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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11	SISYPHUS TOURING, INC.,)	CV No. 15-09512-RSWL-PJW
12	Plaintiff,)	
13	v.)	ORDER Re: DEFENDANTS'
14	TMZ PRODUCTIONS, INC., et	)	MOTION FOR SUMMARY
15	al.,	)	JUDGMENT [47];
16	Defendants.	)	PLAINTIFF'S MOTION FOR
17		)	PARTIAL SUMMARY JUDGMENT
18		)	[42]; DEFENDANTS' MOTION
19		)	PURSUANT TO RULE 56(d)
20		)	TO DEFER CONSIDERATION
		)	OF PLAINTIFF'S MOTION
		)	FOR PARTIAL SUMMARY
		)	JUDGMENT [59];
		)	DEFENDANTS' MOTION FOR
		)	DEFAULT JUDGMENT [72]

21 **I. INTRODUCTION**

22 Currently before the Court is Defendant MBLC
23 Productions Inc. (formerly known as TMZ Productions,
24 Inc.), TMZ.com, EHM Productions, Inc., and Warner Bros.
25 Entertainment Inc.'s ("Defendants") Motion for Summary
26 Judgment ("Mot. Summ. J."), Plaintiff Sisyphus Touring,
27 Inc.'s ("Plaintiff") Motion for Partial Summary
28 Judgment ("Mot. Partial Summ. J."), Defendants' Motion

Pursuant to Rule 56(d) to Defer Consideration of Plaintiff's Motion for Partial Summary Judgment ("Mot."), and Defendants' Motion for Default Judgment Against Third-Party Defendant Naeem Munaf. The Court, having reviewed all papers and arguments submitted pertaining to this Motion, **NOW FINDS AND RULES AS FOLLOWS:** Defendants' Motion for Summary Judgment [42] is **GRANTED**, Plaintiff's Motion for Partial Summary Judgment [42] is **DENIED** as moot, Defendants' Motion Pursuant to Rule 56(d) to Defer Consideration of Plaintiff's Motion for Partial Summary Judgment [59] is **DENIED** as moot, and Defendants' Motion for Default Judgment against Third-Party Defendant Naeem Munaf [72] is **DENIED** as moot.

II. BACKGROUND

A. Findings of Fact

Plaintiff is a for-profit corporation co-owned by Jared Leto ("Leto"). Stipulated Facts 2:14-17. Leto is an actor, recording artist, and a member of the band Thirty Seconds to Mars. Id. at 2:18-19. MBLC Productions Inc. and EHM Productions, Inc. operate TMZ.com and are for-profit companies. Id. at 3:13-20. Warner Bros. Entertainment Inc. is the "indirect parent company" of MBLC Productions Inc. and EHM Productions, Inc. Id. at 3:15-16. TMZ.com reports on celebrity news through their website and earns revenue from advertisements on the website. Id. at 3:21-22.

Plaintiff's representative, Jared Rosenberg

1 ("Rosenberg"), contacted Naeem Munaf ("Munaf") about
2 shooting a video of Leto on September 8, 2015. Id. at
3 2:20-22. Munaf had no relationship with Plaintiff
4 prior to September 8, 2015. Id. at 2:23-25. Munaf has
5 never been an employee of Plaintiff. Id. at 3:1-2.
6 Munaf went to Leto's home on September 8, 2015 and shot
7 footage of him. Id. at 3:3-5. Munaf used his own
8 equipment and no one but Munaf operated his equipment
9 during the video shoot. Id. at 3:6-7.

10 Plaintiff did not give Munaf any documents prior to
11 the shoot indicating that the work would be a work made
12 for hire. Id. at 3:8-12. Munaf did not sign any
13 agreements prior to the shoot indicating that the work
14 would be a work made for hire. Id.

15 Munaf, using a pseudonym, "Jake Miller" sent
16 Defendants a message through "TMZ Ideas" on December 4,
17 2015 at 12:12 a.m. advising he had a clip of Leto
18 talking about singer Taylor Swift. Id. at 3:23-27. A
19 representative of Defendants, Anthony Dominic
20 ("Dominic"), contacted Munaf about the excerpt. Id. at
21 4:3-4. A second representative of Defendants, Nikki
22 Hendry ("Hendry"), contacted Munaf on December 4, 2015
23 at 1:17 p.m. stating, "[P]er our conversation, both
24 parties have agreed that TMZ will pay you \$2,000.00 USD
25 for the outright purchase of 1 video of Jared Leto
26 talking about Taylor Swift. When you have a moment:
27 can you please send me an email back stating 'I agree'
28 to the terms of the agreement. I have also attached

1 the contract and W-9 forms. Please print and fill them
2 out and either fax, or scan and email back to me OR
3 take a good clear cell phone photo of the docs and
4 email them back to me. A check will be sent to you in
5 the next 2-3 weeks." Id. at 4:5-14. Munaf responded
6 to the email on December 4, 2015 at 1:20 p.m., stating
7 "I agree. Sending video to Anthony. I will send these
8 forms back soon." Id. at 4:18-20.

9 Munaf provided Defendants the weblink to the
10 excerpt on December 4, 2015 showing Leto talking about
11 Taylor Swift. Id. at 5:1-3. Hendry sent an email to
12 TMZ's news desk on December 4, 2015, with the subject
13 line, "[w]e now OWN and can distribute video of Jared
14 Leto talking about Taylor Swift." Id. at 5:4-8.
15 Defendants advised Leto's representatives on December
16 6, 2015 approximately at 4:00 p.m. that Defendants were
17 going to publish an excerpt of Leto talking about
18 Taylor Swift. Id. at 5:9-11. Leto and his
19 representatives told Defendants on December 6, 2015
20 that the video was stolen. Id. at 5:15-16. Rosenberg
21 contacted Munaf on December 6, 2015 at or after 10:47
22 p.m. asking he sign a non-disclosure agreement. Id. at
23 5:17-18. Leto's representative sent Defendants an
24 email on December 7, 2015 at 12:12 a.m. stating that
25 Leto owned the copyright to the video. Id. at 5:23-25.
26 Munaf sent Plaintiff a scanned copy of the non-
27 disclosure agreement on December 7, 2015 at 12:15 a.m.
28 Id. at 5:27-28. Defendants published one minute and

1 ten seconds of the video on TMZ.com on December 7, 2015
2 at 1:00 a.m. along with an article written by TMZ
3 staff. Id. at 5:5-7.

4 Munaf sent Dominic an email on December 7, 2015 at
5 1:14 a.m. stating, "do not post the footage. I do not
6 own it. I do not have permission. I will not be
7 signing any w-9 or agree to get paid forms." Id. at
8 6:19-21. Munaf sent Defendants a message on December
9 7, 2015 at 4:20 a.m. stating, "REMOVE JARED LETO POST
10 NOW. MY CONTACT AT TMZ IS ANTHONY DOMINIC. I DID NOT
11 OWN THAT FOOTAGE NOR HAVE PERMISSION. REMOVE NOW. I AM
12 NOT FILLING OUT ANY W-9 AGREE TO GET PAID FORMS." Id.
13 at 6:27-28; 7:1-3. Munaf did not return the contract
14 or W-9 form to Defendants and Defendants have not paid
15 Munaf any of the \$2,000. Id. at 7:6-9.

16 Munaf sent Rosenberg an email on December 7, 2015
17 at 8:47 p.m. stating, "[a]fter agreeing to give TMZ the
18 footage for a financial gain of \$2,000, I don't begin
19 to describe how guilty I felt and stressed from that
20 moment and that no amount of money would be worth the
21 humiliation that I know I have caused for jared and
22 you, JR...Whatever I thought my intent was, I did not
23 sign the agreement that TMZ provided nor fill out the
24 W-9, because after my decision I felt I could not agree
25 to take the money." Id. at 7:11-17.

26 Munaf signed a second non-disclosure agreement
27 provided by Rosenberg on December 7, 2015 at 11:16 a.m.
28 The agreement was "acknowledged and agreed as of this

1 date: 9/8/15, 2015." Id. at 7:21-24. Munaf sent the
2 entire video he shot to Plaintiff on December 7, 2015.
3 Id. at 8:3-4. On December 7, 2015, Plaintiff
4 registered four excerpts of the video with the United
5 States Copyright Office totaling twelve minutes and
6 eight seconds. Id. at 8:5-8. The excerpts contain the
7 footage that was published by Defendants. Id. at 8:13-
8 14. Besides being published by Defendants, no other
9 excerpts of the footage given to the Copyright Office
10 have been published. Id. at 8:27.

11 The excerpt published by Defendants lasts one
12 minute and fourteen seconds. Id. at 9:1-2. There is
13 also an article and a caption in the upper left hand
14 corner of the excerpt image stating "Jared Leto: Screw
15 Taylor Swift But I'd Love One of Her Songs: TMZ.com."
16 Id. at 9:7-9. The TMZ logo is in the upper right hand
17 corner of the excerpt image, and the excerpt begins and
18 ends with a two second animation of a TMZ logo with
19 music. Id. at 9:11-14. The excerpt and article were
20 published on December 7, 2015, and are still published
21 as of today. Id. at 9:15-17.

22 **B. Procedural Background**

23 On December 9, 2015, Plaintiff filed a Complaint
24 [1] alleging a claim of copyright infringement seeking
25 injunctive relief and damages in violation of 17 U.S.C.
26 § 101. On January 8, 2016, Defendants filed an answer
27 [21] to Plaintiff's Complaint alleging six affirmative
28

1 defenses. On January 29, 2016, Defendants filed a
2 First Amended Answer [21].

3 On January 8, 2016, Defendants ("Third-Party
4 Plaintiffs") filed a Third-Party Complaint against
5 Third-Party Defendant "Jake Guy Miller" (Naeem Munaf)
6 [17]. On January 29, 2016, Third-Party Plaintiffs
7 filed a First Amended Third-Party Complaint against
8 Third-Party Defendant "Jake Guy Miller" [22]. On March
9 30, 2016, Third-Party Plaintiffs filed a Second Amended
10 Third-Party Complaint against Third-Party Defendant
11 Naeem Munaf [29]. On June 21, 2016, Third-Party
12 Plaintiffs filed an Application for the Clerk of the
13 Court to enter Default against Third-Party Defendant
14 Naeem Munaf [35]. On June 22, 2016, Default by the
15 Clerk was issued against Third-Party Defendant Naeem
16 Munaf [37]. On September 2, 2016, Third-Party
17 Plaintiffs filed a Motion for Default Judgment against
18 Third-Party Defendant Naeem Munaf [72].

19 On July 11, 2016, Defendants filed a Statement of
20 Stipulated Facts for Summary Judgment Motions [40]. On
21 July 12, 2016, Defendants filed the instant Motion for
22 Summary Judgment [47]. On July 26, 2016, Plaintiff
23 filed an Opposition [60]. On July 26, 2016, Plaintiff
24 filed a Statement of Genuine Disputes [61]. On August
25 9, 2016, Defendants filed a Reply [67].

26 On July 12, 2016, Plaintiff filed a Motion for
27 Partial Summary Judgment [42]. On July 26, 2016,

1 Defendants filed an Opposition [56]. On August 2,
2 2016, Plaintiff filed a Reply [64].

3 On July 26, 2016, Defendants filed a Motion
4 Pursuant to Rule 56(d) to Defer Consideration of
5 Plaintiff's Motion for Partial Summary Judgment
6 pursuant to Federal Rules of Civil Procedure 56(d)
7 [59]. On August 2, 2016, Plaintiff filed its
8 Opposition [65]. On August 9, 2016, Defendants filed
9 its Reply [67].

10 III. DISCUSSION

11 A. Legal Standard

12 1. Motion for Summary Judgment

13 Federal Rule of Civil Procedure 56 states that a
14 "court shall grant summary judgment" when the movant
15 "shows that there is no genuine dispute as to any
16 material fact and the movant is entitled to judgment as
17 a matter of law." Fed. R. Civ. P. 56(a). A fact is
18 "material" for purposes of summary judgment if it might
19 affect the outcome of the suit, and a "genuine issue"
20 exists if the evidence is such that a reasonable fact-
21 finder could return a verdict for the non-moving party.
22 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
23 (1986). The evidence, and any inferences based on
24 underlying facts, must be viewed in the light most
25 favorable to the opposing party. Twentieth Century-Fox
26 Film Corp. v. MCA, Inc., 715 F.2d 1327, 1328-29 (9th
27 Cir. 1983). In ruling on a motion for summary

1 judgment, the Court's function is not to weigh the
2 evidence, but only to determine if a genuine issue of
3 material fact exists. Anderson, 477 U.S. at 255.

4 Under Rule 56, the party moving for summary
5 judgment has the initial burden to show "no genuine
6 dispute as to any material fact." Fed. R. Civ. P.
7 56(a); see Nissan Fire & Marine Ins. Co. v. Fritz Cos.,
8 210 F.3d 1099, 1102-03 (9th Cir. 2000). The burden
9 then shifts to the non-moving party to produce
10 admissible evidence showing a triable issue of fact.
11 Nissan Fire & Marine Ins., 210 F.3d at 1102-03; see
12 Fed. R. Civ. P. 56(a). When a defendant moves for
13 summary judgment, summary judgment "is appropriate when
14 the plaintiff fails to make a showing sufficient to
15 establish the existence of an element essential to
16 [their] case, and on which [they] will bear the burden
17 of proof at trial." Cleveland v. Policy Mgmt. Sys.
18 Corp., 526 U.S. 795, 805-06 (1999); Celotex Corp. v.
19 Catrett, 477 U.S. 317, 322 (1986).

20 The standard for a motion for summary judgment
21 "provides that the mere existence of *some* alleged
22 factual dispute between the parties will not defeat an
23 otherwise properly supported motion for summary
24 judgement; the requirement is that there be no *genuine*
25 issues of *material* fact." Anderson, 477 U.S. at 247-
26 48.

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1 **B. Analysis**

2 1. Plaintiff Does Not Own The Video As A Work
3 Made For Hire

4 A copyright "vests initially in the author or
5 authors of the work." 17 U.S.C. § 201(a). If a piece
6 of work is a work made for hire, "the employer or other
7 person for whom the work was prepared is considered the
8 author..., unless the parties have expressly agreed
9 otherwise in a written instrument signed by them, owns
10 all of the rights comprised in the copyright." 17
11 U.S.C. § 201(b). To qualify as a work made for hire, a
12 work either needs to be "prepared by an employee within
13 the scope of his or her employment; or a work specially
14 ordered or commissioned for use as a contribution to a
15 collective work...if the parties expressly agree in a
16 written instrument signed by them that the work shall
17 be considered a work made for hire." 17 U.S.C. § 101.

18 The video and excerpt is not a work made for hire
19 under the first prong because Munaf has never been an
20 employee of Plaintiff. Stipulated Facts 2:23-25; 3:1-

21 2. For the video and excerpt to qualify as a work made
22 for hire under the second prong, Plaintiff and Munaf
23 would have needed to execute an express agreement
24 signed in writing stating that the work is a work made
25 for hire. 17 U.S.C. § 101.

26 The work must be specially commissioned "for use as
27 a contribution to a collective work, as a part of a

1 motion picture or other audiovisual work, as a
2 translation, as a supplementary work, as a compilation,
3 as an instructional text, as a test, as answer material
4 for a test, or as an atlas." Id. The video was
5 specially commissioned as an audiovisual work by
6 Plaintiff to be used as promotion of new songs by the
7 group Thirty Seconds to Mars. Mot. Summ. J. Opp'n
8 7:16-18.

9 The determination of whether the video was a work
10 made for hire turns on the written instrument
11 requirement. Plaintiff argues that Plaintiff and Munaf
12 orally agreed prior to the video shooting that
13 Plaintiff would own the copyright to the video. Id. at
14 7:19-21. The non-disclosure agreement confirmed their
15 prior oral agreement and satisfies the requirements of
16 17 U.S.C. § 101. Id. at 10:2-6. Defendants argue that
17 the written instrument must be created prior to the
18 creation of the work. Mot. Summ. J. 2:3-5. As the
19 non-disclosure agreements were signed nearly three
20 months after the video was shot, Defendants argue that
21 the video was not a work made for hire. Id. at 2:11-
22 13. The Ninth Circuit has yet to address in a
23 published opinion whether the written instrument needs
24 to be signed before the work is created or if a written
25 instrument memorializing a prior oral agreement is
26 satisfactory for purposes of 17 U.S.C. § 101.

1 The Seventh Circuit in Schiller & Schmidt, Inc. v.
2 Nordisco Corp., 969 F.2d 410, 413 (7th Cir. 1992), held
3 that the writing instrument for a work made for hire
4 "must precede the creation of the property in order to
5 serve its purpose of identify the (noncreator) owner
6 unequivocally." The court in Schiller held that the
7 statute's purpose is to "make the ownership of property
8 rights...clear and definite." Id. at 412. "Works
9 'specially ordered or commissioned' can only be made
10 after the execution of an express agreement between the
11 parties." Gladwell Gov't Servs., Inc. v. Cty. of
12 Marin, 265 F. App'x 624, 626 (9th Cir. 2008) (holding
13 copyright ownership was not established through a work
14 made for hire agreement because the writing was not
15 executed before the work was created).

16 Additionally, the Central District of California
17 has followed the Seventh Circuit in ruling that a
18 writing must be executed before the actual work is
19 created to qualify as a work made for hire. Andreas
20 Acarlsson Productions, AB v. Barnes, 2012 WL 2366391,
21 (C.D. Cal. June 18, 2012) (holding one of the works
22 created by Defendant was not a work made for hire
23 because the written instrument distinguishing it as a
24 work made for hire was executed after the work was
25 created).

26 While other out-of-circuit courts have held that a
27 written instrument for a work made for hire may be

1 executed after the work is created, it is clear based
2 on the statute, the Seventh Circuit's decision in
3 Schiller, and this district's ruling in Andreas
4 Acarlsson, the intention is to have the written
5 instrument executed before the work is made to clearly
6 identify copyright ownership. Allowing the writing
7 instrument to be executed after the work is created
8 would defeat the purpose of the statute in requiring a
9 written instrument altogether. There is no genuine
10 dispute as to any material fact because the parties
11 stipulated that Munaf was not an employee of Plaintiff,
12 and Munaf did not sign any paperwork with Plaintiff
13 prior to shooting the video on September 8, 2015 that
14 the work would be a work made for hire.

15 There is a dispute as to whether there was an oral
16 agreement between Munaf and Plaintiff before the video
17 was shot that Plaintiff would be the owner of the
18 copyright in the video. As the written instrument for
19 a work made for hire needs to be executed before the
20 work is created, the issue of whether there was an oral
21 agreement is irrelevant for purposes of this Motion for
22 Summary Judgment.

23 2. Plaintiff Does Not Own The Video As A Transfer
24 From Munaf Because Munaf Transferred Copyright
25 Ownership to Defendants on December 4, 2015

26 To validly transfer copyright ownership, there must
27 be "an instrument of conveyance, or a note or

1 memorandum of the transfer...in writing and signed by
2 the owner of the rights conveyed or such owner's duly
3 authorized agent." 17 U.S.C. § 204 (a). Defendants
4 argue that Munaf transferred copyright ownership to
5 them in their December 4, 2015 email exchange. Mot.
6 Summ. J. 10:17-20. "Section 204's writing requirement
7 is not unduly burdensome; it necessitates neither
8 protracted negotiations nor substantial expense. The
9 rule is really quite simple: If the copyright holder
10 agrees to transfer ownership to another party, that
11 party must get the copyright holder to sign a piece of
12 paper saying so. It doesn't have to be the Magna
13 Charta; a one-line pro forma statement will do."
14 Effects Associates, Inc. v. Cohen, 908 F.2d 555, 557
15 (9th Cir. 1990).

16 Munaf transferred copyright ownership to Defendants
17 in their December 4, 2015 email exchange. Hendry,
18 wrote that the agreement was for the "outright
19 purchase" of the video for \$2,000 and attached the
20 contract and W-9 form. Olasa Decl., Ex. 1 at 4-9.
21 Munaf emailed back stating he agreed to the terms of
22 the agreement and sent the excerpt to a different
23 representative of Defendants. "Under § 204(a), a
24 transfer of copyright ownership has not occurred unless
25 and until the copyright owner unambiguously embodies
26 its intention to a signed writing." Weinstein Co. v.
27 Smokewood Entm't Grp., LLC, 664 F. Supp. 2d 332, 343

1 (S.D.N.Y. 2009). "No magic words must be included in a
2 document to satisfy 204(a). Rather, the parties' intent
3 as evidenced by the writing must demonstrate a transfer
4 of the copyright." Radio Television Espanola S.A. v.
5 New World Entm't, Ltd., 183 F.3d 922 (9th Cir. 1999)
6 (quoting Valente-Kritzer Video v. Pinckney, 881 F.2d
7 772, 775 (9th Cir. 1989)).

8 While the emails do not specifically say that
9 Munaf is transferring copyright ownership to
10 Defendants, it is clear from the finality of the
11 emails, Munaf's intention was to transfer ownership to
12 Defendants. "In Schiller & Schmidt, 969 F.2d at 413,
13 the court held that an agreement, which did not include
14 the word "copyright," but whose "wording leaves little
15 doubt that [the alleged transferor] sold all the assets
16 of Spotline Studios, tangible and intangible alike" was
17 sufficient to constitute a transfer under Section
18 204(a)." Bieg v. Hovnanian Enterprises, Inc., 157 F.
19 Supp. 2d 475, 479-80 (E.D. Pa. 2001). Munaf stated
20 that he "will send these forms back soon" evidencing he
21 was aware of the attached contract and W-9 form and its
22 content that Munaf was agreeing no other party had
23 interest in the excerpt and he was selling the
24 copyright to Defendants. The actual writing in a
25 transfer of copyright does not have to explicitly state
26 that copyright ownership is being transferred, and
27 emails may be used to determine if there was a

1 transfer. See Schiller, 969 at 410; Kenbrooke Fabrics
2 v. Soho Fashions, 690 F.Supp. 298, 301 (S.D.N.Y. 1988).

3 As Munaf transferred copyright ownership to
4 Defendants on December 4, 2015, there was no transfer
5 to Plaintiff on December 6, 2015 when Munaf signed the
6 non-disclosure agreements. Munaf no longer had
7 ownership in the excerpt. Plaintiff's argument that
8 Munaf only transferred the actual video and not the
9 copyright is not persuasive because Plaintiff did not
10 put forth sufficient evidence showing that was the
11 understanding between Munaf and Defendants.

12 Plaintiff argues that the emails between Munaf and
13 Defendants were not a transfer because Munaf did not
14 sign it. Mot. Summ. J. Opp'n 17:9. 15 U.S.C. § 7006
15 states that an electronic signature "means an
16 electronic sound, symbol, or process, attached to or
17 logically associated with a contract or other record
18 and executed or adopted by a person with the intent to
19 sign the record." A signature or contract in
20 interstate commerce "may not be denied legal effect,
21 validity, or enforceability solely" because it is in an
22 electronic form or has an electronic signature. Id.

23 Plaintiff's argument here is not persuasive. The
24 intent of the statute is to allow electronic forms as
25 valid agreements and signatures. "To invalidate
26 copyright transfer agreements solely because they were
27 made electronically would thwart the clear

1 congressional intent." Metropolitan Regional
2 Information Systems, Inc. v. American Home Realty
3 Network, Inc., 722 F.3d 591, 602 (4th Cir. 2013). "An
4 electronic agreement may effect a valid transfer of
5 copyright interests under Section 204 of the Copyright
6 Act." Id. at 602. While in Metropolitan there was a
7 click of a "yes" button, here the emails are sufficient
8 to act as Munaf's signature. Munaf, using the
9 pseudonym "Jake Miller," wrote via email to Hendry he
10 agreed to the terms of the agreement and the email was
11 signed "Jake Miller Freelance Artist". Olasa Decl., Ex.
12 2 at 11. While Munaf did not click a "yes" button,
13 Munaf did have to click the "send" button and the email
14 had "Jake Miller" written at the bottom, purporting to
15 be Munaf's signature. The court in Vergara Hermosilla
16 v. Coca-Cola Co., No. 10-21418, 2011 WL 744098 (S.D.
17 Fla. Feb. 23, 2011) held that emails can be signed
18 writings and are sufficient to effect a transfer and
19 satisfy 17 U.S.C. § 204's writing requirement. There
20 are no genuine disputes as to material facts because
21 Munaf transferred the excerpt to Defendants, not
22 Plaintiffs.

23 3. It Is Moot Whether Defendants Were Granted An
24 Irrevocable Implied License To Use The Excerpt

25 The granting of a nonexclusive copyright license
26 does not have to be in writing. Foad Consulting Group,
27 Inc., v. Azzalino, 270 F.3d 821 (9th Cir. 2001). "A
28

1 nonexclusive license copyright license may be granted
2 orally or by implication." Id. at 826; Effects
3 Associates, 908 F.2d at 558. State law must be used to
4 determine if a nonexclusive copyright license has been
5 granted. Id. at 827. Since the video was not a work
6 made for hire and there was a valid transfer from Munaf
7 to Defendants, the determination of whether an
8 nonexclusive implied license was granted is moot.

9 4. Plaintiff's Motion for Partial Summary Judgment
10 Is Moot

11 As Defendants' Motion for Summary Judgment
12 is **GRANTED** and Plaintiff does not have any copyright
13 ownership rights to the video and excerpt, Plaintiff's
14 Motion for Partial Summary Judgment is **DENIED** as moot.

15 5. Defendants' Motion Pursuant to Rule 56(d) to
16 Defer Consideration of Plaintiff's Motion for
17 Partial Summary Judgment Is Moot

18 As Defendants' Motion for Summary Judgment is
19 **GRANTED** and Plaintiff does not have any copyright
20 ownership rights to the video and excerpt, Defendants'
21 Motion Pursuant to Rule 56(d) To Defer Consideration of
22 Plaintiff's Motion for Partial Summary Judgment is
23 **DENIED** as moot.

24 6. Defendants' Motion for Default Judgment
25 Against Third-Party Defendant Munaf Is Moot

26 As Defendants' Motion for Summary Judgment is
27 **GRANTED** and Plaintiff does not have any copyright

ownership rights to the video and excerpt, Defendants' Motion for Default Judgment against Third-Party Defendant Munaf is **DENIED** as moot.

IV. CONCLUSION

Accordingly, the Court **GRANTS** Defendants' Motion for Summary Judgment. The Court **DENIES** Plaintiff's Motion for Partial Summary Judgment as moot. The Court **DENIES** Defendants' Motion Pursuant to 56(d) to Defer Consideration of Plaintiff's Motion for Partial Summary Judgment as moot. The Court **DENIES** Defendants' Motion for Default Judgment against Third-Party Defendant Munaf as moot. The Third Party Complaint is dismissed. All pending dates on the Court's calendar are VACATED.

The Clerk shall close this case.

IT IS SO ORDERED.

DATED: September 23, 2016

s/ RONALD S.W. LEW

HONORABLE RONALD S.W. LEW
Senior U.S. District Judge