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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 Buck G. Woodall, a.k.a. Buck  
12 Woodall, an individual,

13 Plaintiff,

14 v.

15 The Walt Disney Company *et al.*,

16 Defendants.

Case No.: CV 20-3772-CBM(Ex)

**ORDER RE: CROSS-SUMMARY  
JUDGMENT MOTIONS [403] [432]**

17 The matters before the Court are: (1) Defendants' Motion for Summary  
18 Judgment (Dkt. No. 403); and (2) Plaintiff's Motion for Partial Summary  
19 Judgment Against Defendants (Dkt. No. 432).<sup>1</sup>

20 **I. BACKGROUND**

21 On April 24, 2020, Plaintiff filed this copyright infringement and trade  
22 secrets action arising from Defendants' alleged infringement and misappropriation  
23 of Plaintiff Buck Woodall's (hereinafter, "Plaintiff's" or "Woodall's") "Bucky"  
24 and "Bucky the Wave Warrior" animated film projects" through Defendants'  
25 production and release of the Disney animated film *Moana*. The Second

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27 <sup>1</sup> The Court denies Defendants' request to deny Plaintiff's Motion for Partial  
28 Summary Judgment for failure to meet and confer as required under Local Rule 7-3 because Defendants fail to demonstrate they were prejudiced by any failure by Plaintiff to thoroughly meet and confer.

1 Amended Complaint (“SAC”), which is the operative complaint, asserts the  
2 following five causes of action: (1) copyright infringement, 17 U.S.C. § 501 *et*  
3 *seq.*, against all Defendants;<sup>2</sup> (2) violations of Defend Trade Secrets Act of 2016  
4 (“DTSA”), 18 U.S.C. § 1836, against all Defendants; (3) violations of the  
5 California Uniform Trade Secrets Act (“CUTSA”), Cal. Civ. Code §§ 3426 *et*  
6 *seq.*, against all Defendants; (4) fraud against all Defendants; and (5) false  
7 promises against Marchick. (Dkt. No. 94.) Defendants move for summary  
8 judgment on all of Plaintiff’s claims. Plaintiff moves for partial summary  
9 judgment on certain issues and affirmative defenses.

## 10 II. STATEMENT OF THE LAW

11 On a motion for summary judgment, the Court must determine whether,  
12 viewing the evidence in the light most favorable to the nonmoving party, there are  
13 any genuine issues of material fact. *Simo v. Union of Needletrades, Indus. &*  
14 *Textile Employees*, 322 F.3d 602, 609-10 (9th Cir. 2003); Fed. R. Civ. P. 56.  
15 Summary judgment against a party is appropriate when the pleadings, depositions,  
16 answers to interrogatories, and admissions on file, together with the affidavits, if  
17 any, show that there is no genuine issue as to any material fact and that the  
18 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. An  
19 issue is “genuine” only if there is a sufficient evidentiary basis on which a  
20 reasonable jury could find for the non-moving party. *Anderson v. Liberty Lobby,*  
21 *Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “material” only if it might  
22 affect the outcome of the suit under governing law. *Id.* The evidence presented  
23 by the parties must be admissible. Fed. R. Civ. P. 56(e). In judging evidence at

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25 <sup>2</sup> The SAC names the following Defendants: Defendants The Walt Disney  
26 Company, Walt Disney Pictures, Walt Disney Animation Studios, Disney  
27 Enterprises, Inc., Disney Consumer Products, Inc., Disney Consumer Products &  
28 Interactive Media, Inc., Walt Disney Direct-To-Consumer & International, Disney  
Book Group, LLC, Disney Interactive Studios, Inc., Disney Store USA, LLC,  
Disney Shopping, Inc., Buena Vista Home Entertainment, Inc., Buena Vista  
Books, Inc., Mandeville Films, Inc., Jenny Marchick, Pamela Ribon (collectively,  
“Defendants”).

1 the summary judgment stage, the Court does not make credibility determinations  
2 or weigh conflicting evidence. *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*  
3 *Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987). Rather, “[t]he evidence of the  
4 nonmovant is to be believed, and all justifiable inferences are to be drawn in [the  
5 nonmovant’s] favor.” *Anderson*, 477 U.S. at 255. But the non-moving party must  
6 come forward with more than “the mere existence of a scintilla of evidence.” *Id.*  
7 at 252. “Conclusory, speculative testimony in affidavits and moving papers is  
8 insufficient to raise genuine issues of fact and defeat summary judgment.”  
9 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007) (citations  
10 omitted).<sup>3</sup>

### 11 III. DISCUSSION

#### 12 A. Trade Secrets Misappropriation

13 Plaintiff asserts two causes of action for trade secrets misappropriation  
14 under federal and California law for violation of the DTSA, 18 U.S.C. § 1836  
15 (second cause of action), and CUTSA, Cal. Civ. Code §§ 3426 *et seq.* (third cause  
16 of action). Defendants moves for summary judgment on Plaintiff’s trade secrets  
17 misappropriation claims on the ground they are time barred. Plaintiff moves for  
18 partial summary judgment on the basis Defendants cannot meet their burden of  
19 proof on their statute of limitations defense.

20 The applicable statute of limitations for Plaintiff’s trade secrets claims  
21 under DTSA and CUTSA is three years from the date the misappropriation is  
22 discovered or should have been discovered. *See* 18 U.S.C. § 1836(d); Cal. Civ.  
23 Code § 3426.6. “[A] continuing misappropriation constitutes a single claim”  
24 under both the DTSA and CUTSA. *See* 18 U.S.C. § 1836(d); Cal. Civ. Code §  
25 3426.6. “[T]he limitations period begins once the plaintiff has notice or  
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27 <sup>3</sup> The Court’s rulings on the parties’ evidentiary objections and requests for  
28 judicial notice filed in connection with the cross-summary judgment motions are  
set forth in separate orders.

1 information of circumstances to put a reasonable person *on inquiry*.... A plaintiff  
2 need not be aware of the specific facts necessary to establish the claim; that is a  
3 process contemplated by pretrial discovery. Once the plaintiff has a suspicion of  
4 wrongdoing, and therefore an incentive to sue, she must decide whether to file suit  
5 or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must  
6 go find the facts; she cannot wait for the facts to find her.” *Jolly v. Eli Lilly &*  
7 *Co.*, 44 Cal. 3d 1103, 1110-11 (Cal. 1988) (internal quotations and citations  
8 omitted); *see also Norgart v. Upjohn Co.*, 21 Cal. 4th 383, 397-98 (Cal. 1999) (the  
9 statute of limitations begins to run when the plaintiff “at least suspects a factual  
10 basis, as opposed to a legal theory, for its elements, even if he lacks knowledge  
11 thereof — when, simply put, he at least suspects [ ] that someone has done  
12 something wrong to him, wrong being used, not in any technical sense, but rather  
13 in accordance with its lay understanding”).

14 Here, the statute of limitations for Plaintiff’s trade secret misappropriation  
15 claims began to run when Plaintiff suspected misappropriation, not when Plaintiff  
16 completed his “full analysis” comparing *Moana* to Plaintiff’s “Bucky” materials.  
17 *See MGA Ent., Inc. v. Mattel, Inc.*, 41 Cal. App. 5th 554, 562–64 (Cal. Ct. App.  
18 2019); *Cypress Semiconductor Corp. v. Super. Ct.*, 163 Cal. App. 4th 575, 587  
19 (Cal. Ct. App. 2008); *Chung v. Intellect Soft Grp. Corp.*, 2022 WL 20184655, at  
20 \*13 (N.D. Cal. July 13, 2022) (citing *MGA Ent., Inc.*, 41 Cal. App. 5th at 562-  
21 64)); *Wolf v. Travolta*, 167 F. Supp. 3d 1077, 1102 (C.D. Cal. 2016); *Moddha*  
22 *Interactive, Inc. v. Philips Elec. N. Am. Corp.*, 92 F. Supp. 3d 982, 993-94 (D.  
23 Haw. 2015), *aff’d sub nom. Moddha Interactive, Inc. v. Philips Elecs. N. Am.*  
24 *Corp.*, 654 F. App’x 484 (Fed. Cir. 2016) (citing *Fox v. Ethicon Endo-Surgery,*  
25 *Inc.*, 110 P.3d 914, 920 (Cal. 2005)). Plaintiff testified at his deposition that when  
26 he watched the *Moana* film in Spanish in December 2016, “I felt like, you know, I  
27 had my suspicions that they were -- stole my film, copied my film, and I thought  
28 what a job they did botching my film and turning it into a musical. I knew at that

1 point I could not, you know, sit here and really absorb and analyze this film and I  
2 needed to get it later on DVD and watch it in English so to really figure out what  
3 had happened to me in terms of this theft.” (Plaintiff Depo. 247:17-25.) Plaintiff  
4 does not submit any evidence contradicting his own deposition testimony that he  
5 had suspicions in December 2016 when he watched *Moana* in the theater.  
6 Therefore, it is undisputed Plaintiff had suspicions that *Moana* misappropriated  
7 his trade secrets no later than in December 2016 when he watched *Moana* in a  
8 theater. Accordingly, the statute of limitations on Plaintiff’s trade secrets  
9 misappropriation claims began to run in December 2016 but Plaintiff did not file  
10 this lawsuit until April 24, 2020. Plaintiff’s trade secrets misappropriation claims  
11 are therefore time-barred under the applicable three-year statute of limitations.  
12 *See Jolly*, 44 Cal. 3d at 1112; *B. Braun Med., Inc. v. Rogers*, 163 F. App’x 500,  
13 504 (9th Cir. 2006) (citing *Jolly*, 44 Cal. 3d at 1112)).

14 Even assuming the statute of limitations did not begin to run on Plaintiff’s  
15 trade secrets claims in December 2016 when Plaintiff watched *Moana* in the  
16 theater, it is further undisputed Plaintiff made screenshot comparisons from the  
17 DVD of *Moana* with Plaintiff’s trade secrets on March 15, 2017, Plaintiff and his  
18 brother Benjamin Woodall emailed each other on March 23, 2017 “strategizing  
19 about the *Moana* case,” and Plaintiff contacted an attorney on March 27, 2017.  
20 *See Gabriel Techs. Corp. v. Qualcomm Inc.*, 857 F. Supp. 2d 997, 1003-07 (S.D.  
21 Cal. 2012). Therefore, it is undisputed Plaintiff had further suspicions that *Moana*  
22 used Plaintiff’s purported trade secrets in March 2017, but Plaintiff did not file  
23 this lawsuit until April 24, 2020. Plaintiff’s trade secret claims are thus untimely.  
24 *See* 18 U.S.C. § 1836(d); Cal. Civ. Code § 3426.6; *Jolly*, 44 Cal. 3d at 1110-11;  
25 *Norgart*, 21 Cal. 4th at 397–98; *B. Braun Med., Inc.*, 163 F. App’x at 504.

26 Accordingly, the Court grants Defendants’ Motion for Summary Judgment  
27 on Plaintiff’s trade secrets claims as time-barred, and denies Plaintiff’s Motion for  
28 Partial Summary Judgment on the ground Defendants cannot meet their burden of

1 proof on their statute of limitations defense as to Plaintiff's trade secrets claim.<sup>4</sup>

2 **B. Fraud and False Promises**

3 Plaintiff's fifth cause of action is for fraud against all Defendants.

4 Plaintiff's sixth cause of action is for false promises against Defendant Marchick  
5 only. Defendants move for summary judgment on Plaintiff's fraud and false  
6 promises claims on the ground they are time-barred because the alleged  
7 misrepresentations and false promises occurred more than three years before  
8 Plaintiff filed this lawsuit. Plaintiff moves for partial summary judgment on the  
9 basis Defendants cannot meet their burden of proof on their statute of limitations  
10 defense.

11 A three-year statute of limitations applies to Plaintiff's fraud and false  
12 promises claims. *See* Cal. Civ. Proc. Code § 338(d) (three year statute of  
13 limitations for "[a]n action for relief on the ground of fraud or mistake"); *see also*  
14 *Ward v. Chanana*, 2008 WL 5383582, at \*5 (N.D. Cal. Dec. 23, 2008). Cal. Civ.  
15 Proc. Code § 338(d) provides "[t]he cause of action" for fraud or mistake "is not  
16 deemed to have accrued until the discovery, by the aggrieved party, of the facts  
17 constituting the fraud or mistake." Therefore, a plaintiff must bring a fraud claim  
18 within three years after "discovery . . . of the fraud *or* facts that would lead a  
19 reasonably prudent person to suspect fraud." *Doe v. Roman Catholic Bishop of*  
20 *Sacramento*, 189 Cal. App. 4th 1423, 1430 (Cal. Ct. App. 2010) (emphasis in  
21 original); *Vera v. REL-BC, LLC*, 66 Cal. App. 5th 57, 69 (Cal. Ct. App. 2021);  
22 *Kline v. Turner*, 87 Cal. App. 4th 1369, 1373-74 (Cal. Ct. App. 2001) (citing Cal.  
23 Civ. Proc. Code § 338(d)); *Jolly*, 44 Cal. 3d at 1110-11); *Moqaddem v. Pinto*,  
24 2023 WL 2628686, at \*3 (C.D. Cal. Jan. 13, 2023) (citing *Kline*, 87 Cal. App. 4th  
25 at 1373-74).

26 Here, Plaintiff's fraud claim is based on Defendant Marchick's alleged

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27 <sup>4</sup> Because Plaintiff's trade secrets claims are time-barred, the Court does not rule  
28 on the other issues raised by the parties as to Plaintiff's trade secrets claims.

1 fraudulent representations to Plaintiff “[b]eginning on October 22, 2003 and  
2 continuing repeatedly until Disney’s release of *Moana* in November of 2016”  
3 while Marchick was “operating in conjunction and with express ratification and  
4 approval of all other Defendants.” (SAC ¶¶ 89-90.) The SAC alleges Marchick  
5 represented to Plaintiff “orally and in writing that the confidentiality of all  
6 materials provided her by Woodall relative to *Bucky* would be honorably  
7 maintained and not violated by her in any manner” and “represented to Woodall  
8 that his accelerated delivery of materials to the Defendants relative to the film  
9 project *Bucky*, including for example the trailer and the 2011 script prepared by  
10 Woodall, were being delivered so that the Defendants could evaluate and then  
11 assist Woodall in commercializing *Bucky* in a successful manner for the benefit of  
12 both the Defendants and Woodall.” (*Id.*) The SAC alleges “[t]hese  
13 representations by Marchick (and by all Defendants named in this Complaint  
14 through their express ratification and approval) were made to induce action by  
15 [Plaintiff] and they did induce the action of [Plaintiff] repeatedly and continuously  
16 delivering all of his ideas related to *Bucky* to the Defendants.” (*Id.* ¶ 90.)

17 Moreover, Plaintiff’s false promises claim against Marchick is based on  
18 Marchick’s alleged execution of the Confidentiality Agreement on October 22,  
19 2003, which the SAC alleges is attached thereto as Exhibit C. (*Id.* ¶ 101.) The  
20 SAC alleges by executing the Confidentiality Agreement, Marchick “stipulate[ed]  
21 in connection therewith that all materials provided to her by Woodall are  
22 confidential and that any disclosure or use of these materials could cause serious  
23 harm or damage to [Plaintiff],” and at the time she executed the Confidentiality  
24 Agreement, “Marchick orally made promises to Woodall related to that agreement  
25 including most importantly that she would abide by and honor the strict  
26 confidentiality of all materials submitted to her appertaining or relating in any  
27 manner to *Bucky*.” (*Id.* ¶¶ 101-02.) The SAC further alleges Marchick “at the  
28 express direction of the Defendants, and each of them -- made the other promises



1 and representations, and engaged in the surrounding misconduct, as set forth in  
2 paragraphs 89 through 99 of this Complaint.” (*Id.* ¶ 103.)

3 Because it is undisputed Plaintiff suspected *Moana* used Plaintiff’s  
4 allegedly confidential *Bucky* materials when he watched *Moana* in December  
5 2016, the statute of limitations for Plaintiff’s fraud and false promises claims  
6 began to run in December 2016. *See Norgart*, 21 Cal. 4th at 397-98; *Critchlow v.*  
7 *Critchlow*, 617 F. App’x 664, 666 (9th Cir. 2015), *as amended on denial of reh’g*  
8 *and reh’g en banc* (July 16, 2015); *Kline*, 87 Cal. App. 4th at 1374-75.<sup>5</sup> Since  
9 Plaintiff did not file this lawsuit until April 2020, Plaintiff’s fraud and false  
10 promises claims are time-barred under the applicable three-year statute of  
11 limitations. *See* Cal. Civ. Proc. Code § 338(d).

12 Moreover, Plaintiff’s fraud conspiracy claim is based on alleged fraud that  
13 occurred between 2005 and 2008 “in order to ultimately make and release the  
14 movie *Moana*” (SAC ¶ 91.) However, because it is undisputed Plaintiff suspected  
15 *Moana* used Plaintiff’s Bucky materials when he watched *Moana* in the theater in  
16 December 2016 and when he watched *Moana* on DVD in March 2017 (*see supra*),  
17 the three-year statute of limitations on Plaintiff’s fraud conspiracy claim began to  
18 run in December 2016 or at the latest March 2017. Because Plaintiff did not file  
19 his Complaint until April 2020, Plaintiff’s fraud conspiracy claim is also time-  
20 barred under the applicable three-year statute of limitations. *See* Cal. Civ. Proc.  
21 Code § 338(d); *Aaroe v. First American Title Ins. Co.*, 222 Cal. App. 3d 124, 128  
22 (Cal. Ct. App. 1990); *River Colony Ests. Gen. P’ship v. Bayview Fin. Trading*  
23 *Grp., Inc.*, 287 F. Supp. 2d 1213, 1220 (S.D. Cal. 2003).

24 Accordingly, the Court grants Defendants’ Motion for Summary Judgment  
25 on the fraud, false promises, and conspiracy to commit fraud claims as time-  
26 barred. The Court denies Plaintiff’s Motion for Partial Summary Judgment on the

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28 <sup>5</sup> *See also Fox, Inc.*, 35 Cal. 4th at 807; *Bernson v. Browning-Ferris Indus.*, 7 Cal.  
4th 926, 932 (1994).



1 ground Defendants cannot meet their burden of proof on their statute of limitations  
2 defense as to Plaintiff's fraud, false promises, and conspiracy to commit fraud  
3 claims. Moreover, the Court denies Plaintiff's Motion for Partial Summary  
4 Judgment as to the issue of falsity for his fraud and false promises claims because  
5 those claims are time-barred.<sup>6</sup>

### 6 **C. Copyright Infringement**

7 The parties each move for summary judgment on Plaintiff's copyright  
8 infringement claim. To prevail on his copyright infringement claim, Plaintiff must  
9 prove he (1) "owns a valid copyright in [the work]" and (2) Defendants "copied  
10 protected aspects of [Plaintiff's work]." *Rentmeester v. Nike, Inc.*, 883 F.3d 1111,  
11 1116–17 (9th Cir. 2018) (citations omitted). The second element has two distinct  
12 components: "copying" and "unlawful appropriation." *Id.* "When the plaintiff  
13 lacks direct evidence of copying, he can attempt to prove it circumstantially by  
14 showing that the defendant had access to the plaintiff's work and that the two  
15 works share similarities probative of copying." *Id.* at 1117. "Such proof creates a  
16 presumption of copying, which the defendant can then attempt to rebut by proving  
17 independent creation." *Id.* "To prove unlawful appropriation, . . . the similarities  
18 between the two works must be substantial and they must involve protected  
19 elements of the plaintiff's work." *Id.* "[W]hether works are substantially similar  
20 involves a two-part analysis consisting of the extrinsic test and the intrinsic test."  
21 *Id.* at 1118 (internal quotations and citations omitted). A plaintiff must satisfy  
22 both components, and therefore a lack of extrinsic similarity is fatal to a plaintiff's  
23 copyright case as a matter of law. *White v. Twentieth Century Fox Corp.*, 572 F.  
24 App'x 475, 476-77 (9th Cir. 2014) (citing *Funky Films, Inc.*, 462 F.3d at 1081).  
25 The extrinsic test is "is objective in nature. [I]t depends not on the responses of  
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27 <sup>6</sup> Because Plaintiff's fraud, false promises, and conspiracy to commit fraud claims  
28 are time-barred, the Court does not rule on the other issues raised by the parties as  
to these claims.

1 the trier of fact, but on specific criteria which can be listed and analyzed. The  
2 extrinsic test focuses on articulable similarities between the plot, themes, dialogue,  
3 mood, setting, pace, characters, and sequence of events in the two works. In  
4 applying the extrinsic test, this court compares, not the basic plot ideas for stories,  
5 but the actual concrete elements that make up the total sequence of events and the  
6 relationships between the major characters.” *Funky Films*, 462 F.3d at 1081  
7 (internal quotations and citations omitted). “Familiar stock scenes and themes that  
8 are staples of literature are not protected.” *Cavalier v. Random House, Inc.*, 297  
9 F.3d 815, 823 (9th Cir. 2002). In addition, “[s]cenes-à-faire, or situations and  
10 incidents that flow necessarily or naturally from a basic plot premise, cannot  
11 sustain a finding of infringement.” *Id.* “Therefore, when applying the extrinsic  
12 test, a court must filter out and disregard the non-protectable elements in making  
13 its substantial similarity determination.” *Id.* at 822-23; *see also Shaw v. Lindheim*,  
14 919 F.2d 1353, 1361 (9th Cir. 1990); *Berkic*, 761 F.2d at 1293-94. The Court  
15 need not explain in its analysis every alleged similarity in a copyright  
16 infringement case and may properly disregard alleged similarities that are not  
17 protectable. *White*, 572 F. App’x at 477 (citing *Funky Films*, 462 F.3d at 1077).<sup>7</sup>

### 18 (1) Time-Barred

19 Defendants move for summary judgment on Plaintiff’s copyright  
20 infringement claim on the grounds it is time-barred as to “many” of the  
21 defendants. Plaintiff moves for partial summary judgment on the ground  
22 Defendants cannot meet their burden of proof on their statute of limitations  
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24 <sup>7</sup> The intrinsic test, on the other hand, is a subjective comparison that focuses on  
25 “whether the ordinary, reasonable audience would find the works substantially  
26 similar in the “total concept and feel of the works.” *Cavalier*, 297 F.3d at 822  
27 (internal quotations and citations omitted). “[T]he intrinsic test for expression is  
28 uniquely suited for determination by the trier of fact.” *Sid & Marty Krofft  
Television Prods., Inc. v. McDonald’s Corp.*, 562 F.2d 1157, 1166 (9th Cir. 1977).  
Accordingly, where the plaintiff satisfies the extrinsic test, “the intrinsic test’s  
subjective inquiry must be left to the jury and [any dispositive motion] must be  
denied.” *Smith v. Jackson*, 84 F.3d 1213, 1218 (9th Cir. 1996).

1 defense as to all of Plaintiff's claims.

2 17 U.S.C. § 507(b) provides: "No civil action shall be maintained under  
3 [the Copyright Act] unless it is commenced within three years after the claim  
4 accrued." *See also Warner Chappell Music, Inc. v. Nealy*, 144 S. Ct. 1135, 1137  
5 (2024) ("The Copyright Act's statute of limitations provides that a copyright  
6 owner must bring an infringement claim within three years of its accrual.") (citing  
7 17 U.S.C. § 507(b)). Accrual for purposes of 17 U.S.C. § 507 occurs "the moment  
8 when the copyright holder 'has knowledge of a violation or is chargeable with  
9 such knowledge.'" *Polar Bear Prods. v. Timex Corp.*, 384 F.3d 700, 706 (9th Cir.  
10 2004) *as amended on denial of reh'g and reh'g en banc* (Oct. 25, 2004) (quoting  
11 *Roley v. New World Pictures, Ltd.*, 19 F.3d 479, 481 (9th Cir. 1994)); *see also*  
12 *Starz Ent., LLC v. MGM Domestic Television Distr., LLC*, 39 F.4th 1236, 1240–  
13 41 (9th Cir. 2022). The Supreme Court recently held:

14 In this case, we assume without deciding that a claim is timely under  
15 [17 U.S.C. § 507(b) of the Copyright Act] if brought within three  
16 years of when the plaintiff discovered an infringement, no matter  
17 when the infringement happened. We then consider whether a claim  
18 satisfying that rule is subject to another time-based limit—this one,  
preventing the recovery of damages for any infringement that  
occurred more than three years before a lawsuit's filing. We hold that  
no such limit on damages exists. The Copyright Act entitles a  
copyright owner to recover damages for any timely claim.

19 *Warner Chappell Music, Inc.*, 144 S. Ct. at 1137.

20 **a. Defendants Marchick, Ribon, and Mandeville**

21 Assuming (as the Supreme Court assumed in *Warner Chappell Music, Inc.*)  
22 that Plaintiff's copyright infringement claim accrued when Plaintiff discovered the  
23 infringement, it is undisputed Plaintiff suspected *Moana* used Plaintiff's allegedly  
24 confidential *Bucky* materials when he watched *Moana* in the theater in December  
25 2016. (*See supra.*) It is also undisputed Plaintiff had further suspicions that  
26 *Moana* used Plaintiff's *Bucky* materials in March 2017 when he watched *Moana*  
27 on DVD. (*See supra.*) Therefore, the statute of limitations for Plaintiff's  
28 copyright infringement claim began to run in December 2016 or at the latest

1 March 2017. *See Polar Bear Prods.*, 384 F.3d at 706; *Oracle Am., Inc. v. Hewlett*  
2 *Packard Enter. Co.*, 971 F.3d 1042, 1047 (9th Cir. 2020). Because Plaintiff did  
3 not file this lawsuit until April 2020, Plaintiff's copyright infringement claim  
4 against Defendants Marchick, Ribon, and Mandeville is time-barred under the  
5 applicable three-year statute of limitations. *See In re Napster, Inc. Copyright*  
6 *Litig.*, 2005 WL 289977, at \*4 (N.D. Cal. Feb. 3, 2005).

7 *Warner Chappell Music, Inc. v. Nealy*, relied on by Plaintiff, does not  
8 support Plaintiff's contention that his copyright claim is not time-barred because  
9 the Supreme Court assumed in that case that the copyright claim was timely  
10 brought within three years of the Plaintiff's discovery of the infringement in  
11 holding that there was no three year limitation on damages that were recoverable  
12 under the Copyright Act. *See Warner*, 144 S. Ct. at 1137. However, here  
13 Plaintiff's copyright infringement claim against Defendants Marchick, Mandeville  
14 and Ribbon is time-barred because it is undisputed Plaintiff suspected the *Moana*  
15 film infringed his copyrights more than three years before he filed this lawsuit.  
16 Therefore, Plaintiff cannot recover damages for his untimely copyright  
17 infringement claim against Defendants Marchick, Mandeville, and Ribbon. *See*  
18 *Polar Bear Prods.*, 384 F.3d at 706 ("§ 507(b) permits damages occurring outside  
19 of the three—year window, so long as the copyright owner did not discover—and  
20 reasonably could not have discovered—the infringement before the  
21 commencement of the three-year limitation period."), *as amended on denial of*  
22 *reh'g and reh'g en banc* (Oct. 25, 2004), *opinion amended on denial of reh'g*,  
23 2004 WL 2376507 (9th Cir. Oct. 25, 2004).

24 **b. Copyright Claims Based on *Moana* Film and *Moana* Home**  
25 **Videos Distributed Prior to April 24, 2017**

26 As to Defendants The Walt Disney Company, Walt Disney Pictures, Walt  
27 Disney Animation Studios, Disney Enterprises, Inc., and Walt Disney Direct-To-  
28 Consumer & International, Plaintiff does not identify any evidence that any of

1 these defendants distributed *Moana* within the three years prior to Plaintiff filing  
2 this lawsuit. Therefore, Plaintiff's copyright infringement claim against  
3 Defendants The Walt Disney Company, Walt Disney Pictures, Walt Disney  
4 Animation Studios, Disney Enterprises, Inc., and Walt Disney Direct-To-  
5 Consumer & International is time-barred under the applicable three-year statute of  
6 limitations.

7 **c. Defendant Buena Vista Home Entertainment, Inc.**

8 Defendants acknowledge Plaintiff has a "timely claim" for copyright  
9 infringement as to Defendant Buena Vista Home Entertainment, Inc. ("BVHE"),  
10 "whose home video distribution of *Moana* continued beyond April 24, 2017."  
11 (Dkt. No. 491, Defendants' Reply at 8.) Therefore, Plaintiff's copyright  
12 infringement claim is not time-barred as to Defendant BVHE. *See Kourtis v.*  
13 *Cameron*, 419 F.3d 989, 999-1000 (9th Cir. 2005), *abrogated on other grounds by*  
14 *Taylor v. Sturgell*, 553 U.S. 880, 128 S. Ct. 2161, 171 L. Ed. 2d 155 (2008).<sup>8</sup>

15 **d. Contributory and Vicarious Infringement**

16 As to Defendants Disney Consumer Products, Inc., Disney Consumer  
17 Products & Interactive Media, Inc., Disney Interactive Studios, Inc., LLC, Disney  
18 Store USA, LLC, Disney Shopping, Inc., Buena Vista Books, Inc., Disney Book  
19 Group, Plaintiff contends these defendants (who produce(d) or distribute(d)  
20 *Moana*-related consumer products but did not distribute the *Moana* film) are liable  
21 as contributory, vicarious, and/or indirect infringers. Defendants contends  
22 Plaintiff's indirect, contributory and vicarious infringement claims against these  
23 defendants are time-barred.

24 Contributory copyright infringement occurs when a party "(1) has  
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26 <sup>8</sup> *See also Botts v. Kompany.com*, 2013 WL 12137690, at \*2 (C.D. Cal. Apr. 10,  
27 2013); *Hunter Killer Prods., Inc. v. AKA Wireless, Inc.*, 2020 WL 4043317, at \*5  
28 (D. Haw. July 17, 2020); *Liberty Media Holdings, LLC v. Vinigay.com*, 2011 WL  
7430062, at \*11 (D. Ariz. Dec. 28, 2011), *report and recommendation adopted*,  
2012 WL 641579 (D. Ariz. Feb. 28, 2012).

1 knowledge of another’s infringement and (2) either (a) materially contributes to or  
2 (b) induces that infringement.” *Perfect 10 v. Visa Int’l Serv. Assoc.*, 494 F.3d 788,  
3 795 (9th Cir. 2007); *see also Desire.*, 986 F.3d at 1264 n.8. “‘Material  
4 contribution’ may involve, for example, providing materials or services that help  
5 another infringe.” *Mahon v. Mainsail LLC*, 2020 WL 6750150, at \*3 (N.D. Cal.  
6 Nov. 17, 2020) (citing *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.4d 259, 264  
7 (9th Cir. 1996)). “Inducement may involve actively encouraging others to  
8 infringe, such as by providing instructions.” *Id.* (citing *Metro-Goldwyn-Mayer*  
9 *Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 936-67 (2005)). “The contributory  
10 infringement occurs, and the [three-year] statute of limitations period begins to  
11 run, when there has been: (1) an act inducing or materially contributing to (2) an  
12 act of direct infringement.” *Goldberg v. Cameron*, 2009 WL 2051370, at \*8  
13 (N.D. Cal. July 10, 2009). For vicarious infringement, Plaintiff must prove  
14 “defendant has the right and ability to supervise the infringing activity and also  
15 has a direct financial interest in such activities.” *A&M Recs., Inc. v. Napster, Inc.*,  
16 239 F.3d 1004, 1022 (9th Cir. 2001). The three-year statute of limitations for  
17 vicarious infringement claims “begins when a party discovers, or reasonably could  
18 have discovered, the infringement.” *Rearden LLC v. Crystal Dynamics, Inc.*, 2020  
19 WL 13890300, at \*4 (N.D. Cal. Oct. 8, 2020). Subsequent acts of direct  
20 infringement do not restart the statute of limitations for contributory and vicarious  
21 infringement claims. *See Goldberg v. Cameron*, 2009 WL 2051370, at \*8; *Arc*  
22 *Music, Inc. v. Henderson*, 2010 WL 11597304, at \*3 (C.D. Cal. Mar. 22, 2010)).

23 Here, because it is undisputed Plaintiff suspected *Moana* used Plaintiff’s  
24 allegedly confidential *Bucky* materials when he watched *Moana* in the theater in  
25 December 2016, and Plaintiff had further suspicions that *Moana* used Plaintiff’s  
26 *Bucky* materials in March 2017 when he watched *Moana* on DVD (*see supra*),  
27 Plaintiff’s contributory and vicarious copyright infringement claims began to  
28 accrue no later than March 2017. Because Plaintiff did not file this lawsuit until



1 April 24, 2020, Plaintiff’s contributory and vicarious infringement claims against  
2 Defendants Disney Consumer Products, Inc., Disney Consumer Products &  
3 Interactive Media, Inc., Disney Interactive Studios, Inc., LLC, Disney Store USA,  
4 LLC, Disney Shopping, Inc., Buena Vista Books, Inc., and Disney Book Group  
5 are time-barred under the applicable three-year statute of limitations.

6 \* \* \*

7 Accordingly, the Court grants Defendants’ Motion for Summary Judgment  
8 on Plaintiff’s copyright infringement claim as time-barred as to all defendants  
9 except Defendant BVHE, and denies Plaintiff’s Motion for Partial Summary  
10 Judgment on the ground Defendants cannot meet their burden of proof on their  
11 statute of limitations defense as to Plaintiff’s copyright infringement claim.

12 **(2) Joint and Several Liability**

13 Plaintiff seeks partial summary judgment on the issue “the Defendants who  
14 participated in distribution of *Moana* and *Moana*-related products and attractions  
15 would be liable.” Plaintiff argues Defendants Walt Disney Company, Walt  
16 Disney Animation Studios, Walt Disney Pictures, Walt Disney Studios, Disney  
17 Enterprises, Inc., Buena Vista Home Entertainment, Inc., and Walt Disney Direct-  
18 To-Consumer and International “are or were part of the distribution chain” for the  
19 *Moana* film, and therefore these defendants are jointly and severally liable for  
20 copyright infringement in this case. However, Plaintiff does not distinguish  
21 between upstream and downstream infringers nor address whether each defendant  
22 is the “but for” cause of any purported infringement, and instead seeks a finding  
23 that all Defendants are jointly and severally liable for any infringement in this  
24 action—a position rejected by the Ninth Circuit in *Desire, LLC v. Manna Textiles,*  
25 *Inc.*, 986 F.3d 1253, 1263-64 (9th Cir. 2021). Moreover, Plaintiff does not submit  
26 evidence “proving the value received from an infringing product used to enhance  
27  
28

1 commercial reputation” as required,<sup>9</sup> nor “offered any reasonably accurate method  
2 of calculating profits” from *Moana* products and attractions “that are attributable  
3 to infringements in the film.”<sup>10</sup> Instead, Plaintiff speculates “any profits from  
4 *Moana*-based products and attractions can only be attributed to the fact that . . .  
5 Disney has made the perfect Disney movie with *Moana*.” Plaintiff therefore fails  
6 to demonstrate he is entitled to profits for all *Moana*-based products and  
7 attractions as a matter of law. *See Bus. Trends Analysts*, 887 F.2d at 404; *Burns*,  
8 2001 WL 34059379, at \*4. Accordingly, the Court denies Plaintiff’s motion for  
9 summary judgment on the issue “the Defendants who participated in distribution  
10 of *Moana* and *Moana*-related products and attractions would be liable.”

### 11 (3) Ownership

12 Plaintiff moves for summary judgment on the issue of Plaintiff’s ownership  
13 of the copyrights regarding the *Bucky* works that were registered with the U.S.  
14 Copyright Office. Defendants state they “have offered to stipulate that Plaintiff  
15 owns a copyright in the materials he registered with the Copyright Office.”  
16 (Defendants’ Opp. at 14 (citing Suppl. Shimamoto Decl. Ex. 31).) Therefore,  
17 there is no genuine issue of material fact that Plaintiff owns the copyright in the  
18 *Bucky* materials he registered with the U.S. Copyright Office. Accordingly, the  
19 Court grants Plaintiff’s Motion for Summary Judgment on the issue of ownership  
20 of his copyrights.

### 21 (4) Exclusive Rights

22 17 U.S.C. § 106 provides that “the owner of copyright under this title has  
23 the exclusive rights to do and to authorize any of the following:”

- 24 (1) to reproduce the copyrighted work in copies or phonorecords;  
25 (2) to prepare derivative works based upon the copyrighted work;

26 <sup>9</sup> *See Bus. Trends Analysts, Inc. v. Freedonia Grp., Inc.*, 887 F.2d 399, 404, 407  
27 (2d Cir. 1989).

28 <sup>10</sup> *See Burns v. Imagine Films Entm’t, Inc.*, 2001 WL 34059379, at \*4 (W.D.N.Y.  
Aug. 23, 2001).

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Defendants argue Defendants The Walt Disney Company, Disney Enterprises, Inc., Disney Consumer Products, Inc., Disney Consumer Products & Interactive Media, Inc., Disney Interactive Studios, Inc., Buena Vista Books, Inc., Mandeville and Marchick did not violate Plaintiff's exclusive rights under the Copyright Act because they were not involved in the development or production of *Moana*, and there is no evidence they distributed or publicly performed or displayed *Moana*. However, because Plaintiff's copyright infringement claims are time-barred as to these defendants for the reasons set forth above, the Court does not rule on the issue of whether these defendants violated Plaintiff's exclusive rights under the Copyright Act.

#### **(5) Access**

Defendants move for summary judgment on Plaintiff's copyright claim on the ground it fails as a matter of law because Plaintiff's access theory is based on bare corporate receipt. Defendants argue Plaintiff did not move for summary judgment on the issue of access because Plaintiff's notice of motion does not state Plaintiff moves for summary judgment on the issue of access (*see* Dkt. No. 432 at p.i). However, Plaintiff argues he does move on the issue of access and a significant portion of his summary judgment motion addresses the issue of access (*see* Plaintiff's Motion at pp. 7-16). Therefore, the Court finds both parties move for summary judgment on the issue of access.

"When the plaintiff lacks direct evidence of copying, he can attempt to

1 prove it circumstantially by showing that the defendant had access to the  
2 plaintiff's work and that the two works share similarities probative of copying."  
3 *Rentmeester*, 883 F.3d at 1117. "To prove access, a plaintiff must show a  
4 reasonable possibility, not merely a bare possibility, that an alleged infringer had  
5 the chance to view the protected work." *Art Attacks Ink, LLC v. MGA Ent. Inc.*,  
6 581 F.3d 1138, 1143 (9th Cir. 2009). Access does not require proof Defendants  
7 actually viewed Plaintiff's work; rather, "[p]roof of access requires 'an  
8 opportunity to view or to copy plaintiff's work.'" *Loomis v. Cornish*, 836 F.3d  
9 991, 995 (9th Cir. 2016) (emphasis added). "Where there is no direct evidence of  
10 access, circumstantial evidence can be used to prove access either by (1)  
11 establishing a chain of events linking the plaintiff's work and the defendant's  
12 access, or (2) showing that the plaintiff's work has been widely disseminated." *Id.*  
13 "[E]vidence that a third party with whom both the plaintiff and defendant were  
14 dealing had possession of plaintiff's work is sufficient to establish access by the  
15 defendant." *Loomis*, 836 F.3d at 995. "[T]he dealings between the plaintiff and  
16 the intermediary and between the intermediary and the alleged copier must  
17 involve some overlap in subject matter to permit an inference of access." *Id.*  
18 Thus, access can be established "where the intermediary either was a supervisor  
19 with responsibility for the defendant's project, was part of the same work unit as  
20 the copier, or contributed creative ideas or material to the defendant's work." *Id.*  
21 (internal quotations and citation omitted). In contrast, "a plaintiff cannot create a  
22 triable issue of access merely by showing bare corporate receipt of her work by an  
23 individual who shares a common employer with the alleged copier. Rather, it  
24 must be reasonably possible that the paths of the infringer and the infringed work  
25 crossed." *Id.* at 995-96.

26 Contrary to those cases where the courts have found no nexus between the  
27 intermediary who received the work and the alleged infringers, here Plaintiff  
28 submits the following interrogatory response from Defendant Marchick:

**INTERROGATORY NO. 8:** Identify any and all documents regarding or relating to Bucky that you provided to any Defendant from 2001 to 2016. and. [sic]

**RESPONSE TO INTERROGATORY NO. 8:**

. . The only Bucky documents that Marchick may have provided to any Defendant was the Bucky material she provided to the individual at Disney TV Animation referenced in her response to Interrogatory No. 3.<sup>11</sup>

(Dkt. No. 441-9.) A reasonable jury could find Defendants had an opportunity to view Plaintiff's work and therefore had access to it based on Marchick's interrogatory response that she "may" have provided Plaintiff's Bucky material to a "defendant" by providing materials to an individual at Disney Animation TV. *See Loomis*, 836 F.3d at 995.

Furthermore, Defendants do not dispute "Mandeville Films' offices were located inside the Old Animation Building on the Walt Disney Studio lot in

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<sup>11</sup> Defendant Marchick' response to Interrogatory No. 3 stated:

**INTERROGATORY NO. 3:** Please describe in detail your involvement in Bucky. If You were not involved in Bucky, please say so.

**RESPONSE TO INTERROGATORY NO. 3:**

. . . Marchick's stepsister Lindsay is married to Plaintiff's brother, Benjamin Woodall. This is how Plaintiff connected with Marchick. Somewhere around 2003-2005, when Marchick was working at Mandeville Films, Plaintiff provided Marchick with certain materials regarding Bucky, including some drawings and a story description. Marchick told Plaintiff that Mandeville Films didn't do animation. Marchick contacted Maggie Malone at Walt Disney Animation Studios ("WDAS") and asked if WDAS took pitches. Marchick did not mention Plaintiff's name or Bucky to Ms. Malone, and did not provide or describe any of Plaintiff's Bucky material to Ms. Malone, or to anyone at WDAS. Ms. Malone stated that WDAS would not accept or review any of Plaintiff's material because WDAS created all of its own content.

Since Plaintiff was family, Marchick contacted someone at Disney TV, and arranged for Plaintiff to meet with that person. Marchick does not recall the person's name, but that person subsequently told Marchick that he or she was not interested in Plaintiff's material. Plaintiff subsequently asked Marchick if he could send her more material if he had any. Marchick agreed.

Plaintiff subsequently sent Marchick additional material at various times, primarily after Marchick left Mandeville Films in October 2007. The last date Marchick received any Bucky material from Plaintiff was in January 2012, when Marchick was working for Sony Pictures Animation.

(Dkt. No. 441-9.)

1 Burbank, California,” nor dispute that “Mandeville Films was a ‘Disney-based’  
2 company” during “the relevant time period,” nor dispute “Mandeville Films  
3 representatives were on Disney’s payroll” during “the relevant time period.” (*See*  
4 Dkt. No. 527, Defendants’ response to Plaintiff’s Statement of Fact Nos. 18, 22,  
5 23.) Moreover, Plaintiff submits a copy of Mandeville’s first look agreement with  
6 Walt Disney Pictures (Dkt. No. 542-4), and Defendants do not dispute Walt  
7 Disney Pictures produced the *Moana* film (*see* Defendants’ response to Plaintiff’s  
8 Statement of Fact No. 316). David Hoberman, the founder of Mandeville Films,  
9 also testified during his deposition that Mandeville had offices on the Disney lot,  
10 Mandeville had “a first-look deal with Disney” from its inception where they gave  
11 “money and overhead” and in exchange if something came to Mandeville it liked  
12 then it would have to present it to Disney, Mandeville employees were not  
13 allowed to go do deals on their own while working for Mandeville based on the  
14 first-look deal with Disney, Mandeville’s employees were paid by Disney, payroll  
15 records for Mandeville employees “would be in the Disney company,” Hoberman  
16 got advice from Disney’s HR, (Dkt. No. 530-2, Hoberman Depo. 21:1-8, 21:16-  
17 22:5, 23:7-11, 23:25-24:4, 27:1-28:16, 31:19-25, 58:1-7.) Marchick testified at  
18 her deposition that she worked at Walt Disney Pictures in 2001, Mandeville’s  
19 office was located in a building on the Walt Disney lot, two HR people worked for  
20 Disney down the hall from her at Mandeville, she interacted with people who  
21 worked for Disney on the Disney lot, she interacted with the vice president  
22 (Kristin Burr) in the live-action division of Disney on the Disney lot who became  
23 Marchick’s mentor and with whom Marchick spoke to about scripts she had read  
24 when she became an executive at Mandeville (Dkt. No. 541-1, Marchick Depo.  
25 37:8-40:22, 63:15-21, 70:20-71:12, 97:17-98:14, 98:16-100:20.) Moreover,  
26 Plaintiff testified at his deposition: “I recall her taking the folder [with Plaintiff’s  
27 works], setting it aside and saying I’ll get this to my bosses and the higher ups at  
28



1 Disney . . .” (Dkt. No. 441-6, Plaintiff Depo. 128:23-25.)<sup>12</sup> Plaintiff also declares  
2 “Marchick told me that, after showing Bucky materials to her bosses and contacts  
3 at Disney, a Disney director wanted me to produce a trailer for Bucky because  
4 they wanted to see Bucky come to life.” (Dkt. No. 434, Plaintiff Decl. ¶ 16.)<sup>13</sup>

5 On the other hand, Defendants submit declarations from Marchick wherein  
6 she declares she never sent any of Plaintiff’s “Bucky” materials to anyone at  
7 WDAS (Dkt. No. 412, Marchick Decl. ¶¶ 5, 14), she never promised Plaintiff that  
8 she would show Plaintiff’s Bucky works to directors at Walt Disney Animation  
9 Studios (Marchick Suppl. Decl. ¶ 3), she never promised Plaintiff that she would  
10 show his Bucky works to “higher ups” at any Disney entity (Marchick Suppl.  
11 Decl. ¶ 3), she never told Plaintiff that anyone wanted to see an animated trailer  
12 for “Bucky” including “her bosses” or “higher-ups at Disney” (Marchick Supp.  
13 Decl. ¶ 4), Marchick contacted Maggie Malone (WDAS’s “Creative Director” and  
14 Head of Creative Affairs) sometime in 2003-2005 and asked if WDAS accepted  
15 outside submissions and was told WDAS did not that was the end of the  
16 conversation and Marchick did not mention Plaintiff or his “Bucky” Project to  
17 Malone (Marchick Decl. ¶ 5). Defendants also submit declarations from  
18 Mandeville’s founder David Hoberman and Mandeville’s Vice President Todd  
19 Lieberman who declared they never received Plaintiff’s “Bucky” project.  
20 (Lieberman Decl. ¶ 3; Hoberman Decl. ¶ 3.) Defendants also submit a declaration  
21

22 <sup>12</sup> See also Benjamin Woodall Depo. 31:12-19 (testifying that during Plaintiff’s  
23 meeting with Marchick on the Disney lot when Plaintiff gave her his Bucky  
24 materials, Marchick said she would “[s]how it to her boss” and said, “I will get  
25 this in front of the right people,” or something, or “show it to the next level”).

26 <sup>13</sup> See also Plaintiff Depo. 122:12-18 (testifying “I believe I was following up with  
27 [Marchick] to see if her bosses had had a chance to look at my material. And she  
28 told me that they looked at it and she asked me if I had a trailer. And I said no and  
she said do you think you could produce one because if you can produce one they  
would take a look at that”); *id.* at 141:7-15 (testifying during a “followup call to  
see if [Marchick] had received a response to my material and my pitch package  
from her bosses” that “she said can you produce an animated trailer -- that her  
bosses and the Disney directors would like to see an animated trailer and if I could  
produce that, they would take a look at it.”).

1 from Defendant Ribon who declares she worked as a writer on *Moana* from late  
2 April 2013 through February 2015; during the time she worked on *Moana* she was  
3 the only writer working on the project; she never met, spoke to, corresponded  
4 with, or communicated with Plaintiff in any manner and never heard of Plaintiff or  
5 his “Bucky” project until learning of this lawsuit; she did not meet Defendant  
6 Marchick until after she had finished writing for *Moana*; she never discussed  
7 Plaintiff or his “Bucky” project with Marchick or anyone else prior to learning of  
8 this lawsuit; and she had never seen, received, viewed, read, referenced, copied, or  
9 used any scripts, character descriptions, artwork, treatments, synopses, trailers, or  
10 any other materials or ideas by Plaintiff or relating to his “Bucky” project prior to  
11 this lawsuit. (Ribon Decl. ¶¶ 3, 5, 6, 7.)

12 Therefore, the record before the Court demonstrates a reasonable trier of  
13 fact could find “a reasonable possibility, not merely a bare possibility” that one of  
14 the defendants “had the chance to view the protected work.” *Art Attacks Ink*, 581  
15 F.3d at 1143; *see also Loomis*, 836 F.3d at 995-96; *Bouchat v. Baltimore Ravens,*  
16 *Inc.*, 241 F.3d 350, 354-55 (4th Cir. 2001). Thus, a triable issue of material fact  
17 exists as to whether Defendants, or any of them, had access to Plaintiff’s work.<sup>14</sup>  
18 Accordingly, the Court denies Defendants’ and Plaintiff’s motions for summary  
19 judgment on the issue of access.<sup>15</sup>

20 <sup>14</sup> Because the Court finds a triable issue of fact exists as to access based on the  
21 evidence discussed above, the Court does not address whether Defendants also  
22 had access to Plaintiff’s *Bucky* work through non-parties Malone, Shurer,  
Lasseter, Bird, and/or Kane.

23 <sup>15</sup> Plaintiff also argues a showing of bare corporate receipt alone is sufficient  
24 where the works are strikingly similar. “[S]triking similarity is obviously a much  
25 higher bar than substantial similarity.” *Klauber Bros., Inc. v. City Chic Collective*  
26 *Ltd.*, 2022 WL 18278400, at \*5 (C.D. Cal. Dec. 6, 2022); *see also Frisby v. Sony*  
27 *Music Ent.*, 2021 WL 2325646, at \*18 (C.D. Cal. Mar. 11, 2021), *aff’d in part,*  
28 *dismissed in part*, 2022 WL 2045340 (9th Cir. June 7, 2022); *Kevin Barry Fine*  
*Art Assocs. v. Ken Gangbar Studio, Inc.*, 391 F. Supp. 3d 959, 968 (N.D. Cal.  
2019). Accordingly, because there is a disputed issue of fact regarding whether  
the works are substantially similar based on the parties’ dueling expert opinions  
(*see infra*)—and substantial similarity is lower standard than striking similarity—  
there is a triable issue of disputed fact regarding whether the works are strikingly  
similar.

1           **(6) Substantial Similarity**

2           Defendants contend Plaintiff's copyright infringement claim also fails as a  
3 matter of law because "Moana is not substantially similar to Plaintiff's  
4 copyrighted 'Bucky' materials under the extrinsic test."<sup>16</sup> Defendants offer a  
5 report and rebuttal report from Defendants' expert Jeff Rovin who opines the  
6 parties' works are not substantially similar. (Dkt. No. 417-1, Rovin Decl. Ex. A,  
7 Expert Report of Jeff Rovin at 85-155; Dkt. No. 417-2, Rovin Decl. Ex. B,  
8 Rebuttal Expert Report of Jeff Rovin at 5-29, 46.)<sup>17</sup> Plaintiff submits reports from  
9 Plaintiff's expert David Roman who opines the parties' works are substantially  
10 similar. (Dkt. No. 435-1, Roman Expert Report at 3-38); Dkt. No. 435-2, Roman  
11 Rebuttal Report at 13-18.) Plaintiff also submits a report from Terry Hunt,  
12 Plaintiff's expert on Polynesian and Oceanic mythology and folklore, who opines  
13 *Moana* "heavily copies from *Bucky*" and that "both works adopt far more than one  
14 identical creative departure from traditional elements of Polynesian mythology"  
15 such that he "believe[s] that the overlap in both works is more than mere  
16 coincidence." (Dkt. No. 436, Hunt Report.).

17           Defendants argue Plaintiff's expert Roman "performed the wrong analysis"  
18 because he "compared Moana to an amalgam of various synopses, story outlines,  
19 treatments, character descriptions, and scripts that Plaintiff created or  
20 commissioned over a more than 13-year period,"<sup>18</sup> and therefore contend Roman's  
21 opinions should be "disregarded on summary judgment."<sup>19</sup> However, Defendants'  
22 argument goes to the weight of Plaintiff's expert Roman's reports rather than

23           <sup>16</sup> Plaintiff does not move for summary judgment on the issue of substantial  
24 similarity.

25           <sup>17</sup> Plaintiff did not file evidentiary objections to Rovin's reports in connection with  
the parties' cross summary judgment motions.

26           <sup>18</sup> Defendants rely on *Gilbert v. New Line Prods., Inc.*, 2010 WL 5790628 at \*3  
27 (C.D. Cal. Aug. 13, 2010) ("[t]he works must be assessed individually and not  
manipulated for any parties' own benefit").

28           <sup>19</sup> Defendants did not file evidentiary objections to Roman or Hunt's reports in  
connection with the parties' cross summary judgment motions.

1 admissibility, and the Court cannot weigh evidence on summary judgment.<sup>20</sup> *See*  
2 *Morrill v. Stefani*, 338 F. Supp. 3d 1051, 1056 (C.D. Cal. 2018); *Iguaçu, Inc. v.*  
3 *Cabrera*, 2013 WL 12173236, at \*5 (N.D. Cal. Feb. 21, 2013), *aff'd sub nom.*  
4 *Iguaçu, Inc. v. Filho*, 637 F. App'x 407 (9th Cir. 2016) (citing *U.S. v. Union*  
5 *Pacific R. Co.*, 565 F. Supp. 2d 1136, 1150 n.22 (E.D. Cal. 2008)). Defendants  
6 argue even if the Court considers Roman's opinions, the existence of dueling  
7 expert reports does not preclude summary judgment on the issue of substantial  
8 similarity. However, the Court cannot weigh or disregard the parties' expert  
9 reports (for which neither party has filed evidentiary objections). *See T.W. Elec.*  
10 *Serv., Inc.*, 809 F.2d at 630.

11 Therefore, there is a genuine issue of triable fact precluding summary  
12 judgment on the issue of substantial similarity based on the dueling expert  
13 opinions submitted by the parties. *See Hall v. Swift*, 2021 WL 6104160, at \*5  
14 (C.D. Cal. Dec. 9, 2021); *Lewert v. Boiron, Inc.*, 212 F. Supp. 3d 917, 937 (C.D.  
15 Cal. 2016), *aff'd*, 742 F. App'x 282 (9th Cir. 2018).<sup>21</sup> Accordingly, the Court  
16 denies Defendants' Motion for Summary Judgment on the issue of substantial  
17 similarity.

### 18 (7) Independent Creation

19 Defendants also contend Plaintiff's copyright infringement claim fails as a  
20 matter of law because "the overwhelming uncontroverted evidence of independent  
21 creation, supported by the testimony of the filmmakers and the complete  
22 development files for Moana, is fatal to Plaintiff's infringement claim even if he  
23

24 <sup>20</sup> Defendants did not file evidentiary objections to or a motion to strike Plaintiffs'  
25 expert's report, nor argue Plaintiffs' expert fails to meet the *Daubert* standards for  
expert testimony.

26 <sup>21</sup> *See also Optivus Tech., Inc. v. Ion Beam Applications S.A.*, 2005 WL 6070811,  
at \*31 (C.D. Cal. Mar. 14, 2005), *aff'd*, 469 F.3d 978 (Fed. Cir. 2006); *Avery*  
27 *Dennison Corp. v. Acco Brands, Inc.*, 2000 WL 986995, at \*12 (C.D. Cal. 2000);  
*Hansen Beverage Co. v. Vital Pharm., Inc.*, 2010 WL 1734960, at \*8 (S.D. Cal.  
28 Apr. 27, 2010); *CytoSport, Inc. v. Vital Pharm., Inc.*, 894 F. Supp. 2d 1285, 1300  
(E.D. Cal. 2012).

1 could create a triable issue as to access.” Plaintiff moves for partial summary  
2 judgment on the ground Defendants have not proven their independent creation  
3 defense, arguing Plaintiff has demonstrated “striking similarity on several levels”  
4 and “‘particularly suspicious’ changes made to the final work,” and “deliberate  
5 concealment” sufficient to preclude a finding of independent creation.

6 “[I]ndependent creation is a complete defense to copyright infringement.”  
7 *Skidmore as Tr. for Randy Craig Wolfe Tr. v. Led Zeppelin*, 952 F.3d 1051, 1064  
8 (9th Cir. 2020). However, “a grant of summary judgment for [the] plaintiff is  
9 proper where works are so overwhelmingly identical that the possibility of  
10 independent creation is precluded.” *Unicolors, Inc. v. Urb. Outfitters, Inc.*, 853  
11 F.3d 980, 985 (9th Cir. 2017) (internal quotations and citations omitted).

12 Here, Defendants rely on declarations from *Moana*’s filmmakers to support  
13 their contention regarding independent creation. (See Dkt. No. 522, Musker Decl.  
14 ¶¶ 8-70; Dkt. No. 526, Clements Decl. ¶¶ 9-30.) Musker declares “I directed  
15 *Moana* along with my longtime collaborator, Ron Clements,” “I first conceived of  
16 the idea of a film set in Polynesia in 2011,” and “told Mr. Clements about my  
17 idea, and we then worked closely together on the development and production of  
18 *Moana* for more than five years, through its theatrical release in November 2016.”  
19 (Musker Decl. ¶ 2.) Clements declares “Musker had the initial idea for an  
20 animated film set in Polynesia,” “[s]tarting in 2011, he and I worked closely  
21 together for more than five years researching, developing, and producing the film  
22 that ultimately became *Moana*.” (Clements Decl. ¶ 2.) Musker and Clements  
23 both declare they do not know Plaintiff, never met, spoke to, corresponded with or  
24 communicated in any manner with Plaintiff, and never heard of Plaintiff or his  
25 “Bucky” project prior to learning about this lawsuit. (Musker Decl. ¶ 3; Clements  
26 Decl. ¶ 3.) They each also declare that they never received, saw or read any  
27 scripts, character descriptions, artwork, treatments, synopses, trailers, or any other  
28 materials or ideas by Plaintiff or relating to Plaintiff’s ‘Bucky’ project.” (Musker

Decl. ¶ 3; Clements Decl. ¶ 3.) They each further declares *Moana* was not inspired by or based in any way on Plaintiff or Plaintiff’s “Bucky” project, and no one involved in the creation, development or production of *Moana* ever mentioned Plaintiff or his “Bucky” project to them, including Maggie Malone, Osnat Shurer, and Pamela Ribon.” (Musker Decl. ¶ 3; Clements Decl. ¶ 3.) Musker also discusses their work researching, creating and developing *Moana* (see Musker Decl. ¶¶ 4-69), and concludes his declaration by attesting “[t]here are thousands of documents that demonstrate the origin and development of every element of the movie,” “[t]he final movie is a product of the contributions of hundreds of individuals who are acknowledged in the credits,” and “[n]othing in *Moana* derived from or was based in any way on [Plaintiff] or his ‘Bucky’ project.” (Musker Decl. ¶ 70.) After discussing the research, creation and development of *Moana* (see Clements Dec. ¶¶ 4-30), Clements concludes his declaration by attesting “*Moana* was not inspired by or based in any way on [Plaintiff] or his ‘Bucky’ project, which I learned of for the first time after this lawsuit was filed.” (Clements Decl. ¶ 31.) To support independent creation, Defendants also submit evidence regarding WDAS’s development files regarding the origin and development of the *Moana* film, including story ideas, pitch materials, written research, travel journals, scripts, and script revisions, which Defendants contend make no reference to Plaintiff’s *Bucky* materials.<sup>22</sup>

Plaintiff submits a report from Terry Hunt, Plaintiff’s expert on Polynesian and Oceanic mythology and folklore, who opines *Moana* “heavily copies from *Bucky*” and opines “both works adopt far more than one identical creative departure from traditional elements of Polynesian mythology” such that he “believe[s] that the overlap in both works is more than mere coincidence.” (Dkt. No. 436, Hunt Report.). Plaintiff also cites to the report of his substantial

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<sup>22</sup> See Dkt. No. 404-1 to 404-73, Musker Decl. Exs. A-UUU; see also Dkt. No. 410, Jessica Julius Decl. ¶¶ 12-21; Dkt. No. 411, James McDonald Decl. ¶¶ 5-7.



1 similarity expert who opines there is significant “overlap” between Bucky and  
2 earlier versions of Moana and “plagiarism,” and “[e]arlier scripts and treatments  
3 of the Disney Film heavily borrow from the original *Bucky* materials” which “are  
4 extraordinary coincidences that defy any other argument than that they were based  
5 on *Bucky*.” (Dkt. No. 435-1, Roman Expert Report at 35-37.)<sup>23</sup>

6 The issue of independent creation is necessarily tied to the parties’ evidence  
7 regarding access and evidence regarding substantial similarity (an issue for which  
8 there are dueling expert opinions from the parties) such that the issue of  
9 independent creation should be left to the trier of fact. *See Three Boys Music*  
10 *Corp. v. Bolton*, 212 F.3d 477, 486 (9th Cir. 2000), *overruled on other grounds by*  
11 *Skidmore as Tr. for Randy Craig Wolfe Tr. v. Led Zeppelin*, 952 F.3d 1051 (9th  
12 Cir. 2020); *Macnab v. Gahderi*, 2009 WL 10671026, at \*4 (C.D. Cal. July 28,  
13 2009); *Fun With Phonics, LLC v. LeapFrog Enters., Inc.*, 2010 WL 11404474, at  
14 \*9 (C.D. Cal. Sept. 10, 2010); *Skidmore*, 952 F.3d at 1064. Moreover, Plaintiff  
15 submits deposition testimony from Clements who testified regarding an original  
16 pitch he and Musker made about a Western teenage boy who needed to time-travel  
17 to the past to save his Polynesian island and a modern island boy thrown back in  
18 time, and that a news article misquoted him in reporting in an interview that time  
19 travel was an element to the Moana story. (Dkt. No. 542-6, Clements Depo.  
20 104:21-105:24, 120:6-122:18.) Plaintiff also submits deposition testimony from  
21 Musker, wherein Musker testified regarding a pitch about a young boy in the  
22 contemporary world who went back into the world of ancient voyage to learn  
23 about ancient Polynesia. (Dkt. No. 542-12, Musker Depo. 99:16-101:21.)  
24

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25 <sup>23</sup> Defendants argue in response to Plaintiff’s statement of disputed facts that Hunt  
26 and Roman’s expert reports are “improper and immaterial” because neither was  
27 disclosed as an expert on independent creation and is not qualified to render an  
28 opinion on that subject. (*See* Defendants’ Response to Plaintiff’s Statement of  
Genuine Issues No. 64.) However, Defendants did not file evidentiary objections  
to Hunt and Roman’s reports in connection with the parties’ cross-motions for  
summary judgment.

1 Therefore, evidence before the Court raises a triable issue of fact regarding the  
2 issue of independent creation. *See, e.g., McIntosh v. N. Cal. Universal Enters.*  
3 *Co.*, 670 F. Supp. 2d 1069, 1095 (E.D. Cal. 2009). Furthermore, a finding on the  
4 issue of independent creation on summary judgment would be improper here  
5 because it would require the Court to weigh evidence and make credibility  
6 determinations. *See Kaseberg v. Conaco, LLC*, 260 F. Supp. 3d 1229, 1247 (S.D.  
7 Cal. 2017); *Miller v. Miramax Film Corp.*, 2001 U.S. Dist. LEXIS 25967, at \*31-  
8 \*32 (C.D. Cal. 2001). Nor is summary judgment in favor of Plaintiff on the issue  
9 of the independent creation case proper here since there is a disputed issue of  
10 genuine fact regarding substantial similarity and striking similarity between the  
11 parties' works. *See Twentieth Century-Fox Film Corp. v. MCA, Inc.*, 715 F.2d  
12 1327, 1330 (9th Cir. 1983).<sup>24</sup> Accordingly, the Court denies both Defendants' and  
13 Plaintiff's motions for summary judgment on the issue of independent creation.

#### 14 **(8) Affirmative Defenses**

15 Plaintiff moves for summary judgment on Defendants' affirmative defenses  
16 as to copying and willfulness for Plaintiff's copyright infringement claim.

##### 17 **a. Merger and Scènes-à-Faire**

18 Plaintiff argues Defendants cannot meet their burden of proof on their  
19 "Merger Defense" and "Scènes-à-Faire Defense." (Plaintiff's Motion at 17, 20.)<sup>25</sup>  
20 "Under the merger doctrine, courts will not protect a copyrighted work from  
21 infringement if the idea underlying the copyrighted work can be expressed in only  
22 one way, lest there be a monopoly on the underlying idea" because "[i]n such an  
23 instance, it is said that the work's idea and expression merge." *Ets-Hokin v. Skyy*  
24 *Spirits, Inc.*, 225 F.3d 1068, 1082 (9th Cir. 2000) (internal quotations and citations  
25

26 <sup>24</sup> *Cf. Walker v. Viacom Int'l, Inc.*, 2008 WL 2050964, at \*9 (N.D. Cal. May 13,  
27 2008), *aff'd*, 362 Fed. App'x. 858 (9th Cir. 2010).

28 <sup>25</sup> Plaintiff also argues Defendants have not proven their independent creation  
defense. The issue of independent creation is discussed *supra*.

1 omitted).<sup>26</sup> “Under the related doctrine of scènes à faire, courts will not protect a  
2 copyrighted work from infringement if the expression embodied in the work  
3 necessarily flows from a commonplace idea; like merger, the rationale is that there  
4 should be no monopoly on the underlying unprotectable idea.” *Id.* (citations  
5 omitted).<sup>27</sup>

6 As to the scènes à faire defense, Defendants submit a report and rebuttal  
7 report from their expert Jeff Rovin, wherein he opines regarding unprotectable  
8 scènes à faire in Plaintiff’s *Bucky*. (See Dkt. No. 417-1, Rovin Report at 133, 141;  
9 Dkt. No. 417-2, Rovin Rebuttal Report at 7, 29.) Plaintiff argues Rovin’s opinions  
10 in his reports regarding scènes à faire “is refuted by the much more detailed and  
11 reasoned opinions of Terry Hunt,” Plaintiff’s expert. (Dkt. No. 436-1, Hunt  
12 Expert Report.) However, Plaintiff’s arguments in favor of his expert’s opinions  
13 regarding the protectable scenes in Plaintiff’s work go to the weight of the  
14 evidence rather than showing there are no triable issues as to Defendants’ scènes à  
15 faire defense. Since there are dueling expert opinions on the issue, summary  
16 judgment on the issue is improper. *See Hall*, 2021 WL 6104160, at \*5; *Lewert*,  
17 212 F. Supp. 3d at 937; *Optivus Tech.*, 2005 WL 6070811, at \*31; *Avery Dennison*  
18 *Corp.*, 2000 WL 986995, at \*12; *CytoSport*, 894 F. Supp. 2d at 1300. Therefore,  
19 the Court denies Plaintiff’s motion for summary judgment on the scènes à faire  
20 defense.

21 Defendants also argue they have submitted evidence raising triable issues

22 <sup>26</sup> “Ideas, like facts, are not entitled to copyright.” *CDN Inc. v. Kapes*, 197 F.3d  
23 1256, 1261 (9th Cir. 1999). Moreover, “when expression is essential to conveying  
the idea, expression will also be unprotected.” *Id.*

24 <sup>27</sup> Defendants argue Plaintiff’s Motion for Summary Judgment on Defendants’  
25 purported affirmative defenses of merger and scènes-à-faire fails because the  
merger doctrine and scènes-à-faire doctrine are not affirmative defenses.  
26 However, the Ninth Circuit has recognized “[a]lthough there is some disagreement  
among courts as to whether these two doctrines [merger and scènes-à-faire] figure  
27 into the issue of copyrightability or are more properly defenses to infringement,  
we hold that they are defenses to infringement.” *Ets-Hokin*, 225 F.3d at 1082  
28 (internal citations omitted); *see also Satava v. Lowry*, 323 F.3d 805, 810 n.3 (9th  
Cir. 2003).

1 with respect to the doctrine of merger, relying on the same portions of Rovin’s  
2 Expert Report and Rebuttal Report cited in connection with the scènes à faire  
3 defense discussed above. However, those portions of Rovin’s reports relied on by  
4 Defendants do not opine on the issue of merger, but rather refer to “stock  
5 elements” related to Defendants’ scènes à faire defense. (See Dkt. No. 417-1,  
6 Rovin Report at 133 (opining “themes of a dangerous ocean, the calls of nature  
7 toward man, and animals guiding humans are stock elements in thousands of years  
8 of Polynesian storytelling”); *id.* at 141 (idea of “a protagonist battling a storm” at  
9 sea is a stock element in seagoing stories); Dkt. No. 417-2, Rovin Rebuttal Report  
10 at 7 (characterization of teenage protagonists as “free spirits,” “impatient and  
11 impulsive,” and “rebellious,” and of parents as overprotective, are stereotypical  
12 representations in coming-of-age stories); *id.* at 29 (theme that young protagonist  
13 “must be true to herself to find her destiny” is common to “most every one of the  
14 Disney ‘princess’ films that came before and after MOANA, and of countless  
15 movies involving a hero’s journey”)).) See *Rentmeester v. Nike, Inc.*, 883 F.3d  
16 1111, 1118 (9th Cir. 2018) (“Before that comparison can be made, the court must  
17 ‘filter out’ the unprotectable elements of the plaintiff’s work—primarily ideas and  
18 concepts, material in the public domain, and **scènes à faire (stock or standard**  
19 **features** that are commonly associated with the treatment of a given subject”)  
20 (emphasis added), *overruled on other grounds by Skidmore as Tr. for Randy Craig*  
21 *Wolfe Tr. v. Led Zeppelin*, 952 F.3d 1051 (9th Cir. 2020).

22 Defendants also cite to the entirety of the expert report from Dr. Marie  
23 Alohalani in disputing Plaintiff’s Statement of Fact No. 1 that “Defendants cannot  
24 meet their burden of proof on their affirmative defense of merger,” but do not  
25 identify any portion of her report addressing the merger doctrine. (See  
26 Defendants’ Response to Plaintiff’s Statement of Facts No. 3 (citing “Botwin  
27 Decl. Ex. 57 (Dkt. 441-57) (Expert report of Dr. Marie Alohalani Brown)”).)  
28 However, “[a] party asserting that a fact cannot be or is genuinely disputed must

1 support the assertion by . . . citing to particular parts of materials in the record.”  
2 Fed. R. Civ. P. 56(c) (emphasis added); *see also* *Zackaria*, 2014 WL 11398759, at  
3 \*2. Moreover, the Court reviewed Dr. Alohalani’s report which addresses  
4 common Polynesian motifs, Polynesian mythology, customs, traditions, and  
5 culture, and does not address the merger of ideas and expression.

6 Accordingly, Defendants do not identify any evidence demonstrating “the  
7 idea” in the work “can be expressed in only one way” or “an idea and its  
8 expression” that are “indistinguishable” in support of their merger defense. *Ets-*  
9 *Hokin*, 225 F.3d at 1082; *Apple Computer, Inc. v. Microsoft Corp.*, 35 F.3d 1435,  
10 1444 (9th Cir. 1994). Therefore, the Court grants Plaintiff’s Motion for Summary  
11 Judgment on the affirmative defense of merger, and Defendants cannot pursue the  
12 merger doctrine defense at trial.

13 **b. Willful Infringement**

14 Plaintiff moves for partial summary judgment on the issue of willfulness.  
15 “To prove willfulness under the Copyright Act, the plaintiff must show (1) that the  
16 defendant was actually aware of the infringing activity, or (2) that the defendant’s  
17 actions were the result of reckless disregard for, or willful blindness to, the  
18 copyright holder’s rights.” *Louis Vuitton Malletier, S.A. v. Akanoc Sols., Inc.*, 658  
19 F.3d 936, 944 (9th Cir. 2011) (internal quotations and citations omitted).<sup>28</sup>

20 Here, Plaintiff argues willfulness can be found as a matter of law where, as  
21 here, the evidence shows the defendant had undisputed notice of the infringement  
22 but continued to infringe. However, because Plaintiff does not cite to any specific  
23 evidence, and instead vaguely references “the evidence,” Plaintiff fails to comply  
24 with Fed. R. Civ. P. 56(c), which provides “[a] party asserting that a fact cannot be  
25 or is genuinely disputed must support the assertion by . . . citing to particular

26 \_\_\_\_\_  
27 <sup>28</sup> The Copyright Act provides “[i]n a case where the copyright owner sustains the  
28 burden of proving, and the court finds, that infringement was committed willfully,  
the court in its discretion may increase the award of statutory damages to a sum of  
not more than \$150,000.” 17 U.S.C. § 504.

1 **parts** of materials in the record.” (Emphasis added.) *See also Zackaria v. Wal-*  
2 *Mart Stores, Inc.*, 2014 WL 11398759, at \*2 (C.D. Cal. Feb. 21, 2014); *Cortes v.*  
3 *Mkt. Connect Grp., Inc.*, 2015 WL 5772857, at \*4 (S.D. Cal. Sept. 30, 2015);  
4 *Equal Emp. Opportunity Comm’n v. Telecare Mental Health Servs. of*  
5 *Washington, Inc.*, 2023 WL 5348880, at \*4 (W.D. Wash. Aug. 21, 2023) (citing  
6 *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)). Moreover, Plaintiff’s  
7 argument regarding willfulness assumes Defendants have infringed. However,  
8 Plaintiff has not moved for summary judgment on the issue of infringement, and  
9 therefore a finding on the issue of willfulness is premature. Furthermore,  
10 “[g]enerally, a determination as to willfulness requires an assessment of a party’s  
11 state of mind, a factual issue that is not usually susceptible to summary judgment”  
12 and “is ordinarily a question of fact for the jury.” *L.A. Printex Indus., Inc.*, 2009  
13 WL 789877, at \*7; *see also N. Face Apparel Corp. v. Dahan*, 2014 WL 12558010,  
14 at \*18 (C.D. Cal. Oct. 6, 2014) (collecting cases); *United Fabrics Int’l, Inc. v. G-*  
15 *III Apparel Grp., Ltd.*, 2013 WL 7853485, at \*6 (C.D. Cal. Dec. 27, 2013).  
16 Accordingly, the Court denies Plaintiff’s Motion for Summary Judgment on the  
17 issue of willfulness.

18 **D. Plaintiff’s Request for Stay Pursuant to Fed. R. Civ. P.**

19 In Plaintiff counsel Botwin’s declaration filed in support of Plaintiff’s  
20 Motion for Partial Summary Judgment, Plaintiff’s counsel declared:

21 Plaintiff seeks to file a motion for leave to file a motion to compel  
22 responses to . . . Requests for Admission [regarding a FedEx account  
23 number on a handwritten note produced by Plaintiff during  
24 discovery] out of time, based on the fact that the evidence is newly  
25 discovered and Disney Defendants’ admission would serve the  
26 interests of justice and further permit the case to be resolved on the  
27 merits. Thus, to the extent the Court does not find that Defendants’  
28 admission in their attempt to explain why Plaintiff is in possession of  
their confidential information, see Plaintiff’s Response to  
Defendants’ Statement of Genuine Disputes, filed herewith, at ¶¶  
251, 252, does not already amount to an admission that the FedEx  
account number is that of Disney Defendants, Plaintiff respectfully



requests a brief stay, pursuant to Rule 56(d), Fed.R.Civ.P.,<sup>29</sup> pending resolution of this narrow dispute.

(Dkt. No. 547, Botwin Decl. ¶ 6.)

On June 11, 2024, Plaintiff filed a “Motion to Reopen Discovery for the Limited Purpose of Compelling Responses from Certain Defendants to Requests for Admission.” (Dkt. No. 502.) Fact discovery closed on October 23, 2023. (Dkt. No. 293.) Six months after fact discovery had closed, Plaintiffs served Requests for Admission (“RFAs”) on Disney Defendants to “[a]dmit or deny that ‘\_\_\_\_\_ 828-0’ is a FedEx account number that was associated with Disney in or around 2003 and 2004.” Defendants objected to the Requests for Admission regarding the FedEx number on the basis that the fact discovery cutoff was October 23, 2023, and therefore Plaintiff’s Requests for Admission were untimely. Plaintiff’s Motion to Reopen Discovery thus sought to reopen discovery “for the limited purpose of permitting Plaintiff to file a motion to compel certain Defendants to respond to” the Requests for Admission regarding the FedEx account number. On July 5, 2024, the Court denied Plaintiff’s Motion to Reopen Discovery upon finding no good cause to reopen discovery because Plaintiff failed to demonstrate he was diligent in obtaining discovery regarding the FedEx numbers prior to the close of discovery. (Dkt. No. 508.) Therefore, Plaintiff’s request to stay pursuant to Fed. R. Civ. P. 56(d) is denied.

#### IV. CONCLUSION

Accordingly, the Court rules on Defendants’ Motion for Summary Judgment as follows:

1. Defendants’ Motion for Summary Judgment on Plaintiff’s trade secrets misappropriation claims under the DTSA and CUTSA on the ground they are time-barred is **GRANTED**;

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<sup>29</sup> Fed. R. Civ. P. 56(d) provides: “If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order.”

2. Defendants' Motion for Summary Judgment on Plaintiff's fraud, false promises, and conspiracy to commit fraud claims on the ground they are time-barred is **GRANTED**;
3. Defendants' Motion for Summary Judgment on Plaintiff's copyright claim on the ground it is time-barred against all Defendants except Defendant Buena Vista Home Entertainment is **GRANTED**;
4. Defendants' Motion for Summary Judgment on Plaintiff's copyright infringement claim as to the issue of access is **DENIED**;
5. Defendants' Motion for Summary Judgment on Plaintiff's copyright claim as to the issue of substantial similarity is **DENIED**; and
6. Defendants' Motion for Summary Judgment on the issue of independent creation is **DENIED**.

The Court rules on Plaintiff's Motion for Partial Summary Judgment as follows:

1. Plaintiff's Motion for Partial Summary Judgment on the ground Defendants cannot meet their burden of proof on their statute of limitations defense is **DENIED**;
2. Plaintiff's Motion for Partial Summary Judgment as to the issue of falsity for his fraud and false promises claims is **DENIED** because those claims are time-barred;
3. Plaintiff's Motion for Partial Summary Judgment on the issue of ownership of the copyrighted Bucky works is **GRANTED**;
4. Plaintiff's Motion for Partial Summary Judgment on the issue of access for Plaintiff's copyright infringement claim is **DENIED**;
5. Plaintiff's Motion for Partial Summary Judgment on the issue of independent creation for Plaintiff's copyright infringement claim is **DENIED**;
6. Plaintiff's Motion for Partial Summary Judgment on the issue of Defendants' joint and several liability for copyright infringement is **DENIED**;
7. Plaintiff's Motion for Partial Summary Judgment on the scènes à faire defense for Plaintiff's copyright infringement claim is **DENIED**;
8. Plaintiff's Motion for Partial Summary Judgment on the merger doctrine defense for Plaintiff's copyright infringement claim is **GRANTED**, and Defendants cannot pursue the merger doctrine defense at trial; and

9. Plaintiff's Motion for Partial Summary Judgment on the issue of willfulness for Plaintiff's copyright infringement claim is **DENIED**.

The Court **DENIES** Plaintiff's request to stay pursuant to Fed. R. Civ. P. 56(d).

Based on the Court's rulings in this Order, the remaining claim for trial is Plaintiff's copyright infringement claim based on distribution of *Moana* by Defendant Buena Vista Home Entertainment after April 24, 2017.

**IT IS SO ORDERED.**

DATED: November 1, 2024.



HON. CONSUELO B. MARSHALL  
UNITED STATES DISTRICT JUDGE