

1 Gina L. Durham (Bar No. 295910)
gina.durham@dlapiper.com
2 DLA PIPER LLP (US)
555 Mission Street, Suite 2400
3 San Francisco, California 94105-2933
Tel: 415.836.2500
4 Fax: 415.836.2501

5 Stanley J. Panikowski (Bar No.
224232)
stanley.panikowski@dlapiper.com
6 DLA PIPER LLP (US)
401 B Street, Suite 1700
7 San Diego, CA 92101
8 Tel: 619.699.2700
9 Fax: 619.699.2701

10 Andrew L. Deutsch (Bar No. 319286)
andrew.deutsch@dlapiper.com
11 DLA PIPER LLP (US)
2000 Avenue of the Stars
Suite 400, North Tower
12 Los Angeles, CA 90067-4704
Tel: 310.595.3000
13 Fax: 310.595.3300

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

16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA

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

19 Plaintiff,

20 v.

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

25 Defendants.

Tamar Y. Duvdevani (admitted *pro hac*
vice)
tamar.duvdevani@dlapiper.com
Marc E. Miller (admitted *pro hac vice*)
marc.miller@dlapiper.com
DLA PIPER LLP (US)
1251 Avenue of the Americas
New York, New York 10020-1104
Tel: 212.335.4500
Fax: 212.335.4501

Ryan Compton (admitted *pro hac vice*)
ryan.compton@dlapiper.com
James Stewart (admitted *pro hac vice*)
james.stewart@dlapiper.com
DLA PIPER LLP (US)
500 Eight Street, NW
Washington, D.C. 20004
Tel: 202.799.4000
Fax: 202.799.5000

Case No.: 16-cv-02779-JLS-BGS

**PLAINTIFF DR. SEUSS
ENTERPRISES, L.P.'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION
TO DEFENDANTS' MOTION FOR
RECONSIDERATION OF ORDER
DENYING MOTION FOR
ISSUANCE OF REQUEST TO THE
REGISTER OF COPYRIGHTS
PURSUANT TO 17 U.S.C. § 411 (b)**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page

I. PRELIMINARY STATEMENT..... 1

II. PROCEDURAL HISTORY 4

 A. Defendants’ § 411(b) Motion..... 4

 B. DSE’s Motion for Summary Judgment and Subsequent Appeal 5

III. ARGUMENT 6

 A. Defendants’ Motion Must Be Evaluated Under the
 “Extraordinary Circumstances” Standard of Fed. R. Civ. P.
 60(b)(6) for Reopening Final Judgments..... 6

 B. Defendants’ Motion Must Be Denied Because They Have Not
 Identified an Intervening Change in Law that Undermines
 This Court’s § 411(b) Order. 9

 C. Defendants’ Motion is Barred by the Law of the Case Doctrine
 and Waiver Arising from Failure to Cross-Appeal from the
 Court’s § 411(b) Order..... 14

IV. CONCLUSION 18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page

CASES

Agostini v. Felton,
521 U.S. 203 (1997) 8

Asante v. California Dep't of Health Care Servs.,
330 F. Supp. 3d 1198 (N.D. Cal. 2018)..... 17

Bahn v. Korean Airlines Co.,
642 F.3d 685 (9th Cir. 2011)..... 15, 16

Beltran v. Myers,
701 F.2d 91 (9th Cir. 1983) 16

Bradshaw v. Zoological Soc'y. of San Diego,
662 F.2d 1301 (9th Cir.1981)..... 7

DeliverMed Holdings, LLC v. Schaltenbrand DeliverMed Holdings,
734 F.3d 616 (7th Cir. 2013)..... 9, 10

Dr. Seuss Enterprises, L.P. v. ComicMix LLC,
372 F. Supp. 3d 1101 (S.D. Cal. 2019), *aff'd in part, rev'd in part and*
remanded, 983 F.3d 443 (9th Cir. 2020)..... 5, 6, 18

Dr. Seuss Enters., L.P. v. ComicMix LLC,
No. 16-cv-2779, 2018 WL 2298197 (S.D. Cal. May 21, 2018)..... 4, 5

Facebook, Inc. v. Power Ventures, Inc.,
252 F. Supp. 3d 765 (N.D. Cal. 2017), *aff'd*, 749 F. App'x 557
(9th Cir. 2019) 15

Fleischer Studios, Inc. v. A.V.E.L.A., Inc.,
925 F. Supp. 2d 1067 (C.D. Cal. 2012)..... 16

Hall v. City of L.A.,
697 F.3d 1059 (9th Cir. 2012)..... 6, 14

In re Cellular 101, Inc.,
539 F.3d 1150 (9th Cir. 2008)..... 17

TABLE OF AUTHORITIES

(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

Kaseberg v. Conaco, LLC,
360 F. Supp. 3d 1026 (S.D. Cal. 2018) 10

Litchfield v. Spielberg,
736 F.2d 1352 (9th Cir. 1984)..... 15

Magnesystems, Inc. v. Nikken, Inc.,
933 F. Supp. 944 (C.D. Cal. 1996)..... 14, 15

Marketquest Grp. v BIC Corp.,
No. 11-cv-0618, 2018 WL 1757526 (S.D. Cal. Apr. 12, 2018)..... 16

Matrix Int'l Textile, Inc. v. Monopoly Textile, Inc.,
2017 WL 2404918 (C.D. Cal. Mar. 6, 2017) 10

McCoy v. Stronach,
12-cv-983, 2020 WL 6075651 (E.D. Cal. Oct. 15, 2020)..... 7

Merritt v. Mackey,
932 F.2d 1317 (9th Cir. 1991)..... 8

Messinger v. Anderson,
225 U.S. 436 (1912) 14

Nat'l Credit Union Admin. Bd. v. Goldman Sachs & Co.,
No. Civ. 11-6521-GW(JEMX), 2013 WL 12306438
(C.D. Cal. July 11, 2013)..... 6

Navajo Nation v. Dep't of the Interior,
876 F.3d 1144 (9th Cir. 2017)..... 7

Palmer/kane LLC v. Gareth Stevens Publishing,
15-cv-7404-GFW, 2016 WL 6238612 (S.D.N.Y Oct. 24, 2016)..... 7

Phelps v. Alameida,
569 F.3d 1120 (9th Cir. 2009)..... 8

Phillies v. Harrison/Erickson, Inc.,
No. 19 Civ. 07239, 2020 WL 6482882 (S.D.N.Y. Nov. 4, 2020) 10

TABLE OF AUTHORITIES

(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship,
507 U.S. 380 (1993) 8

Price v. Astrue,
473 F. App'x 566 (9th Cir. 2012)..... 8

Riley v. Filson,
933 F.3d 1068 (9th Cir. 2019)..... 7, 8

Ronaldo Designer Jewelry, Inc. v. Cox,
No. 17-cv-2-DMB (Dkt. 364) (N.D. Miss. Aug. 22, 2019) 7

Russell v. Walmart Inc.,
No. Civ. 19-5495, 2020 WL 9073046..... 9, 10, 12

Saavedra v. Eli Lilly & Co.,
12-cv-9366, 2018 WL 5905801 (C.D. Cal. July 19, 2018), *aff'd sub nom.*
Strafford v. Eli Lilly & Co., 801 F. App'x 467 (9th Cir. 2020) 8, 9

Schenck v. Orosz,
105 F. Supp. 3d 812 (M.D. Tenn. 2015) 9

Securities Investor Protection Corp. v. Vigman,
74 F.3d 932 (9th Cir. 1996) 15

SPH Am., LLC v. High Tech Computer Corp.,
No. 08-cv-2146 DMS (RBB), 2009 WL 10672276 (S.D. Cal. Mar. 4, 2009)... 14

Twentieth Century-Fox Film Corp. v. Dunnahoo,
637 F.2d 1338 (9th Cir. 1981)..... 8

Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.,
959 F.3d 1194 (9th Cir. 2020)..... passim

United States v. Husband,
312 F.3d 247 (7th Cir. 2002) 17

United States v. Morris,
259 F.3d 894 (7th Cir.2001) 17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

(continued)

Page

Univ. Dyeing & Printing,
2020 U.S. App. LEXIS 30300..... 13, 14

Universal Dyeing & Printing, Inc. v. Topson Downs of Cal., Inc.,
2019 U.S. Dist. LEXIS 16669 (C.D. Cal. Feb 1, 2019)..... 13

Urban Textile, Inc. v. Fashion Avenue Knits, Inc.,
No. 16-cv-6786-MWF, ECF No. 71-1 (C.D. Cal. filed Dec. 29, 2017) 12

VHT, Inc. v. Zillow Grp., Inc.,
461 F. Supp. 3d 1025 (W.D. Wash. 2020), *opinion clarified*,
No. C 15-1096JLR, 2021 WL 913034 (W.D. Wash. Mar. 10, 2021)..... 8

STATUTES

17 U.S.C. § 411(b)..... passim

17 U.S.C. § 411(b)(2) passim

OTHER AUTHORITIES

Fed. R. Civ. P. 54(b)..... 1, 6, 7

Fed. R. Civ. P. 59..... 7

Fed. R. Civ. P. 60..... 7

Fed. R. Civ. P. 60(b)..... passim

FED. R. CIV. P. 60(b)(6) 6, 7, 8, 9

FEDERAL PRACTICE AND PROCEDURE § 4478 14

5 PATRY ON COPYRIGHT § 17:125.50 (2021)..... 10

5 PATRY ON COPYRIGHT § 17:125.50..... 10

1 Plaintiff Dr. Seuss Enterprises, L.P. (“DSE”) respectfully submits this
2 memorandum of law in opposition to Defendants’ Motion for Reconsideration Of
3 Order Denying Motion For Issuance Of Request To The Register Of Copyrights
4 Pursuant To 17 U.S.C. § 411(b). The current Motion is referred to herein as the
5 “Motion”; Defendants’ prior Motion is referred to as the “§ 411(b) Motion.”

6 **I. PRELIMINARY STATEMENT**

7 The Court should deny Defendants’ Motion, because it is procedurally
8 improper and (should the Court choose to reach the merits) entirely without merit.

9 *First*, Fed. R. Civ. P. 54(b), which Defendants cite as the basis for their
10 Motion (ECF No. 177 at 7-8), is inapplicable at this stage of proceedings. Rule
11 54(b) applies only to orders decided before entry of final judgment. But this Court
12 previously entered a *final* judgment on all claims in the case, into which all
13 interlocutory orders of the Court, including its May 21, 2018 Order denying the
14 § 411(b) Motion (the “§ 411(b) Order”), have been merged. That final judgment
15 was vacated on appeal, but the § 411(b) Order that had merged into the final
16 judgment remains undisturbed. The Federal Rule that applies to the current Motion
17 is therefore Fed. R. Civ. P. 60(b), which permits alteration or amendment of a final
18 judgment or other order only upon the movant showing that exceptional
19 circumstances warrant such relief.

20 *Second*, Defendants’ Motion papers fail utterly to show the required
21 exceptional circumstances for altering a final judgment or order. Their argument is
22 that the recent decision in *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 959
23 F.3d 1194, 1197 (9th Cir. 2020) “changed the nature of how courts in this Circuit
24 are required to address such § 411(b) requests.” (ECF No. 177 at 9.) As a result of
25 this alleged change in law, they contend that the Court must vacate its ruling on the
26 § 411(b) Motion and refer Defendants’ challenge to two of DSE’s copyright
27 registrations to the Register of Copyrights for an advisory opinion.

28 //

1 The problem for Defendants is that *Unicolors* did not change the law in any
2 way that affects the validity of this Court’s § 411(b) Order. Prior to *Unicolors*, it was
3 well-settled that district courts played a “gatekeeper” role in considering motions for
4 a reference to the Register of Copyrights under § 411(b)(2). That role remains well-
5 settled after *Unicolors*, and permits a court to decide, in the first instance (1) whether
6 the plaintiff’s copyright application contained an inaccuracy and (2) whether the
7 inaccuracy was known to the applicant. The court is required to seek the Register’s
8 advisory opinion only if both conditions are satisfied. If the defendant loses its
9 motion and final judgment is entered, it is of course entitled to appeal the district
10 court’s finding of no known inaccuracy.

11 *Unicolors* was just such an appeal. Plaintiff had asserted a registration for a
12 collection on fabric prints, but some of those fabric prints were not first published
13 together, even though they were first available for inspection in plaintiff’s show
14 room on the same day. The district court rejected the defendant’s argument that it
15 was inaccurate for the plaintiff to register multiple works, published separately but
16 on the same day, in a single group registration, and ultimately entered judgment for
17 plaintiff. Defendant then argued on appeal that such a registration was inaccurate,
18 and the Ninth Circuit agreed and reversed.

19 The reversal did not indicate disapproval of a court (rather than the Register
20 of Copyrights) determining in the first instance whether an inaccuracy exists in a
21 copyright registration. In fact, the Ninth Circuit itself found an inaccuracy in the
22 plaintiff’s registration without first consulting the Register. *Unicolors* simply
23 disagreed with the district court’s conclusion that the Copyright Act and Copyright
24 Office regulations permitted a single group registration where the works were
25 separately published. In so doing, *Unicolors* announced a new rule for the Ninth
26 Circuit, under which multiple works can only be registered together if they were all
27 first published in an integrated manner. The Ninth Circuit remanded with
28 instructions that the district court submit an inquiry to the Register asking whether

1 registration would have been refused had the inaccuracy been known to the
2 Register.

3 *Unicolors* has not changed the procedural law governing this Court's
4 § 411(b) Order. The decision leaves undisturbed existing precedent holding that a
5 district court should determine whether a known inaccuracy exists in an application
6 before making a referral to the Register. In fact, other than citing to § 411(b)(2)
7 and directing the district court to follow the statute on remand, *Unicolors* did not
8 discuss the Section 411(b)(2) process. In particular, it did not disapprove of the
9 district court's making the threshold inaccuracy determination; it simply disagreed
10 with the district court's conclusion that no inaccuracy was present. Thus, the law
11 has not changed in any respect relevant to this Court's § 411(b) Order. Because
12 the only inaccuracy in two of DSE's registrations claimed by Defendants has
13 nothing to do with group registration of multiple works, the one change of law
14 actually made in *Unicolors* has no effect on the validity of the § 411(b) Order.
15 Defendants have thus failed to show exceptional circumstances warranting
16 reopening of the § 411(b) Order, and their Motion must be denied.

17 *Third*, the § 411(b) Order is law of the case: it was incorporated into the
18 Court's final judgment and was not disturbed in any way by the Ninth Circuit's
19 ruling reversing this Court's fair use finding. The law of the case doctrine
20 mandates that courts should only deviate from their own prior rulings in light of
21 "exceptional" situations such as an intervening change or controlling law, new
22 evidence, or clear error. As *Unicolors* did not change any law or create a manifest
23 injustice to Defendants, there is no reason for the Court to deviate from its prior
24 ruling.

25 *Finally*, if Defendants wished to challenge the Court's § 411(b) Order, they
26 were required to cross-appeal to preserve that issue. Their failure to do so waived
27 any right to argue on remand that the Court erred in not seeking the Register's
28 advisory opinion before ruling on the validity of DSE's registrations. This is true

1 even though Defendants won on fair use in this Court. Defendants knew that if the
 2 Ninth Circuit reversed the fair use finding on appeal, DSE would be entitled to
 3 summary judgment on copyright infringement upon remand. Their only means of
 4 forestalling this result was to cross-appeal from the § 411 Order, convince the Ninth
 5 Circuit to reverse this Court’s finding of no inaccuracy and direct the Court to seek
 6 the advisory opinion of the Register, and then argue to this Court that the DSE
 7 registrations were invalid. However, Defendants chose to bet their entire case on
 8 fair use and not cross-appeal. They have therefore voluntarily waived the
 9 arguments presented in their Motion.

10 **II. PROCEDURAL HISTORY**

11 **A. Defendants’ § 411(b) Motion**

12 On December 22, 2017, Defendants filed their § 411(b) Motion, asserting that
 13 Dr. Seuss’s original applications to register copyright in *The Sneetches and Other*
 14 *Stories* (“*Sneetches*”) and *Oh, the Places You’ll Go!* (“*Go!*”) contained inaccurate
 15 information and the resulting registrations were therefore “invalid and
 16 unenforceable.” (ECF No. 57-1 at 7). Defendants asked the Court to issue a request
 17 pursuant to 17 U.S.C. § 411(b)(2), that “the Register of Copyrights advise the Court
 18 whether the inaccurate information that was included in the applications that resulted
 19 in Registration No. A 543386 for [*Sneetches*], and Registration No. VA 430950 for
 20 [*Go!*], if known, would have caused the Register of Copyrights to refuse
 21 registration.” (*Id.* at 23.) DSE opposed the § 411(b) Motion.

22 On May 21, 2018, the Court issued its Order denying the § 411(b) Motion. *Dr.*
 23 *Seuss Enters., L.P. v. ComicMix LLC*, No. 16-cv-2779, 2018 WL 2298197, at *5-6
 24 (S.D. Cal. May 21, 2018). This Court held that Defendants failed to show any
 25 inaccuracy in the *Sneetches* and *Go!* applications. Although *Sneetches* was partly
 26 based on two prior published Dr. Seuss stories in *Redbook* magazine, the copyright
 27 application form at the time of registration required disclosure of prior works only
 28 where the pre-existing material included in an applied-for new work constituted a

1 “substantial part” of the new work. Because *Sneetches* “elaborated” on the prior
 2 stories and added “a great amount of new and different material,” the Court found
 3 that the prior stories were not a “substantial part” of the new work. *Id.* at *4.
 4 Likewise, the Court found that there was no inaccuracy in Dr. Seuss’s application to
 5 register *Go!* even though one of 25 illustrations in *Go!* previously appeared as
 6 background artwork to a Dr. Seuss *New York Times* op-ed in poem form. It found
 7 that the application’s request to disclose “earlier versions” of the applied-for work
 8 did not apply because the op-ed was not an earlier version of *Go!*, and that Dr. Seuss
 9 was not required to identify *Go!* as a derivative work of the op-ed because the op-ed
 10 illustration, standing alone without the poem that formed the main body of the op-ed,
 11 did not constitute an “appreciable” or “substantial” amount of the material in the op-
 12 ed. *Id.* at *6. Because the registrations were not inaccurate, there was nothing to refer
 13 to the Register of Copyrights, and the Court denied the motion. *Id.*

14 **B. DSE’s Motion for Summary Judgment and Subsequent Appeal**

15 On December 11, 2018, DSE filed a motion for summary judgment on its claim
 16 for copyright infringement of *Go!*, *How the Grinch Stole Christmas!*, and *Sneetches*.
 17 (ECF No. 107.) To prevail on its copyright infringement claims, DSE needed to
 18 establish (1) ownership of valid copyrights and (2) substantial copying of the DSE
 19 Works. (*Id.* at 11). In support of the first prong of its copyright infringement claim,
 20 DSE produced unrefuted evidence showing that it was the owner of the copyright
 21 registrations for the three books. (*Id.* at 12.)

22 In opposing DSE’s motion, Defendants argued only that they were shielded
 23 from copyright infringement by fair use. They did not reassert any defense that the
 24 registrations of *Sneetches* and *Go!* were invalid. (ECF No. 120 at 15-25.) The Court
 25 denied DSE’s motion and granted Defendants’ motion for summary judgment,
 26 holding with respect to copyright that Defendants had made fair use of the Dr. Seuss
 27 works. *Dr. Seuss Enterprises, L.P. v. ComicMix LLC*, 372 F. Supp. 3d 1101, 1128
 28 (S.D. Cal. 2019), *aff’d in part, rev’d in part and remanded*, 983 F.3d 443 (9th Cir.

1 2020). The Court then entered final judgment. (ECF No. 150.)

2 DSE timely appealed the final judgment to the Ninth Circuit. Defendants
3 opposed DSE's appeal but did not cross-appeal from the Court's § 411(b) Order.
4 Thus, the only copyright-related question before the Ninth Circuit was "whether
5 *Boldly's* use of Dr. Seuss's copyrighted works is fair use and thus not an infringement
6 of copyright." 983 F.3d at 448. ECF No. 174, at 5. The Ninth Circuit reversed this
7 Court's summary judgment rulings as to copyright, holding that Defendants failed to
8 show that they made fair use of the three Dr. Seuss books.

9 **III. ARGUMENT**

10 **A. Defendants' Motion Must Be Evaluated Under the "Extraordinary** 11 **Circumstances" Standard of FED. R. CIV. P. 60(b)(6) for** 12 **Reopening Final Judgments.**

12 Defendants cite Fed. R. Civ. P. 54(b) in asking the Court to reconsider its
13 § 411(b) Order. (ECF No. 177, at 3.) However, Rule 54(b) has no role to play
14 here, because the § 411(b) Order was merged into the Court's final judgment. The
15 § 411(b) Order was unaffected by the Ninth Circuit's reversal of this Court's fair
16 use ruling. The only Federal Rule that permits reopening and reconsidering a final
17 judgment or order is Rule 60(b), and Defendants have fallen far short of meeting
18 the high burden imposed on a Rule 60(b) movant.

19 Rule 54(b) only permits revision of a court order "before the entry of a
20 judgment adjudicating all the claims and all the parties' rights and liabilities." *See*
21 *Nat'l Credit Union Admin. Bd. v. Goldman Sachs & Co.*, No. Civ. 11-6521-
22 GW(JEMX), 2013 WL 12306438, at *2 (C.D. Cal. July 11, 2013) ("Rule 54(b)
23 provides that an interlocutory order 'may be revised at any time before the entry of
24 a judgment adjudicating all the claims and all the parties' rights and liabilities,'
25 where 'judgment' is defined in 54(a) as 'any order from which an appeal lies.'")
26 Although the Court's §411(b) Order was interlocutory when made, it ceased to be
27 interlocutory when it was merged into the Court's March 26, 2019 final judgment.
28 (ECF Nos. 149-150). *Hall v. City of L.A.*, 697 F.3d 1059, 1070 (9th Cir. 2012)

1 (explaining that other earlier, non-final orders are “merge” into a final judgment)
 2 (citing *Bradshaw v. Zoological Soc’y. of San Diego*, 662 F.2d 1301, 1304 (9th
 3 Cir.1981). The cases cited by Defendants are not to the contrary: they all involved
 4 reconsideration of an order *prior* to the entry of final judgment, and therefore Rule
 5 54(b) was properly invoked in those cases.¹

6 In addition, even if Rule 54(b) permitted a motion for reconsideration after
 7 the Section 411(b) Order merged into the final judgment, Defendants are out of
 8 time to make such a motion. Local Rule 7.1(i)(2) provides that application for
 9 reconsideration must be brought within 28 days of the ruling “[e]xcept as may be
 10 allowed under Rules 59 and 60 of the Federal Rules of Civil Procedure.”

11 Defendants’ time to move expired on June 18, 2018, 28 days after entry of the
 12 § 411(b) Order and nearly three years before Defendants finally requested
 13 reconsideration.

14 Rule 60(b) allows a court to grant relief from a “final judgment, order or
 15 proceeding” for specified reasons “on motion and just terms,” and is therefore the
 16 only procedural rule that could apply here, once a judgment or order is final. The
 17 only one of the justifications that is possibly relevant here is Rule 60(b)(6): “any
 18 other reason that justifies relief.” However, courts recognize that Rule 60(b)(6)
 19 could be used to undermine the finality and reliability of court judgments and non-
 20 interlocutory orders, and therefore place a high burden on those seeking relief under
 21 the Rule. Such “relief should be granted ‘sparingly’ to avoid ‘manifest injustice.’”
 22 *Riley v. Filson*, 933 F.3d 1068 (9th Cir. 2019) (quoting *Navajo Nation v. Dep’t of*
 23 *the Interior*, 876 F.3d 1144, 1173 (9th Cir. 2017)); *McCoy v. Stronach*, 12-cv-983,
 24

25 ¹ See *Ronaldo Designer Jewelry, Inc. v. Cox*, No. 17-cv-2-DMB (Dkt. 364) (N.D.
 26 Miss. Aug. 22, 2019) (motion to reconsider issuance of a request to the Register of
 27 Copyrights pursuant to FED. R. CIV. P. 54. sought before judgment was entered, and
 28 no appeal was taken); *Palmer/kane LLC v. Gareth Stevens Publishing*, 15-cv-7404-
 GFW, 2016 WL 6238612, at *3 (S.D.N.Y Oct. 24, 2016) (Rule 54(b) not discussed;
 district court exercised its “inherent power to reconsider and modify its
 interlocutory orders *prior to the entry of final judgment.*”) (emphasis added)

WEST\294026108.1

1 2020 WL 6075651 at *1 (E.D. Cal. Oct. 15, 2020) (“To succeed, a party must set
 2 forth facts or law of a strongly convincing nature to induce the court to reverse its
 3 prior decision.”) A Rule 60(b)(6) movant must demonstrate “extraordinary
 4 circumstances” justifying reopening a judgment. *Pioneer Inv. Servs. Co. v.*
 5 *Brunswick Assoc. Ltd. P’ship*, 507 U.S. 380, 393 (1993); *Twentieth Century-Fox*
 6 *Film Corp. v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir. 1981).

7 While an “intervening change in the controlling law” can lend support to a
 8 Rule 60(b)(6) motion, *Saavedra v. Eli Lilly & Co.*, 12-cv-9366, 2018 WL 5905801
 9 at *4 (C.D. Cal. July 19, 2018), *aff’d sub nom. Strafford v. Eli Lilly & Co.*, 801 F.
 10 App’x 467 (9th Cir. 2020), such a change, standing alone, is rarely an extraordinary
 11 circumstance justifying Rule 60(b)(6) relief. *Id.* (citing *Phelps v. Alameida*, 569
 12 F.3d 1120, 1133 (9th Cir. 2009)); *Agostini v. Felton*, 521 U.S. 203, 239 (1997)
 13 (even “[i]ntervening developments in the law by themselves rarely constitute the
 14 extraordinary circumstances required for relief under Rule 60(b).”); *Riley v. Filson*,
 15 933 F.3d 1068, 1071 (9th Cir. 2019) (affirming denial of Rule 60(b)(6) motion,
 16 noting that a change in law “does not always supply sufficient conditions for
 17 granting” a Rule 60(b)(6) motion.”).

18 The burden is on the movant to show both that there has been a change in
 19 controlling law since the prior decision *and* that the change undermines the basis for
 20 the prior decision. First, the movant must prove that the law actually changed.
 21 *Merritt v. Mackey*, 932 F.2d 1317, 1320 (9th Cir. 1991); *VHT, Inc. v. Zillow Grp.,*
 22 *Inc.*, 461 F. Supp. 3d 1025, 1039 (W.D. Wash. 2020), *opinion clarified*, No. C 15-
 23 1096JLR, 2021 WL 913034 (W.D. Wash. Mar. 10, 2021). Appellate rulings that
 24 merely confirm, clarify or explain existing case law do not mark an intervening
 25 change in law. *Merritt*, 932 F.2d at 1320-21 (law-of-the-case doctrine applied where
 26 the purportedly intervening decision “did not change the controlling standard,” but
 27 only “clarified and refined the law”); *Price v. Astrue*, 473 F. App’x 566, 568 (9th Cir.
 28 2012) (social security ruling was “intended to clarify, not substantially change, the

1 law” and thus did not justify a departure from the law of the case). Second, a
 2 supposed change in law that “does not call into the question the legal basis for the
 3 [district court’s] order” will not justify Rule 60(b)(6) relief. *Saavedra*, 2018 WL
 4 5905801, at *10.

5 **B. Defendants’ Motion Must Be Denied Because They Have Not**
 6 **Identified an Intervening Change in Law that Undermines**
 7 **This Court’s § 411(b) Order.**

8 The first reason to deny Defendants’ Motion is the most basic: Defendants
 9 have failed to identify any intervening change of law that would justify extraordinary
 10 relief under Rule 60(b)(6). *Unicolors* did not disapprove of, much less change, long-
 11 standing precedent permitting district courts to weed out meritless 17 U.S.C.
 12 § 411(b)(2) motions by initially determining whether an copyright application
 13 actually contains an inaccuracy known to the applicant and denying motions where
 14 no such inaccuracy is present. It was on the basis of this settled procedure that this
 15 Court denied the Defendants’ § 411(b) Motion, and nothing in *Unicolors* undermines
 16 this Court’s reasoning or conclusions that the copyright applications for the two DSE
 17 Works contained no inaccuracies which would have required seeking an advisory
 18 opinion from the Register of Copyrights.

19 A defendant who challenges the validity of a copyright registration on the
 20 grounds that the application to register contained a known inaccuracy may move the
 21 court for an order requesting the Register of Copyrights to provide a non-binding,
 22 advisory opinion as to whether the work would have been registered had the
 23 Copyright Office known of the inaccuracy. *See* 17 U.S.C. § 411(b)(2); *DeliverMed*
 24 *Holdings, LLC v. Schaltenbrand DeliverMed Holdings*, 734 F.3d 616, 624 (7th Cir.
 25 2013). However, federal courts have long recognized that § 411(b)(2) is liable to
 26 abuse, because “infringers can throw up roadblocks to merited infringement lawsuits,
 27 simply by ‘alleging’ technical violations of the underlying copyright registrations.”
 28 *Schenck v. Orosz*, 105 F. Supp. 3d 812, 818 (M.D. Tenn. 2015); *see also DeliverMed*,
 734 F.3d at 625; *Russell v. Walmart Inc.*, No. Civ. 19-5495, 2020 WL 9073046, at *

1 //

2 (C.D. Cal. Oct. 16, 2020); *Matrix Int'l Textile, Inc. v. Monopoly Textile, Inc.*, 2017
3 WL 2404918, at *4 (C.D. Cal. Mar. 6, 2017).

4 Accordingly, “[a]lthough the statute appears to mandate that the Register get
5 involved “[i]n any case in which inaccurate information [in an application for
6 copyright registration] is alleged,” 17 U.S.C. § 411(b)(2), input need not be sought
7 immediately after a party makes such a claim.” *Russell*, 2020 WL 9073046, at *5
8 (quoting *DeliverMed Holdings*, 734 F.3d at 625); *see also Matrix Int'l Textile, Inc.*,
9 2017 WL 2404918, at *4. Rather, courts can require that the party seeking
10 invalidation first “demonstrate that: ‘(1) the registration application included
11 inaccurate information; and (2) the registrant knowingly included the inaccuracy in
12 his submission to the Copyright Office.’” *Id.* “Where the party requesting a referral
13 does not provide evidence of actual inaccurate information in the registration
14 application, no referral should be made.” 5 PATRY ON COPYRIGHT § 17:125.50 (2021)
15 (citing *Phillies v. Harrison/Erickson, Inc.*, No. 19 Civ. 07239, 2020 WL 6482882, at
16 *2 (S.D.N.Y. Nov. 4, 2020)).

17 As such, “[o]nly after determining that the moving party has met these
18 requirements should a court seek the Register’s opinion as to whether the inaccuracy
19 would have resulted in the application’s refusal.” *Russell*, 2020 WL 9073046, at *5;
20 *see also, e.g., Kaseberg v. Conaco, LLC*, 360 F. Supp. 3d 1026, 1032 (S.D. Cal. 2018)
21 (“[S]hould the Court determine that there is no misstatement of fact, it need not refer
22 the issues of materiality or reliance to the Register.”); *Matrix Int'l Textile, Inc.*, 2017
23 WL 2404918, at *4 (same); 5 PATRY ON COPYRIGHT § 17:125.50. This gatekeeping
24 function is vital: “By assuming [an application’s] inaccuracy in a request to the
25 Copyright Office, the Court would be inviting the Copyright Office to weigh in on
26 an issue reserved for the finder of fact.” *Phillies*, 2020 WL 6482882, at *2.

27 Defendants claim that in *Unicolors*, “the Court of Appeals changed the
28 nature of how courts in this Circuit are required to address such § 411(b) requests.”

1 (ECF No. 177 at 9.) This assertion is wrong. There was new law made in
2 *Unicolors*, but nothing that bears on the present case. In particular, *Unicolors* did
3 not change the settled gatekeeping role of district courts to determine in the first
4 instance whether an application contains known inaccuracies.

5 In *Unicolors*, a copyright infringement defendant contended that the registrant
6 inaccurately registered a collection of fabric prints under a single collective group
7 registration even though not all the prints were published together. It moved under
8 § 411(b)(2) for a referral to the Register of Copyright. The district court denied the
9 motion, holding that it was not inaccurate for the plaintiff to make a collective group
10 registration of the prints. 959 F.3d at 1197. After trial and a final judgment in favor
11 of the plaintiff, the defendant appealed the denial of the referral motion to the Ninth
12 Circuit.

13 Before *Unicolors*, the Ninth Circuit had not addressed whether a collective
14 work could be comprised of individual works that were first published separately,
15 even if on the same date. *Id.* In *Unicolors*, the Ninth Circuit examined that issue,
16 and held for the first time that “a collection of works does not qualify as a ‘single unit
17 of publication’ unless all individual works of the collection were first published as a
18 singular, bundled unit.” *Id.* In light of that holding, the Ninth Circuit found that “it
19 is an inaccuracy for a registrant like *Unicolors* to register a collection of works (such
20 as the works identified in the ‘400 Registration) as a single-unit publication when the
21 works were not initially published as a singular, bundled collection.” *Id.* The appeals
22 court also noted that it was proven at trial that the inaccuracy was known to *Unicolors*
23 and, thus, instructed the district court to issue the request to the Copyright Office on
24 remand. *Id.* at 1200-1201. The Ninth Circuit thus reversed the judgment, but not
25 because the district court erred in making a determination on inaccuracy in the first
26 instance. Rather, the Ninth Circuit disagreed with the district court’s conclusion that
27 there was no inaccuracy. *Id.* at 1200.

28 The Ninth Circuit then explained that although there were known inaccuracies

1 in *Unicolors*'s application:

2 that does not mean that [defendant] H&M was entitled to judgment as
 3 a matter of law. Rather, the district court was required to 'request the
 4 Register of Copyrights to advise the court whether the inaccurate
 5 information, if known, would have caused the Register ... to refuse
 6 registration.' 17 U.S.C. § 411(b)(2). Because the district court did not
 7 make the statutorily required request, we remand the case so that the
 8 district court can complete this requirement before deciding whether
 9 *Unicolors*'s registration is invalid, which would require dismissing
 10 *Unicolors*'s claims and entering judgment in favor of H&M.

11 *Id.*

12 Thus, the Ninth Circuit ruling's addressed only the district court's error in
 13 finding that no inaccuracy existed in the application, and the relief granted was that
 14 that because an inaccuracy *did* exist, the district court was required to make the
 15 Section 411(b)(2) referral. *Id.* *Unicolors* did not change the settled gatekeeping
 16 power of district courts to determine for themselves whether a copyright registration
 17 application contains a known inaccuracy. Nothing in *Unicolors* states that a court
 18 must uncritically accept the movant's allegations of inaccuracy. A later district court
 19 decision found that *Unicolors*, far from changing the law, is "consistent with this
 20 gatekeeping procedure" and "support[s] the Court's position that a court must answer
 21 the threshold question of whether the application contained known inaccuracies
 22 before submitting an inquiry to the Register...." *Russell*, 2020 WL 9073046, at *5.

23 It is worth noting that the Register of Copyright also endorses the gatekeeping
 24 role of district courts on § 411(b)(2) motions. *See* advisory opinion in *Urban Textile,*
 25 *Inc. v. Fashion Avenue Knits, Inc.*, No. 16-cv-6786-MWF, ECF No. 71-1 at 3-4 n. 19
 26 (C.D. Cal. filed Dec. 29, 2017) (found on the Copyright Office website at [urban-
 27 textile-inc-v-fashion-avenue-knits-inc-no-16-cv-06786-cd-cal-dec-29-2017.pdf](http://urban-textile-inc-v-fashion-avenue-knits-inc-no-16-cv-06786-cd-cal-dec-29-2017.pdf)
 28 (copyright.gov), which confirms that "courts appropriately can require 'that the party
 seeking invalidation first establish that the other preconditions to invalidity are
 satisfied before obtaining the Register's advice on materiality.'" *Id.* at p. 4, fn. 19.

1 Likewise, the United States, presenting the Copyright Office’s position in a post-
 2 *Unicolors* amicus brief filed in *Univ. Dyeing & Printing, Inc. v. Topson Downs of*
 3 *Cal., Inc.*, noted that “if this Court were to determine that Universal did not
 4 knowingly make misrepresentations in its registration application, that could obviate
 5 the need for the district court to seek the Register’s views pursuant to Section
 6 411(b)(2).” Brief of the United States as *Amicus Curiae*, No. 19-55840 (9th Cir.
 7 Filed Jan. 16, 2020) (Dkt. No. 22).²

8 Defendants’ Motion also cites the Ninth Circuit’s September 22, 2020 Order
 9 in *Univ. Dyeing & Printing*, 2020 U.S. App. LEXIS 30300 (ECF No. 177 at 10-11),
 10 to no avail. The *Univ. Dyeing & Printing* decision dealt with the group registration
 11 issue addressed in *Unicolors*. The district court had found after trial that there was a
 12 known inaccuracy in the plaintiff’s collective works registration for fabric designs,
 13 because not all the works were published at the same time, and entered judgment
 14 dismissing the plaintiff’s infringement claim. *Universal Dyeing & Printing, Inc. v.*
 15 *Topson Downs of Cal., Inc.*, 2019 U.S. Dist. LEXIS 16669, *12-13, (C.D. Cal. Feb
 16 1, 2019). During the appeal from the dismissal, the Ninth Circuit decided *Unicolors*.
 17 The parties then jointly moved in the Ninth Circuit to remand the case to the district
 18 court. *See Joint Motion to Reverse and Remand*, Case No. 19-55840 at Dkt. 42 (9th
 19 Cir. filed on Aug. 7, 2020.) The Ninth Circuit granted the motion and issued an Order
 20 vacating the judgment and remanding so that the district court could “seek the views
 21 of the Register of Copyrights in accordance with 17 U.S.C. 411(b)(2)” and review
 22 the issues in light of the *Unicolors* decision. *Univ. Dyeing & Printing*, 2020 U.S.
 23 App. LEXIS 30300, at *1.

24 *Univ. Dyeing & Printing, Inc.*, like *Unicolors*, casts no doubt on a district
 25

26 ² Defendants wrench a single sentence in the *amicus curiae* brief out of context and
 27 contend that it is the position of the Copyright Office that a district court must seek
 28 an advisory opinion from the Register of Copyrights immediately upon an
 allegation of an inaccuracy. (ECF No. 177 at 10.) As shown above, the Copyright
 Office’s view is entirely to the contrary.

1 court's gatekeeping power to determine whether the plaintiff's application contained
 2 an inaccuracy. There, the district court determined that an inaccuracy existed and
 3 entered judgment for defendant but neglected to seek guidance from the Register of
 4 Copyrights before declaring the registration invalid. *See id.* at *12-13. The Ninth
 5 Circuit's vacatur was based on § 411(b)(2)'s plain directive that if *a known*
 6 *inaccuracy is found*, the district court cannot immediately dismiss an infringement
 7 complaint; instead, it must seek the non-binding views of the Register as to whether
 8 the inaccuracy would have caused the Copyright Office to refuse registration.
 9 Neither decision undermines the § 411(b) Order's conclusion that the copyright
 10 applications for the three Dr. Seuss books contained no inaccuracy.

11 In short, because *Unicolors* is not an intervening change in law affecting the
 12 Court's § 411(b) Order, Defendants have failed to meet the burden set by Fed. R.
 13 Civ. P. 60(b) for reopening a final judgment or order. The Court should therefore
 14 deny the Motion and grant the relief sought by DSE in its renewed Motion for
 15 Summary Judgment.

16 **C. Defendants' Motion is Barred by the Law of the Case Doctrine**
 17 **and Waiver Arising from Failure to Cross-Appeal from the**
 18 **Court's § 411(b) Order**

19 The Court should also deny the Motion because it is contrary to the law of the
 20 case as established in the Court's § 411(b) Order, and because Defendants waived
 21 their arguments by failing to cross-appeal from the § 411(b) Order.

22 It is a basic principle of federal practice that "courts generally ... refuse to
 23 reopen what has been decided." *Magnesystems, Inc. v. Nikken, Inc.*, 933 F. Supp.
 24 944, 948 (C.D. Cal. 1996) (quoting *Messinger v. Anderson*, 225 U.S. 436, 444
 25 (1912).) This well-settled "law of the case doctrine . . . aims to promote the efficient
 26 operation of the courts" by precluding "a court from reconsidering an issue decided
 27 previously by the same court or by a higher court in the identical case." *Hall*, 697 at
 28 1067. While the doctrine is discretionary, a court will not depart from law of the case
 unless "exceptional" situations are presented. FEDERAL PRACTICE AND PROCEDURE §

1 4478 at 790; *see also, e.g. SPH Am., LLC v. High Tech Computer Corp.*, No. 08-cv-
2 2146 DMS (RBB), 2009 WL 10672276, at *2 (S.D. Cal. Mar. 4, 2009). The three
3 “exceptional” situations that may incline a court to depart from the law of the case
4 are “(1) an intervening change in controlling law; (2) new evidence has surfaced; or
5 (3) the previous disposition has resulted in clear error or manifest injustice.”
6 *Magnesystems, Inc.*, 933 F. Supp. at 949.

7 The § 411(b) Order became law of this case once final judgment was entered.
8 *Securities Investor Protection Corp. v. Vigman*, 74 F.3d 932, 937 (9th Cir.
9 1996) (finding that an issue in an earlier order not appealed was “subsumed within
10 [the Court's] summary judgment” order was therefore “law of the case.”). As shown
11 above, there has been no intervening change in controlling law, Defendants did not
12 argue that any other “exceptional” situations are present here, and, indeed, there are
13 none. Accordingly, the Court’s § 411(b) Order controls, and the Motion should be
14 denied as an improper attempt to reargue what this Court has already decided.

15 Defendants have also waived any challenge to the § 411(b) Order. DSE’s
16 appeal of this Court’s final judgment drew “in question all earlier, non-final orders
17 and rulings which produced the judgment,” *Litchfield v. Spielberg*, 736 F.2d 1352,
18 1355 (9th Cir. 1984), including the § 411(b) Order. Defendants’ failure to cross-
19 appeal from the § 411(b) Order as incorporated in the final judgment bars them from
20 later relitigating the same § 411(b) question on remand. *See Facebook, Inc. v. Power*
21 *Ventures, Inc.*, 252 F. Supp. 3d 765, 775 (N.D. Cal. 2017), *aff’d*, 749 F. App’x 557
22 (9th Cir. 2019) (“[I]ssues that were previously resolved and were not raised on appeal
23 are the law of the case and are not subject to relitigation”).

24 None of the cases cited by Defendants are to the contrary. In *Bahn v. Korean*
25 *Airlines Co.*, 642 F.3d 685, 701-02 (9th Cir. 2011), the Ninth Circuit refused to
26 consider the district court’s interlocutory case management schedule because as final
27 judgment had not been entered, the Ninth Circuit lacked appellate jurisdiction to
28 review the order. *Id.* In the passage cited by Defendants (ECF No. 177 at 8-9), the

1 appellate court was simply pointing out that the case management order was
2 interlocutory because the district court was free to modify it until final judgment was
3 entered. *Id.* This has nothing to do with the present case, where the Court’s § 411
4 Order is part of a *final* judgment and is not modifiable except as allowed by Rule
5 60(b). *Beltran v. Myers*, 701 F.2d 91, 93 (9th Cir. 1983) simply recited the mandate
6 rule. It did not address whether a party, having failed to appeal from an adverse
7 ruling incorporated into a final judgment, could belatedly attack that ruling when the
8 case was remanded to the district court. In *Beltran*, the Court found that the issue
9 could be addressed on remand because even though it was before the Ninth Circuit,
10 the appellate court declined to reach it. Such is not the case here, where the Section
11 411(b) Order was not before the Ninth Circuit in the first place. Defendants’ citation
12 to *Beltran* (ECF No. 177 at 8-9) also ignores the fact that by failing to appeal the
13 Section 411(b) Order, it was impliedly disposed of an appeal due to that waiver.
14 *Fleischer Studios, Inc. v. A.V.E.L.A., Inc.*, 925 F. Supp. 2d 1067, 1071 (C.D. Cal.
15 2012) (“[T]he Court will not consider any arguments that Plaintiff did not present to
16 the district court at the prior proceedings, or that Plaintiff did not pursue on appeal:
17 the Court finds that such matters are waived or abandoned.”). Finally, in *Marketquest*
18 *Grp. v BIC Corp.*, No. 11-cv-0618, 2018 WL 1757526, at *2 (S.D. Cal. Apr. 12,
19 2018) the court explained that a district court can revisit a prior denial of summary
20 judgment on remand if the appellate court reversed on the specific legal issues that
21 were the basis of the district court’s denial (summary judgment ruling “was expressly
22 based on Defendants’ concession that a denial would be appropriate *if* summary
23 judgment on the fair use defense was granted. Because the grant has been reversed
24 on appeal, the basis for denial of summary judgment on the counterclaims and
25 dismissal of the invalidity counterclaims no longer exists.”). *Id.* In contrast, the basis
26 on which the Ninth Circuit reversed this Court’s grant of summary judgment to
27 Defendants – their failure to prove copyright fair use – has nothing to do with the
28 reasoning or outcome in the Court’s § 411(b) Order.

1 Defendants point out that the § 411 issue was not briefed or argued by any
 2 party to the Ninth Circuit appeal (ECF No. 177 at 5), but this fact only cuts further
 3 against their current Motion. If Defendants wanted to challenge this Court’s § 411
 4 Order, the time to do so was in the Ninth Circuit appeal. A district court does not
 5 reconsider on remand its prior orders merged into its final judgment, which were
 6 not challenged on appeal and which were not affected by the appeals’ court’s
 7 ruling, because the remand does not include such orders. *In re Cellular 101, Inc.*,
 8 539 F.3d 1150, 1155 (9th Cir. 2008) (appealing party who failed to raise legal
 9 argument on appeal could not assert that argument in later proceedings); *Asante v.*
 10 *California Dep’t of Health Care Servs.*, 330 F. Supp. 3d 1198, 1207 (N.D. Cal.
 11 2018) (same, collecting cases). As the Seventh Circuit said in *United States v.*
 12 *Husband*, 312 F.3d 247, 250 (7th Cir. 2002):

13 This confusion [between scope of remand and waiver] is linguistic
 14 and can be cleared up by simply recognizing that this court does not
 15 remand issues to the district court when those issues have been
 16 waived or decided. The question of whether an issue was waived on
 17 the first appeal is an integral and included element in determining the
 18 “scope of remand.” [...] There are two major limitations on the scope
 19 of a remand. First, any issue that could have been but was not raised
 20 on appeal is waived and thus not remanded. *See United States v.*
 21 *Morris*, 259 F.3d 894, 898 (7th Cir.2001) (“[P]arties cannot use the
 22 accident of remand as an opportunity to reopen waived issues.”) [...] Second,
 23 any issue conclusively decided by this court on the first
 24 appeal is not remanded.

25 (internal citations omitted.) Defendants are not confused as to the appropriate
 26 scope of the Ninth Circuit’s remand. They know that they are rearguing
 27 points they lost on three years ago and are attacking an order that they chose
 28 not to appeal from when they had the chance. This is simply their last-ditch
 attempt to avoid the consequences of their waiver and the liability they have
 incurred for willfully infringing DSE’s valuable copyrights. The Court
 should deny their Motion and enter judgment in DSE’s favor on copyright
 infringement.

////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

For the foregoing reasons, this Court should deny Defendants’ Motion and grant DSE’s renewed Motion for Summary Judgment.

Dated: April 30, 2021

DLA PIPER LLP (US)

/s/ Tamar Duvdevani
Tamar Y. Duvdevani
Attorneys for Plaintiff
Dr. Seuss Enterprises, L.P.