
 13 works was a fair use. On appeal the Ninth Circuit found that "[t]he bottom line is
 14 that ComicMix created, without seeking permission or a license, a non-
 15 transformative commercial work that targets and usurps *Go!*'s potential market"
 16 and targeted the "heart" of DSE's works *Oh, the Places You'll Go!*, *How the Grinch*
 17 *Stole Christmas!* and *The Sneetches and Other Stories*. *Dr. Seuss Enterprises L.P.*
 18 *v. ComicMix LLC*, 983 F.3d 443, 448, 461 (9th Cir. 2020). After weighing all four
 19 fair use factors, the appellate court concluded that the factors "decisively" favored
 20 DSE. *Dr. Seuss Enterprises L.P. v. ComicMix LLC*, 983 F.3d 443, 448, 461 (9th
 21 Cir. 2020). Accordingly, because ComicMix is either foreclosed from or has
 22 otherwise waived the opportunity to oppose DSE's motion on any other grounds,
 23 the Court should grant DSE's renewed motion.

24 In addition, Defendants' infringement was willful because Defendants, at the
 25 least, showed a reckless disregard to and willful blindness of DSE's rights. As
 26 such, the Court should award enhanced statutory damages totaling \$225,000 in
 27 favor of DSE, taking into consideration the significant value of DSE's copyrights

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1 that were infringed, Defendants' willfulness, and the need to deter Defendants and
2 other future bad actors.

3 This Motion is made pursuant to Civil Local Rule 7.1 and is based on this
4 Notice of Motion and Motion and the accompanying Memorandum of Points and
5 Authorities, both of which are based entirely on the prior summary judgment record
6 already before the Court, including the DSE Separate Statement of Undisputed
7 Material Facts (ECF No. 107-2), the Declaration of Tamar Y. Duvdevani and
8 exhibits attached thereto (*Id.* at 107-22), Defendants' opposition (ECF No. 120),
9 DSE's reply (ECF No. 140), other records and files of this action, and any
10 argument or additional evidence that is permitted by this Court.

11 Dated: April 9, 2021

Respectfully submitted,

12 By /s/ Tamar Duvdevani

13 TAMAR DUVDEVANI
14 DLA Piper LLP (US)

15 *Attorneys for Plaintiff*
16 *Dr. Seuss Enterprises, L.P.*