

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

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FARHAD SAFINIA,
Plaintiff and Counter-Claim
Defendant,
v.
VOLTAGE PICTURES, LLC, *et al.*,
Defendants and Counter-Claim
Plaintiffs.

Case No.: CV 17-6902-CBM-RAO
**ORDER RE: DEFENDANTS’
MOTION FOR SUMMARY
JUDGMENT; AND PLAINTIFF’S
MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
DEFENDANTS’ LIABILITY FOR
COPYRIGHT INFRINGEMENT**

The matters before the Court are: (1) Defendants Voltage Pictures, LLC, Voltage Productions, LLC, Christchurch Productions DAC, Nicolas Chartier, and Definition Films DAC’s (collectively, “Defendants”) Motion for Summary Judgment (Dkt. No. 129); and (2) Plaintiff’s Motion for Partial Summary Judgment on Defendants’ Liability for Copyright Infringement (Dkt. No. 161).¹

I. BACKGROUND

This lawsuit arises from Defendants’ alleged infringement of Plaintiff

¹ The Court’s rulings re: the parties’ evidentiary objections (Dkt. Nos. 134-2, 143-1, 164-6) are set forth in a separate order.

1 Farhad Safinia’s (“Plaintiff’s” or “Safinia’s”) screenplay, *The Professor and the*
2 *Madman* (the “Screenplay”).² Plaintiff’s complaint asserts two causes of action
3 against Defendants: (1) copyright infringement, 17 U.S.C. §§ 106 *et seq.*; and (2)
4 defamation (libel) per se, Cal. Civ. Code §§ 45, 45a. (Dkt. No. 1.) On December
5 7, 2017, the Court dismissed Plaintiff’s defamation claim without prejudice to
6 refile in a court with proper jurisdiction upon finding the defamation claim was
7 not part of the same case or controversy as Plaintiff’s copyright claim because it
8 does not derive from a common nucleus of operative fact. (Dkt. No. 41.)
9 Defendants move for summary judgment on Plaintiff’s copyright infringement
10 claim. Plaintiff moves for partial summary judgment on the issue of Defendants’
11 liability for copyright infringement.³

12 II. LEGAL STANDARD

13 A. Summary Judgment

14 On a motion for summary judgment, the Court must determine whether,
15 viewing the evidence in the light most favorable to the nonmoving party, there are
16 any genuine issues of material fact. *Simo v. Union of Needletrades, Indus. &*
17 *Textile Employees*, 322 F.3d 602, 609-10 (9th Cir. 2003); Fed. R. Civ. P. 56.
18 Summary judgment against a party is appropriate when the pleadings, depositions,
19 answers to interrogatories, and admissions on file, together with the affidavits, if
20 any, show that there is no genuine issue as to any material fact and that the

21 _____
22 ² It is undisputed that: (1) on July 27, 2016, Defendant Voltage’s President Zev
23 Foreman sent an email to Plaintiff with the subject line: “Script” wherein Foreman
24 wrote: “We really need you to condense roles/scenes now. The current cost for
25 your current script is 50 days. We need it to be 40. So I think it would make sense
26 to get started.”; and (2) Plaintiff completed the rewrite/revised version of the script
27 on September 14, 2016. This 2016 “script” is the Screenplay copyrighted by
28 Plaintiff which is basis of Plaintiff’s copyright infringement claim against
Defendants. Prior versions/revisions of scripts re: the Novel are not the subject of
this lawsuit.

³ Defendants filed Counterclaims and a Third-Party Complaint (Dkt. No. 42), and
the Court previously dismissed without prejudice certain counterclaims (Dkt. No.
76). Defendants’ remaining counterclaims for declaratory judgment, breach of
contract, and intentional interference with prospective economic relation, are not
the subject of the parties’ instant motions.

1 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. An
2 issue is “genuine” only if there is a sufficient evidentiary basis on which a
3 reasonable jury could find for the non-moving party. *Anderson v. Liberty Lobby,*
4 *Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “material” only if it might
5 affect the outcome of the suit under governing law. *Id.* The evidence presented
6 by the parties must be admissible. Fed. R. Civ. P. 56(e). In judging evidence at
7 the summary judgment stage, the Court does not make credibility determinations
8 or weigh conflicting evidence. *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
9 *Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987). Rather, “[t]he evidence of the
10 nonmovant is to be believed, and all justifiable inferences are to be drawn in [the
11 nonmovant’s] favor.” *Anderson*, 477 U.S. at 255. But the non-moving party must
12 come forward with more than “the mere existence of a scintilla of evidence.” *Id.*
13 at 252. “Conclusory, speculative testimony in affidavits and moving papers is
14 insufficient to raise genuine issues of fact and defeat summary judgment.”
15 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007) (citations
16 omitted).

17 **B. Copyright Infringement**

18 “To establish a successful copyright infringement claim, a plaintiff must
19 show that he . . . owns the copyright and that defendant[s] copied protected
20 elements of the work.” *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822 (9th
21 Cir. 2002). The plaintiff is also “required to show registration as an element of an
22 infringement claim.” *Unicolors, Inc. v. Urban Outfitters, Inc.*, 853 F.3d 980, 988
23 (9th Cir. 2017); *see also Fourth Estate Pub. Benefit Corp. v. Wall-Street.com,*
24 *LLC*, --- S.Ct. ----, 2019 WL 1005829, at *3 (U.S. Mar. 4, 2019) (“Registration”
25 of a copyright “is akin to an administrative exhaustion requirement that the owner
26 must satisfy before suing to enforce ownership rights.”). “A certificate of
27 registration from the U.S. Copyright Office raises the presumption of copyright
28 validity and ownership.” *Unicolors, Inc.*, 853 F.3d at 822. However, “[t]he

1 presumptive validity of the certificate may be rebutted and defeated on summary
2 judgment.” *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1086 (9th Cir. 1989).

3 “Copyright in a work protected under [the Copyright Act] vests initially in
4 the author or authors of the work.” 17 U.S.C. § 201(a). However, “[i]n the case
5 of a work made for hire, the employer or other person for whom the work was
6 prepared is considered the author . . . , and, unless the parties have expressly
7 agreed otherwise in a written instrument signed by them, owns all of the rights
8 comprised in the copyright.” 17 U.S.C. § 201(b). A “work made for hire” is
9 defined as “(1) a work prepared by an employee within the scope of his or her
10 employment; or (2) a work specially ordered or commissioned for use ... as a part
11 of a motion picture or other audiovisual work, ... if the parties expressly agree in a
12 written instrument signed by them that the work shall be considered a work made
13 for hire.” 17 U.S.C. § 101. Therefore, in “work made for hire” agreements, “the
14 employer or other person for whom the work was prepared is considered the
15 author . . . and . . . owns all the rights in the copyright.” *Warren v. Fox Family*
16 *Worldwide, Inc.*, 328 F.3d 1136, 1140 (9th Cir. 2003) (citing 17 U.S.C. 201(b));
17 *see also Mostowfi v. i2 Telecom Int’l, Inc.*, 269 F. App’x 621, 623 (9th Cir. 2008)
18 (“The creator of a work made for hire does not have a legal or beneficial interest
19 in the copyright and therefore does not have standing to sue for infringement.”).

20 III. DISCUSSION

21 A. Preliminary Matters

22 Plaintiff’s request that the Court deny or defer ruling on Defendants’
23 Motion based on defense counsel’s failure to disclose facts and evidence
24 supporting Defendants’ Motion during the conference of counsel pursuant to
25 Local Rule 7-3 is denied. Local Rule 7-3 does not require the moving party to
26 disclose all facts and evidence in support of its intended Motion.

27 Plaintiff’s request that the Court deny or defer ruling on Defendants’
28 Motion on the ground Defendants failed to meet and confer regarding a joint

1 statement of undisputed facts is denied. No summary judgment motion had been
2 filed by Plaintiff at the time Plaintiff filed his opposition to Defendants' Motion,
3 and therefore the parties were not required to file a joint statement of undisputed
4 facts at that time.

5 **B. Ownership**

6 Plaintiff provides evidence of a certificate of registration issued on August
7 4, 2017, for the Screenplay, which raises a rebuttable presumption regarding
8 Plaintiff's ownership and the validity of the copyright. *See S.O.S., Inc.*, 886 F.2d
9 at 1085-86; *Unicolors*, 853 F.3d at 988.

10 Defendants, however, submit evidence demonstrating Plaintiff signed a
11 Certificate of Authorship ("COA") on January 8, 2007, with Airborne
12 Productions, Inc. ("Airborne"),⁴ which states:

13 I, Farhad Safinia, hereby certify that I have been engaged by
14 Airborne Productions, Inc. ("Company") to render writing services in
15 connection with the pre-existing script entitled 'The Professor and the
16 Madman' based on the book of the same name (the "Project"). In
17 connection therewith, I hereby represent, warrant and agree that (a)
18 my services are rendered for good and valuable consideration, the
19 receipt and sufficiency of which are hereby acknowledged; (b) the
20 results and product of all such services, including, without limitation,
21 *all writings, notes, ideas, characters, situations, themes and plots I*
22 *contribute* in connection with the Project, (collectively, the "Work")
23 *are and will be deemed to have been specifically ordered or*
24 *commissioned by Company* for use as part of a motion picture or
25 other audio visual work; (c) such results and product are and will be a
26 "work made for hire" within the meaning of the United States
27 Copyright Act; and (d) *Company shall be deemed to be the author*
28 *thereof and the owner of all rights therein and of all proceeds*
derived therefrom and in connection therewith, with the right to
make such changes therein and such uses and disposition thereof,
in whole or in part, as Company may from time to time determine as

⁴ Airborne is not a party in this lawsuit. Airborne is an affiliate of Icon Productions, LLC, which held the rights to a 2001 screenplay re: the Novel and the rights to create the film re: the Novel.

1 the author and owner thereof.

2 (Emphasis added.) The language of the COA makes clear it applies to any
3 writings by Plaintiff regarding the Film, including the Screenplay registered by
4 Plaintiff which is the subject of this lawsuit.

5 Plaintiff argues the COA only covers work “specifically ordered or
6 commissioned by [the] Company” (i.e., Airborne), and therefore does not cover
7 the Screenplay which was requested by Defendant Voltage. The express language
8 of the COA, however, states that “all writings, notes, ideas, characters, situations,
9 themes and plots [Safinia] contribute[s] in connection with the Project” (defined
10 as “writing services in connection with the pre-existing script entitled ‘The
11 Professor and the Madman’ based on the book of the same name”) “***are and will
12 be deemed to have been specifically ordered or commissioned by Company.***”
13 (Emphasis added.) Accordingly, the Court finds the Screenplay is a writing in
14 connection with the pre-existing script and therefore is deemed to have been
15 specifically ordered or commissioned by Airborne pursuant to the terms of the
16 COA.

17 The fact that there is no COA between the named parties in this lawsuit is
18 irrelevant to determining whether Plaintiff’s Screenplay is a work for hire which
19 Plaintiff does not own based on the COA between Plaintiff and Airborne. The
20 COA provides that the “Company [i.e., Airborne] shall be deemed to be the author
21 thereof and the owner of all rights therein” of the “writings, notes, ideas,
22 characters, situations, themes and plots [Safinia] contribute[s] in connection with
23 the Project.” Accordingly, even if there is no COA between Plaintiff and
24 Defendants, Plaintiff does not have ownership rights in the Screenplay based on
25 the COA between Airborne and Plaintiff. *See* 17 U.S.C. § 201(b) (“In the case of
26 a work made for hire, the employer or other person for whom the work was
27 prepared is considered the author for purposes of this title, and, unless the parties
28 have expressly agreed otherwise in a written instrument signed by them, owns all

1 of the rights comprised in the copyright.”).

2 Notwithstanding the above, Defendants offer a Quitclaim Agreement dated
3 August 21, 2016, signed by Airborne and Definition Films DAC, as evidence,
4 which provides:

5 WHEREAS, on or about January 78, 2007, Airborne engaged Farhad
6 Safinia (“Safinia”) to perform writing services in connection with a
7 motion picture project entitled “The Professor And The Madman”
8 (the “Picture”), and Safinia executed a Certificate of Authorship
9 certifying he was engaged by Airborne “to render writing services in
10 connection with the pre-existing script entitled ‘The Professor and the
11 Madman’ based on a book of the same name” on a work for hire
12 basis; . . . the parties hereto acknowledge and agree as follows: . . .

11 Assignor [Airborne] hereby quitclaims and assigns unto Assignee
12 [Definition Films DAC] all of Assignor’s right, title and interest in
13 and to Picture, including but not limited to . . . All literary material
14 relating to the Picture including without limitation the “Literary
15 Material” set forth in Exhibit “A” hereto, and all copyrights in
16 connection therewith, and all tangible and intangible properties
17 respecting the Picture (collectively, the “Literary Property”); and . . .
18 All contracts, agreements, assignments and instruments of every kind
19 and character under which Assignor has heretofore acquired any
20 right, title or interest in or to the Picture, including without limitation,
21 all documents enumerated in Exhibit “A” hereto (the “Underlying
22 Documents”).

20 Exhibit A to the Quitclaim Agreement defines: (1) “Literary Material” as “[a]ll
21 rights in and to the book entitled ‘The Professor and the Madman’ written by
22 Simon Winchester (‘Winchester’), and all rights in and to *all drafts and versions*
23 *of the screenplay* currently entitled ‘The Professor And The Madman’ written by
24 Farhad Safinia (‘Safinia’) and/or any other writer (Based on the foregoing book)
25 (collectively, the ‘Literary Material’)” (emphasis added); and (2) “Underlying
26 Documents” as “Certificate of Authorship dated January 8, 2007, between
27 Airborne Productions, Inc. (“Airborne”) and Safinia wherein Safinia certifies that
28 he was engaged by Airborne “to render writing services in connection with the

1 pre-existing script entitled ‘The Professor and the Madman’ based on a book of
 2 the same name” on a work for hire basis.”⁵ Therefore, Airborne’s ownership
 3 rights to the Screenplay were transferred to Defendant Voltage under the
 4 Quitclaim Agreement. *See* 17 U.S.C. § 201(d).

5 Plaintiff argues the COA only applies to a single rewrite by Plaintiff in 2007
 6 and that Plaintiff and Airborne “contemplated” and “understood” that the COA
 7 would not cover any of Plaintiff’s future work after 2007 such as the Screenplay
 8 which was completed in 2016. Plaintiff declares:

9 I began revising the 2001 screenplay after signing the COA. I spent
 10 months on the revisions and created several drafts along the way, but
 11 I finished my revisions by the time I left Icon⁶ in 2009. Therefore, at
 12 that time, I understood that my engagement under the COA had
 13 terminated, that Airborne Productions, Inc. (“Airborne”) owned the
 14 rights to the revisions I performed up to that time, and that the COA
 would not apply to anything I created in the future.

15 (Plaintiff’s Decl. ¶ 3.) In addition, Vicki Christianson, the President of Airborne,
 16 declares: “On or about January 8, 2007, Farhad Safinia was engaged to revise the
 17 2001 screenplay” for which Icon held the rights to create the Film, “[w]hen
 18 Airborne requested Mr. Safinia revise the 2001 screenplay and signed the COA
 19 with him, Airborne contemplated the COA would apply only to Mr. Safinia’s

20 ⁵ Defendants also submit a copy of a Short Form Assignment & Quitclaim signed
 21 by Airborne dated August 21, 2016, which provides:

22 The undersigned, AIRBORNE PRODUCTIONS, INC., (together,
 “Assignor”), do hereby assign and quitclaim unto DEFINITION FILMS,
 23 DAC (“Assignee”) all of Assignor’s right, title and interest in and to the
 book entitled “The Professor and the Madman” written by Simon
 24 Winchester, and all of Assignor’s rights in and to the screenplay currently
 entitled “The Professor And The Madman” written by Farhad Safinia,
 25 and/or any other writer, and ***all drafts, versions, synopses, treatments,***
scenarios, screenplays, and all copyrights in connection herewith. This
 Short Form Quitclaim is subject to all the terms, conditions, representations,
 26 and warranties of the Quitclaim Agreement between Assignor and Assignee
 dated August 21, 2016.

27 (Emphasis added.)

28 ⁶ Icon is an affiliate of Airborne, and is not a named party in this action.

1 2007 revision. Airborne did not contemplate the COA would cover any additional
2 work performed by Mr. Safinia beyond his 2007 revision,” at the time Mr. Safinia
3 left Icon in 2009, he had completed his 2007 revision under the COA, and “[a]t
4 the time, Airborne Understood that Mr. Safinia’s engagement under the COA had
5 terminated, that Airborne owned the revised screenplay and any drafted created by
6 Mr. Safinia up to that time, and that any future work by Mr. Safinia would not be
7 covered by the COA.” (Christianson Decl. ¶ 3.)

8 The express language of the COA, however, does not limit its application to
9 only a single rewrite in 2007, nor provide that the COA would not apply to future
10 writings by Plaintiff after 2007. Therefore, the COA is not “reasonably
11 susceptible” to the interpretation proffered by Plaintiff. *See* Cal. Civ. Code § 1638
12 (“The language of a contract is to govern its interpretation, if the language is clear
13 and explicit, and does not involve an absurdity.”);⁷ *Parsons v. Bristol Dev. Co.*, 62
14 Cal. 2d 861, 865 (1965) (“Extrinsic evidence is admissible to interpret the
15 instrument, but not to give it a meaning to which it is not reasonably
16 susceptible.”).

17 Moreover, the declarations submitted by Plaintiff regarding Airborne and
18 Plaintiff’s undisclosed subjective intent does not change the objective intent set
19 forth in the language of the COA. *See* Cal. Civ. Code § 1639 (“When a contract is
20 reduced to writing, the intention of the parties is to be ascertained from the writing
21 alone, if possible.”).⁸ Plaintiff fails to submit evidence demonstrating Airborne or
22 Plaintiff’s subjective intent was communicated before the COA was signed.⁹

23 ⁷ The parties reply on California law in interpreting the COA.

24 ⁸ *See also Foster-Gardner, Inc. v. Nat’l Union Fire Ins. Co.*, 18 Cal. 4th 857, 868
25 (1998) (“intent is to be inferred, if possible, solely from the written provisions of
26 the contract”); *see also Okada v. Whitehead*, 2016 WL 9448482, at *7 (C.D. Cal.
27 Nov. 4, 2016), *aff’d*, 2019 WL 92486 (9th Cir. Jan. 3, 2019) (citing *Titan Grp.,*
28 *Inc. v. Sonoma Valley Cty. Sanitation Dist.*, 211 Cal. Rptr. 62, 65 (Cal. Ct. App.
1985)); *Ben-Zvi v. Edmar Co.*, 47 Cal. Rptr. 2d 12, 14 (Cal. Ct. App. 1995).

⁹ Plaintiff testified at his deposition that he could not recall if he asked any
questions about the COA before he signed it, he does not remember exactly what
Christianson said to him about the COA when he was asked to sign it, and he

1 Therefore, Airborne and Plaintiff’s subjective intent is irrelevant to interpreting
2 the express language of the COA.¹⁰

3 Plaintiff also submits evidence regarding Plaintiff’s and Defendants’ “pre-
4 dispute conduct,” and argues such evidence shows Defendants knew and believed
5 the COA did not cover Plaintiff’s Screenplay. However, none of the named
6 defendants are a party to the COA, and therefore evidence regarding Defendants’
7 conduct is irrelevant to determining the contracting parties’ objective intent at the
8 time the COA was executed. *Cf. People v. Shelton*, 37 Cal. 4th 759, 767 (2006)
9 (“The mutual intention to which the courts give effect is determined by objective
10 manifestations of the parties’ intent, including . . . the **subsequent conduct of the**
11 **parties.**”) (emphasis added).

12 Accordingly, the undisputed evidence demonstrates Plaintiff does not own
13 rights in the Screenplay. Plaintiff therefore lacks standing for his copyright
14 infringement claim against Defendants. *See* 17 U.S.C. § 501(b); *Silvers v. Sony*
15 *Pictures Entm’t, Inc.*, 402 F.3d 881, 883 (9th Cir. 2005); *Baker v. FirstCom*
16 *Music*, 2018 WL 3583237, at *23 (C.D. Cal. Mar. 15, 2018), *modified*, 2018 WL
17 3617884 (C.D. Cal. Apr. 6, 2018).

18 ///

19 ///

20 ///

21 ///

22 _____
23 cannot recall if there was anyone else he might have spoken to about the COA.
24 (Plaintiff Depo. 54:10-16, 295:10-296:24.) Christianson testified at her deposition
that she did not recall having any conversation with Plaintiff before they signed
the COA. (Christianson Depo. 56-58.)

25 ¹⁰ The Court sustained Defendants’ objections to Plaintiff’s and Christianson’s
26 declarations regarding their subjective intent re: the COA as irrelevant. (*See*
27 *supra.*) *See Founding Members of the Newport Beach Country Club v. Newport*
28 *Beach Country Club, Inc.*, 135 Cal. Rptr. 2d 505, 514 (Cal. Ct. App. 2003) (“The
parties’ undisclosed intent or understanding is irrelevant to contract
interpretation.”); *Winet v. Price*, 6 Cal. Rptr. 2d 554 (Cal. Ct. App. 1992) (“[T]he
undisclosed subjective intent of the parties is irrelevant to determining the
meaning of contractual language.”).

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

Accordingly, the Court **GRANTS** Defendants’ Motion for Summary Judgment on Plaintiff’s copyright infringement claim; and **DENIES** Plaintiff’s Motion for Partial Summary Judgment on Defendants’ Liability for Copyright Infringement.

IT IS SO ORDERED.

DATED: March 20, 2019.



CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

Deadline