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17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

19 NICKY LAATZ and NICKY LAATZ  
 20 CREATIONS UK LTD.,

21 Plaintiffs,

22 v.

23 ZAZZLE, INC. and MOHAMED  
 24 ALKHATIB,

25 Defendants.

Case No. 5:22-cv-04844-BLF

**PLAINTIFFS' NOTICE OF MOTION  
 AND MOTION FOR PARTIAL  
 SUMMARY JUDGMENT;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES**

Judge: Hon. Beth Labson Freeman  
 Date: January 19, 2023  
 Time: 9:00 a.m.

Trial Date: None Set

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**NOTICE OF MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on January 19, 2023, before the Honorable Beth Labson Freeman, Courtroom 3, 5th floor, San Jose Courthouse, 280 South 1st Street, San Jose, California 95113, at 9:00 a.m. or as soon thereafter as the matter may be heard, Plaintiffs Nicky Laatz and Nicky Laatz Creations UK Ltd. (collectively, “Plaintiffs” or “Nicky Laatz”) will and hereby do move the Court for an order granting partial summary judgment in Plaintiffs’ favor as to liability against all Defendants for each of Plaintiffs’ claims for relief.

Nicky Laatz is entitled to partial summary judgment under Federal Rule of Civil Procedure 56 because there is no genuine dispute as to any material fact regarding Defendants’ liability and Nicky Laatz is entitled to judgment as a matter of law. Nicky Laatz seeks an order that Defendants Zazzle, Inc. (“Zazzle”) and Mohamed Alkhatib (“Alkhatib”) are liable as to Nicky Laatz’s first claim for relief for fraudulent misrepresentation, Nicky Laatz’s second claim for relief for fraudulent concealment, and Nicky Laatz’s third claim for relief for promissory fraud. Nicky Laatz further seeks an order that Defendant Zazzle is liable as to Nicky Laatz’s fourth claim for relief for intentional interference with contractual relations, Nicky Laatz’s fifth claim for relief for copyright infringement, and Nicky Laatz’s sixth claim for relief for trademark infringement. Nicky Laatz further seeks an order that Defendant Alkhatib is liable as to Nicky Laatz’s seventh claim for relief for breach of contract. Nicky Laatz bases this motion on the following Memorandum, the supporting declarations of Nicky Laatz, John Laatz, and Stephen C. Steinberg, all records and pleadings on file in this case, and such argument as may be heard by this Court.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This is the atypical case where no discovery is needed to prove liability because conclusive evidence already shows that there is no genuine dispute as to any material fact as to each claim for relief.

Plaintiff Nicky Laatz is a leading creator of original font designs. Together with her company Nicky Laatz Creations UK Ltd., she owns federally registered copyrights for the font

1 software used to implement her Blooming Elegant Trio of fonts. Nicky Laatz offers the software  
2 for these fonts by a limited license available for purchase both directly through her website and  
3 through select online marketplaces such as Creative Market.

4 Defendant Zazzle is one of the world's largest online marketplaces that allows individual  
5 users and designers to custom-design and sell their products through Zazzle. In November 2016,  
6 hoping to offer the Blooming Elegant fonts to its customers, Zazzle reached out to Nicky Laatz,  
7 asking, "Do you offer a license in perpetuity for server-based use?" Nicky Laatz did not respond  
8 as she often does not respond to unsolicited correspondence that seeks to vary the terms of the  
9 single-seat licenses that she typically grants. In May 2017, after failing to obtain the requested  
10 perpetual server-based license, Zazzle directed Defendant Alkhatib, one of its Senior Network  
11 Engineers, to enter a standard single-seat license using his personal name, so that Zazzle could  
12 obtain and use the software that implements Laatz's Blooming Elegant fonts in a manner that  
13 Zazzle knew was not covered by Alkhatib's license. At the direction of Zazzle, Alkhatib  
14 intentionally violated his single-seat license by loading the software that implements the Blooming  
15 Elegant fonts onto Zazzle's servers for commercial use by Zazzle's independent designers (which  
16 Zazzle boasted as numbering in the six-hundred-thousands) as well as any of the nearly 100  
17 million users and customers who use Zazzle's website.

18 When Nicky Laatz discovered this unauthorized use and confronted Zazzle, Zazzle's in-  
19 house counsel admitted that "the Blooming Elegant font was among four fonts purchased on a  
20 company card by Mohamed Alkhatib, our Sr. Network Engineer, for use on our site."

21 It is undisputed that the Creative Market license secured by Alkhatib does not permit  
22 Zazzle's use of Nicky Laatz's font software because: (1) the license is expressly limited to "one  
23 seat per license," "cover[ing] one user, which we call a seat"; (2) the license only allows the  
24 covered user to install the fonts "on up to two computers used by the end user, so long as only one  
25 computer is used at a time"; (3) the covered user "may not make the [font software] available on a  
26 digital asset management system, shared drive, or the like for the purposes of sharing or  
27 transferring the [font software], and [] must not permit an end user of the end product to extract  
28 the [font software] and use [them] separately from the End Product"; and (4) the license prohibits

1 a user from “sublicens[ing], ... shar[ing], transfer[ing], or otherwise redistribut[ing] the [font  
2 software] . . . under any circumstances, not even for free.” Finally, the FAQ on the Creative  
3 Market license page states in response to the frequently asked question “Can I use a font in a  
4 website, app, or eBook?”: “[y]ou are not permitted to embed a purchased font into any of these  
5 *mediums*.”

6 A review of the terms of the Creative Market license and Zazzle’s correspondence with  
7 Nicky Laatz and her counsel demonstrates that there is no genuine dispute of material fact and that  
8 Zazzle and Alkhatib are liable as a matter of law on each of the claims asserted against them.

## 9 **II. STATEMENT OF THE ISSUES TO BE DECIDED**

10 The overarching issue to be decided on this motion is whether Zazzle and Alkhatib are  
11 liable to Nicky Laatz on each of the claims for relief asserted in this case.

## 12 **III. STATEMENT OF RELEVANT FACTS**

### 13 **A. Nicky Laatz and Her Fonts**

14 Nicky Laatz is an expert font designer and one of the world’s premier creators of original  
15 font designs. Custom fonts and the software used to implement them on computers are widely  
16 used in graphic design, including on invitations, business cards, signs, websites, and other  
17 applications. (Decl. of N. Laatz in Support of Pls.’ Mot. for Partial Summ. J. (“Laatz Decl.”), ¶ 2.)  
18 She has been involved in the graphic design industry for nearly two decades and has created over  
19 110 unique fonts (including the implementing software) for use in graphic design. (*Id.*) Artists and  
20 designers like Nicky Laatz commercialize custom fonts by designing the letters for a new font,  
21 creating software to implement the font on computers, and licensing this software to users who  
22 wish to use the custom font for their own purposes. (*Id.*)

23 Nicky Laatz offers limited use licenses for her font software through her website  
24 (<https://nickylaatz.com>) and certain online marketplaces including Creative Market  
25 (<https://creativemarket.com/Nickylaatz>). (*Id.* ¶ 3.) These licenses are the primary means of  
26 monetizing her creative works and the primary source of her income. (*Id.* ¶ 3.)

### 27 **B. Nicky Laatz’s Development of the Blooming Elegant Trio of Fonts**

28 In 2016, Nicky Laatz created a unique trio of fonts titled “Blooming Elegant,” “Blooming

1 Elegant Hand,” and “Blooming Elegant Sans” (collectively, “Blooming Elegant Trio”). (*Id.* ¶ 4.)  
2 The “Blooming Elegant” font is a handwriting-style font, which includes stylistic alternative  
3 characters (*e.g.* multiple design versions of the same character so that when the same character is  
4 used multiple times in a given typesetting, they appear differently to mimic handwritten text),  
5 ligatures (*e.g.* connections between certain combined characters when used next to each other, like  
6 “fl” or “fi,” to improve legibility and mimic the connections in handwritten text), as well as  
7 individual swashes (*e.g.* flourishes such as tails or exaggerated serifs that can be stylistically added  
8 to certain characters to enhance the visual representation of such characters). (*Id.* ¶ 5.) These  
9 unique features make the Blooming Elegant font particularly valuable and difficult to replace with  
10 another script that will have the same proportions of elegance, weight, and playfulness. (*Id.* ¶ 5.)  
11 The Blooming Elegant Sans font is a set of uppercase sans serif characters, and the Blooming  
12 Elegant Hand font is a set of hand-lettered uppercase characters, both of which are designed to  
13 complement the Blooming Elegant font. (*Id.* ¶ 6.)

14 **C. Nicky Laatz’s Copyrights and Trademarks on the Blooming Elegant Trio**

15 Nicky Laatz has multiple copyrights protecting the software that implements her Blooming  
16 Elegant Trio. The Blooming Elegant Trio font software is protected by U.S. Copyright  
17 Registration No. TX0008984766, the Blooming Elegant Hand font software is protected by U.S.  
18 Copyright Registration No. TX0008984764, and the Blooming Elegant Sans font software is  
19 protected by U.S. Copyright Registration No. TX0008984762. (Decl. of S. Steinberg in Support of  
20 Pls.’ Mot. for Partial Summ. J. (“Steinberg Decl.”), ¶ 4, Exs. 7-9.)

21 Nicky Laatz has also obtained U.S. Trademark Registration No. 6,626,946 for the mark  
22 “BLOOMING ELEGANT” for use in connection with “Downloadable printing fonts; Printing  
23 fonts that can be downloaded provided by means of electronic transmission; Typeface fonts  
24 recorded on magnetic media,” which she has used in commerce since at least 2016. (*Id.* Ex. 10.)

25 **D. Nicky Laatz’s Single-User Limited Licenses for the Blooming Elegant Trio**

26 Nicky Laatz has offered the Blooming Elegant Trio font software since 2016. (Laatz Decl.  
27 ¶ 7.) The licenses offered by Nicky Laatz for the Blooming Elegant Trio font software are limited  
28 in scope, such that a user can pay a one-time fee of \$17 to Nicky Laatz directly or \$20 to a

1 marketplace such as Creative Market to download the implementing software for use only by a  
2 single user. (*Id.* ¶ 7, Ex. 3.) Creative Market’s standard license states that it is limited to “one seat  
3 per license,” which covers one user. (*Id.* Ex. 3 at ¶ 2.) The license further states that a user “may  
4 not make the [fonts] available on a digital asset management system, shared drive, or the like for  
5 the purposes of sharing or transferring the [fonts], and you must not permit an end user of the end  
6 product to extract the [fonts] and use [them] separately from the End Product.” (*Id.* Ex. 3 at ¶ 6.)  
7 The license prohibits a user from “sublicens[ing], ... shar[ing], transfer[ring], or otherwise  
8 redistribut[ing]e the [fonts] (*e.g.* as stock, in a tool or template, with source files, and/or not  
9 incorporated into an End Product) under any circumstances, not even for free.” (*Id.* Ex. 3 at ¶ 5.)

#### 10 **E. Zazzle and Its E-Commerce Operation**

11 Zazzle is an enormously profitable business worth up to \$2 billion. According to Zazzle’s  
12 website: “Zazzle is the world’s leading people-powered design platform. Our proprietary  
13 technology connects consumers, designers, manufacturers, and major brands, such as Disney and  
14 Marvel, to design, customize and make anything imaginable. Zazzle’s rapidly expanding product  
15 base of over 1000+ different product and design categories includes everything from apparel and  
16 accessories, invitations, art, home goods, office supplies, electronics, and custom gifts. Zazzle  
17 provides tools to design digital and physical products, coupled with content and images for  
18 inspiration. Upon creation, products and designs are instantly and accurately visualized and  
19 offered in the Zazzle marketplace.” (Steinberg Decl. ¶ 8, Ex. 13.)

20 One of the key features on Zazzle’s website is the online design customization tool, which  
21 provides designers and individual users with the access and ability to choose from and use various  
22 fonts in designing and customizing products, including from around May 2017 until at least early  
23 August 2022, the Blooming Elegant Trio of fonts. (*Id.* ¶ 9-10, Exs. 14-15.) According to Zazzle,  
24 its users have created over 600 million different designs using Zazzle’s website. (*Id.* Ex. 12.)

#### 25 **F. Zazzle’s Scheme to Unlawfully Use Nicky Laatz’s Font Software**

26 On November 2, 2016, a Senior Product Marketing Manager for Zazzle, Monica McGhie,  
27 contacted Nicky Laatz through the Creative Market chat system, stating that Zazzle wanted to  
28 make the Blooming Elegant Trio of fonts available to Zazzle’s designers, users, and customers for

1 designing products using its customization tool, and noting that Zazzle houses fonts on its internal  
2 servers. (Laatz Decl. ¶ 8, Ex. 1.) McGhie told Nicky Laatz, “Saw your Blooming Elegant Font  
3 Trio and *believe that our Designers would love it!*” and “we do everything we can to enable our  
4 *600k individual designers to sell their original designs on Zazzle by using our design tools*  
5 *(which include a wide variety of fonts)* and then applied to thousands of made-to-order products!”  
6 (*Id.* (emphasis added).) McGhie added, “[a]ll our fonts are housed on Zazzle’s internal servers, so  
7 Designers and our customers can use it on our site to design on products using our customization  
8 tool ....” (*Id.*) Knowing that a standard, single-seat license from either Creative Market or Nicky  
9 Laatz’s own website would not cover Zazzle’s intended use, Ms. McGhie asked Nicky Laatz, “*Do*  
10 *you offer a license in perpetuity for server-based use?*” (*Id.* (emphasis added).) Nicky Laatz did  
11 not respond to this inquiry. She often does not respond to unsolicited inquiries seeking to license  
12 her fonts in a manner that goes beyond the typical single-seat license that she offers. (*Id.* ¶ 13.)

13 On May 4, 2017, after failing to obtain the requested server-based license, Zazzle directed  
14 its Senior Network Engineer, Mohamed Alkhatib, to enter into a single-seat license through  
15 Creative Market, acquire the Blooming Elegant Trio font software, and upload it onto Zazzle’s  
16 server for use by Zazzle’s 600,000 plus individual designers and nearly 100 million users and  
17 customers. (Decl. of J. Laatz in Support of Pls.’ Mot. for Partial Summ. J. (“J. Laatz Decl.”), ¶ 3,  
18 Ex. B; Steinberg Decl. Ex. 12.)

#### 19 **G. Nicky Laatz’s Discovery of Zazzle’s Theft and Abuse of Her IP Rights**

20 Nicky Laatz was unaware that Zazzle was illicitly using her Blooming Elegant Trio of  
21 fonts until August 25, 2020, when Zazzle user Michelle Hunt submitted a request for support on  
22 Nicky Laatz’s website, stating that “I would like to use your blooming elegant font on Zazzle. I  
23 see that they have it, however I am trying to figure out how to use the glyphs to make the swirl at  
24 the beginning and end of the letters.” (Laatz Decl. ¶ 9, Ex. 2.) In response, on August 26, 2020,  
25 John Laatz, director and operations manager for Nicky Laatz Creations UK Ltd., wrote to Zazzle,  
26 “[w]e were made aware of [Zazzle’s hosting of Laatz’s Blooming Elegant Font Trio] by one of  
27 your users approaching us directly with questions about this type face and have since confirmed  
28 that zazzle.com is hosting Blooming Elegant.” (J. Laatz Decl. ¶ 2, Ex. A.) Zazzle’s Senior

1 Director of Legal (previously Associate General Counsel), Liana Larson, replied that she was  
2 currently investigating “Zazzle’s purchase of the Blooming Elegant font family,” and that she was  
3 “able to find information that we purchased these from Creative Market in May of 2017.” (*Id.*)  
4 Ms. Larson later provided a receipt for a purchase of a single-seat license (“Blooming Elegant  
5 License”) in the name of Mohamed Alkhatib. (*Id.* Ex. B.)

6 On January 22, 2021, noting that Zazzle’s use violated the express terms of the Blooming  
7 Elegant License, Mr. Laatz wrote to Ms. Larson to inquire whether Zazzle had a broader license  
8 for its use of the Blooming Elegant Trio. (*Id.* ¶ 4, Ex. C.) Mr. Laatz pointed Ms. Larson to the  
9 license page’s FAQ, which stated in response to the question “Can I use a font in a website, app,  
10 or eBook?,” that “[y]ou are *not permitted to embed a purchased font into any of these mediums*  
11 *unless the shop offering the font has provided explicit permission for you to do so.*” (*Id.*; Laatz  
12 Decl. Ex. 4.) Later, on October 8, 2021, Ms. Larson, admitted in writing “that the Blooming  
13 Elegant font was among four fonts purchased on a company card by Mohamed Alkhatib, our Sr.  
14 Network Engineer, *for use on our site ...*” (Steinberg Decl. Ex. 12. (emphasis added).) Larson  
15 added, “[o]ur intention was always to validly license Blooming Elegant for unrestricted and  
16 perpetual use, per our standard procedures. If we did not do so appropriately at the time, we would  
17 like to do so now.” (*Id.*)

18 Nicky Laatz sent further correspondence pointing out that the Blooming Elegant License  
19 purchased by Alkhatib did not cover Zazzle’s use of the Blooming Elegant Trio font software and  
20 demanded that Zazzle cease and desist from any further unlawful use. (J. Laatz Decl. Ex. C.)  
21 Zazzle, however, did not cease and desist from its use of Nicky Laatz’s Blooming Elegant Trio,  
22 instead inquiring whether it could purchase an after-the-fact perpetual, server-based license.  
23 (Steinberg Decl. Ex. 12.) Though she does not agree to perpetual, server-based licenses for her  
24 fonts, especially where the licensee plans to allow any user to use the font for commercial  
25 purposes, Nicky Laatz was willing to consider providing Zazzle with a license to avoid damaging  
26 the designs of the many independent graphic designers who sell designs on Zazzle that use the  
27 Blooming Elegant Trio. (Laatz Decl. ¶ 15.) Nicky Laatz was only willing to consider such a  
28 license if Zazzle both provided data on the number of Zazzle designers and customers who used



1 the Blooming Elegant Trio and number of unique designs that Zazzle designers and customers had  
 2 created and/or purchased using her custom fonts, and appropriately compensated Nicky Laatz for  
 3 such use. But Zazzle refused to provide this data to Nicky Laatz, necessitating this lawsuit. (*Id.*)

4 **H. Zazzle Has Profited Immensely from Its Theft of the Blooming Elegant Trio**

5 Beginning on or about May 4, 2017, and continuing to the present, Zazzle copied the  
 6 Blooming Elegant Trio font software onto its servers and made the fonts available on its website  
 7 for designers and individual users to use in their designs. (Steinberg Decl. ¶¶ 9-10, Exs. 12, 14,  
 8 15.) The Blooming Elegant Trio quickly became some of Zazzle’s most popular fonts. (Steinberg  
 9 Decl. ¶¶ 11-14, Exs. 16-19.) Zazzle offered numerous customizable products using the Blooming  
 10 Elegant Trio, including many of its most popular items. (Steinberg Decl. ¶¶ 12-13, Exs. 16-17.)  
 11 For example, at least five of Zazzle’s twelve most popular business cards and ten of Zazzle’s  
 12 twenty-four most popular business cards until at least early August 2022 used one or more of the  
 13 Blooming Elegant fonts. (Steinberg Decl. ¶ 11, Ex. 16; Laatz Decl. ¶ 16.) As another example, at  
 14 least up until early August 2022, several of Zazzle’s most popular wedding invitations used one or  
 15 more of the Blooming Elegant fonts. (Steinberg Decl. ¶ 12, Ex. 17; Laatz Decl. ¶ 17.) At least up  
 16 until early August 2022, Zazzle also enabled its individual users to design their own products  
 17 using the Blooming Elegant fonts. (Steinberg Decl. ¶¶ 9-10, Exs. 14, 15.)

18 **IV. ARGUMENT AND AUTHORITIES**

19 **A. Summary Judgment Standard**

20 A party is entitled to summary judgment if the ““movant shows that there is no genuine  
 21 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”” *City of*  
 22 *Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049 (9th Cir. 2014) (quoting Fed. R. Civ. P.  
 23 56(a)). The question is “whether there is a need for trial—whether, [] there are any genuine factual  
 24 issues that properly can be resolved only by a finder of fact because they may reasonably be  
 25 resolved in favor of either party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

26 The mere existence of a factual dispute, by itself, does not preclude summary judgment.  
 27 *See id.* at 255. The dispute must be genuine and the disputed fact must be material. A dispute is  
 28 only genuine if “the evidence presents a sufficient disagreement to require submission to a jury.”



1 *Id.* at 251–52. In other words, the evidence must be sufficient to support a jury’s finding for either  
 2 side. *See Scott v. Harris*, 550 U.S. 372, 380 (2007); *see also Matsushita Elec. Indus.l Co. v. Zenith*  
 3 *Radio Corp.*, 475 U.S. 574, 586–587 (1986) (“Where the record taken as a whole could not lead a  
 4 rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’”). “The  
 5 district judge is not required to comb the record to find some reason to deny a motion for summary  
 6 judgment.” *Forsberg v. Pac. Nw. Bell Tel. Co.*, 840 F.2d 1409, 1418 (9th Cir. 1988).

7 The party moving for summary judgment bears the burden of showing there is no material  
 8 factual dispute, by “identifying for the court the portions of the materials on file that it believes  
 9 demonstrate the absence of any genuine issue of material fact.” *T.W. Elec. Serv. Inc. v. Pac. Elec.*  
 10 *Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). If the moving party meets its burden, the  
 11 burden shifts to the nonmoving party to produce evidence supporting its defenses. *Nissan Fire &*  
 12 *Marine Ins. Co. v. Fritz Cos., Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000). If the nonmoving party  
 13 does not produce evidence to show a genuine issue of material fact, the moving party is entitled to  
 14 summary judgment. *Anderson*, 477 U.S. at 323.

## 15 **B. Nicky Laatz Is Entitled to Summary Judgment**

16 Zazzle has, in written correspondence with Nicky Laatz and her counsel prior to the filing  
 17 of this suit, admitted the essential facts establishing its and Alkhatib’s liability. As discussed  
 18 below, there is no dispute over any material fact supporting Nicky Laatz’s claims for relief. The  
 19 only issue in dispute—due to Zazzle’s refusal to provide Nicky Laatz with data regarding the  
 20 extent of its wrongful use of the Blooming Elegant Trio of fonts—is the extent of Zazzle’s profits  
 21 (subject to disgorgement) and the amount of harm that Zazzle has otherwise caused to Nicky  
 22 Laatz. As such, Nicky Laatz seeks summary judgment as to liability so the parties may focus their  
 23 discovery efforts on determining the full scope of remedies in this case.

### 24 **1. Nicky Laatz Is Entitled to Summary Judgment Against All Defendants** 25 **as to Liability on The First Three Claims for Relief for Fraud**

26 Nicky Laatz has alleged three claims for fraud against Zazzle and Alkhatib: (1) Fraudulent  
 27 Misrepresentation—based on the misrepresentation made by Alkhatib during the scope of his  
 28 employment by Zazzle that the Blooming Elegant License was for his own personal use;

1 (2) Fraudulent Omission—based on the omissions made by Alkhatib during the scope of his  
 2 employment by Zazzle that he was entering into the Blooming Elegant License so that he could  
 3 access and download the Blooming Elegant Trio font software for Zazzle’s unlicensed use; and  
 4 (3) Promissory Fraud—based on the false promise made by Alkhatib during the scope of his  
 5 employment by Zazzle that he would abide by the terms of the Blooming Elegant License. For  
 6 Nicky Laatz to prevail on these claims, she need only show “(1) a misrepresentation (false  
 7 representation, concealment, or nondisclosure); (2) knowledge of falsity (or scienter); (3) intent to  
 8 defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage.” *Robinson*  
 9 *Helicopter Co. v. Dana Corp.*, 34 Cal. 4th 979, 990 (2004).

10 **a. Zazzle and Alkhatib Knowingly Made Material Misstatements,**  
 11 **Omitted Material Facts, and Made False Promises**

12 A plaintiff is entitled to summary judgment as to the first element of fraud where she  
 13 shows that a defendant suggests, as a fact, “that which is not true, by one who does not believe it  
 14 to be true”; suppresses “that which is true, ... having knowledge or belief of the fact”; or makes a  
 15 promise “without any intention of performing it.” Cal. Civ. Code § 1572. Nicky Laatz has shown  
 16 that Alkhatib and Zazzle, as his employer, engaged in each of these types of fraud.

17 First, it is undisputed that Alkhatib, in the course of his employment with Zazzle,  
 18 purchased a standard single-user license for the Blooming Elegant Trio through Creative Market  
 19 in his name, and that he purchased the license so that Zazzle could access and implement the  
 20 Blooming Elegant Trio font software on its website. (J. Laatz Decl. Ex. B.) Thus, Alkhatib  
 21 misstated that the Blooming Elegant License was for his own personal use, rather than for Zazzle’s  
 22 use.

23 Second, it is undisputed that Alkhatib, in the course of his employment with Zazzle,  
 24 suppressed the fact that he was purchasing the license for Zazzle’s use. Instead, Alkhatib entered  
 25 the license in his own name—not Zazzle’s—without providing that the license was entered into  
 26 for Zazzle to offer the Blooming Elegant Trio font software for use to its 600,000 designers and  
 27 nearly 100 million users and customers. (*Id.*)

28 Finally, it is undisputed that Zazzle directed Alkhatib to enter into the Blooming Elegant

1 License with no intent of abiding by the promises therein. Zazzle knew at the time that Alkhatib  
2 entered into the Blooming Elegant License that the license did not cover its intended use. (Laatz  
3 Decl. Ex. 1.) Nonetheless, Alkhatib, in the scope of his employment, entered into the license,  
4 downloaded the Blooming Elegant Trio font software, and then implemented the font software on  
5 Zazzle’s website, allowing its millions of users to access and use it in knowing violation of the  
6 Blooming Elegant License.

7 **b. Zazzle and Alkhatib Intended for Nicky Laatz to Rely on the**  
8 **Misstatements and Omissions and Nicky Laatz Justifiably**  
9 **Relied Thereon**

9 To prevail on summary judgment on their fraud claims, Nicky Laatz need only show that  
10 Zazzle and Alkhatib intended Nicky Laatz to rely on the above-referenced misrepresentations,  
11 omissions, and false promises, and that Nicky Laatz justifiably relied thereon. *Small v. Fritz Cos.*,  
12 30 Cal. 4th 167, 174 (2003). The intent Nicky Laatz must show is only the intent to induce  
13 reliance on the misstatements, omissions, and false promises, not the intent to deceive. *Id.* at 173-  
14 174. To show reliance, Nicky Laatz need only show that the misstatements, omissions, and false  
15 promises substantially influenced Nicky Laatz’ decision to grant Alkhatib the Blooming Elegant  
16 License, not that it was the only, or predominant or decisive factor for her. *Whiteley v. Phillip*  
17 *Morris Inc.*, 117 Cal. App. 4th 635, 678 (2004). To show that reliance was justified, Nicky Laatz  
18 need only show that she “was justified in believing the representation in the light of h[er] own  
19 knowledge and experience.” *Gray v. Don Miller & Assocs., Inc.*, 35 Cal. 3d 498, 503 (1984).

20 It is undisputed that Zazzle knew that the Blooming Elegant License was only for a single  
21 user and did not cover its intended use. Specifically, Zazzle had previously inquired if Nicky Laatz  
22 would grant Zazzle a perpetual server-based license. (Laatz Decl. ¶¶ 8, Ex. 1.) It is undisputed  
23 that Nicky Laatz did not respond and did not grant any such license. (*Id.* ¶ 13.) Alkhatib, then—  
24 just six months later—purchased the Blooming Elegant License in his own name, concealing the  
25 fact that he was purchasing the license for Zazzle to acquire the Blooming Elegant Trio font  
26 software and offer it for use by its millions of designers, users, and customers. (J. Laatz Decl. Ex.  
27 B.) Given this sequence, the only reasonable inferences are that Zazzle intended Nicky Laatz to  
28 rely on the misrepresentation that the Blooming Elegant License was for single use by Alkhatib,

1 and that Zazzle and Alkhatib also intended for Nicky Laatz to rely on the implicit false promise  
2 that Alkhatib would abide by the terms of the license.

3 It similarly cannot be disputed that Nicky Laatz actually and justifiably relied on the  
4 Zazzle and Alkhatib’s misrepresentations, omissions, and false promises. She would not have  
5 granted the license to Alkhatib had she known that the purpose of the license was so that Zazzle  
6 could implement the Blooming Elegant Trio font software on its servers for use by its millions of  
7 designers, users, and customers. (Laatz Decl. ¶ 14.)

8 **c. Zazzle and Alkhatib’s Fraud Caused Harm to Nicky Laatz**

9 Finally, it cannot be disputed that Nicky Laatz suffered damages as a result of Zazzle and  
10 Alkhatib’s fraud. In defrauding Nicky Laatz, Alkhatib and Zazzle acquired a copy of her  
11 intellectual property and delivered it to a party—Zazzle—that Nicky Laatz never would have  
12 provided her font software to, and certainly not at the price of a single-user license. (J. Laatz Decl.  
13 Ex. B; Laatz Decl. ¶ 14.) Zazzle and Alkhatib did so without compensating Nicky Laatz for  
14 Zazzle’s use of the software. (J. Laatz Decl. Ex. B; Laatz Decl. ¶¶ 13, 15.) Consequently, Nicky  
15 Laatz was denied license revenue from Zazzle’s 600,000 designers and nearly 100 million users  
16 and customers that she otherwise would have received had those designers, users, and customers  
17 purchased a license from her or other services that compensate her for such a license.

18 **d. Zazzle is Vicariously Liable for Alkhatib’s Actions**

19 Under the doctrine of respondeat superior, Zazzle is vicariously liable as to the first three  
20 claims for relief because Alkhatib’s actions were made within the scope of his employment. “It is  
21 well established that traditional vicarious liability rules ordinarily make principals or employers  
22 vicariously liable for acts of their agents or employees in the scope of their authority or  
23 employment.” *Meyer v. Holley*, 537 U.S. 280, 285 (2003); *see also Protectus Alpha Nav. Co., Ltd.*  
24 *v. North Pacific Grain Growers, Inc.*, 767 F.2d 1379, 1386 (9th Cir.1985) (“We agree that a  
25 corporation can act only through its agents and employees, and that no reasonable distinction can  
26 be made between the guilt of the employee in a managerial capacity acting within the scope of his  
27 employment and the guilt of the corporation.”). The doctrine (including the question of scope of  
28 employment) has been “interpreted broadly.” *Freeney v. Bank of America Corp.*, No.

1 CV1502376MMMPJWX, 2015 WL 12535021, at \*25 (C.D. Cal. Nov. 19, 2015) (quoting  
 2 *Farmers Ins. Grp. v. Cty. of Santa Clara*, 11 Cal. 4th 992, 1004 (1995)). Moreover, where a  
 3 defendant’s “tortious actions therefore ‘result[ed] or ar[ose] from pursuit of the[ir] employer’s  
 4 interests,’” summary judgment on behalf of plaintiff is warranted because the issue of vicarious  
 5 liability may be “undisputedly established.” *Williams v. Kohl’s Dep’t Stores, Inc.*, No.  
 6 EDCV19397JGBSHKX, 2020 WL 3882953, at \*23 (C.D. Cal. June 16, 2020).

7 Here, there is no genuine issue of material fact relating to the question of whether Zazzle is  
 8 vicariously liable for the actions of its employee, Alkhatib. First, Alkhatib’s actions were both  
 9 “required or incident to his duties” and “could be reasonably foreseen by [Zazzle as] the employer  
 10 in any event.” *Bailey v. Filco, Inc.*, 48 Cal.App.4th 1552, 1559 (1996) (applying a two-prong test  
 11 where if either prong is satisfied, the employer is liable). Alkhatib purchased the Blooming  
 12 Elegant License at the direction of Zazzle using a Zazzle company card. Zazzle even admitted that  
 13 Alkhatib purchased the license “for use on [Zazzle’s] site.” (Steinberg Decl. Ex. 12; J. Laatz Decl.  
 14 Ex. B.) Thus, there is no question that his actions were reasonably foreseen by Zazzle given they  
 15 were done *at Zazzle’s direction*. Because it is undisputed that Alkhatib acted at Zazzle’s direction  
 16 in the scope of his employment, Zazzle is vicariously liable on the first three claims for relief.

17 **2. Nicky Laatz Is Entitled to Summary Judgment as to Liability on the  
 18 Fourth Claim for Relief for Intentional Interference With Contract**

19 There is no dispute over the facts giving rise to Zazzle’s liability for tortious interference  
 20 with contractual relations. To prove liability, Nicky Laatz need only show “(1) a valid contract  
 21 between plaintiff and a third party; (2) defendant’s knowledge of this contract; (3) defendant’s  
 22 intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual  
 23 breach or disruption of the contractual relationship; and (5) resulting damage.” *Quelimane Co. v.*  
*Stewart Title Guar. Co.*, 19 Cal. 4th 26, 55 (1998). No element can be disputed here.

24 First, it is undisputed that Nicky Laatz had a valid contract with a third party (i.e., a party  
 25 other than Zazzle). This element requires Nicky Laatz to show only that Zazzle is a “stranger” to  
 26 the contract. *See Redfearn v. Trader Joes Co.*, 20 Cal. App. 5th 989, 1003 (2018) (disapproved on  
 27 other grounds by *Ixchel Pharma, LLC v. Biogen, Inc.*, 9 Cal. 5th 1130, 1148 (2020)) (“[O]ne . . .  
 28 who is not a party to the contract or an agent of a party to the contract is a ‘stranger’ for purpose of

1 the tort of intentional interference with contract.) As evidenced by the receipt for the Blooming  
2 Elegant License purchased by Alkhatib and the license terms found on Creative Market’s website,  
3 Nicky Laatz, Creative Market, and Alkhatib – not Zazzle – are the only parties to the license. (J.  
4 Laatz Decl. Ex. B; Laatz Decl. Ex. 3 at 1.) Zazzle does not appear anywhere in the receipt as a  
5 party to the Blooming Elegant License, nor does the receipt to the license state that Alkhatib is an  
6 employee of Zazzle purchasing the license for Zazzle’s use. Further, as admitted by Zazzle,  
7 Alkhatib was an agent of Zazzle, not the other way around. (J. Laatz Decl. Ex. A.) It is thus an  
8 indisputable fact that Zazzle is a stranger to the Blooming Elegant License.

9         Second, it is undisputed that Zazzle was aware of this contract. On January 21, 2020, in  
10 response to John Laatz’s inquiry regarding Zazzle’s wrongful use of the Blooming Elegant Trio,  
11 Zazzle’s Associate General Counsel provided the receipt for the purchase of the Blooming Elegant  
12 License. (J. Laatz Decl. Ex. B.) In a prior email, Ms. Larson confirmed that Zazzle’s internal  
13 records showed that this license had been purchased in May of 2017. (*Id.* Ex. A.)

14         It is similarly undisputed that Zazzle engaged in acts designed to induce a breach of the  
15 Blooming Elegant License. It is without dispute that Alkhatib downloaded the font software for  
16 the Blooming Elegant Trio of fonts after purchasing the Blooming Elegant License, and that  
17 Zazzle then uploaded the font software onto its servers. (*Id.* Ex. D (“[A]ll fonts are stored on our  
18 servers . . .”).) As discussed in Part IV.E, *infra*, Alkhatib’s actions in granting Zazzle and  
19 Zazzle’s users the ability to use the Blooming Elegant Trio font software violated the Blooming  
20 Elegant License. Further, Zazzle knew that the license that Alkhatib purchased did not cover  
21 Zazzle’s intended use of the Blooming Elegant Trio font software. (Laatz Decl. Ex. 1.) *See*  
22 *Quelimane Co.*, 19 Cal. 4th at 56 (interference need not be the primary purpose of a Defendant’s  
23 actions where interference is “known to him to be a necessary consequence of his action”). Thus,  
24 it is without dispute that Zazzle deliberately engaged in conduct that was designed to induce  
25 Alkhatib to breach the Blooming Elegant License, and that Alkhatib did in fact breach the  
26 Blooming Elegant License as a result.

27         Finally, it cannot be disputed that Nicky Laatz suffered damages as a result of Zazzle  
28 inducing Alkhatib to Breach the Blooming Elegant License. By transferring the Blooming Elegant

1 Trio font software to Zazzle so that Zazzle could then grant access to the font software to each of  
2 its 600,000 designers and nearly 100 million users and customers, Nicky Laatz was denied license  
3 revenue from Zazzle’s users and designers that she otherwise would have received had those users  
4 and designers had to purchase a license from Nicky Laatz or other services that compensate Nicky  
5 Laatz for such a license. (Laatz Decl. ¶¶ 9-10, 13, 15.)

6 Nicky Laatz has shown that Zazzle intentionally induced Alkhatib to violate the Blooming  
7 Elegant License. Further, Nicky Laatz’s claim for intentional interference with contractual  
8 relations is not preempted by the Copyright Act. A state law claim for intentional interference with  
9 contractual relations that is based on interference with a license of copyrighted material is not  
10 preempted by the Copyright Act where the “licensing agreement ... limited the party’s use [of] a  
11 copyrighted work to specific circumstances, and a third party used the copyrighted work outside  
12 the scope of the license.” *Media.net Advert. FZ-LLC v. NetSeer, Inc.*, 156 F. Supp. 3d 1052, 1072  
13 (N.D. Cal. 2016). This is so where “specific provisions of [the license] agreements ... created  
14 rights in the parties” and those rights are “qualitatively different and not the equivalent of a  
15 copyright infringement claim.” *Id.*; see also *MDY Indus., LLC v. Blizzard Entm’t, Inc.*, 629 F.3d  
16 928, 957 (9th Cir. 2010) (a state law claim for intentional interference with contractual relations is  
17 not preempted where the copyright holder seeks to “enforce contractual rights ... that are not  
18 equivalent to any of its exclusive rights of copyright”). Here, the Blooming Elegant License limits  
19 use of the Blooming Elegant Trio font software to one user and gives the licensee a non-  
20 transferrable right to use the font software. These restrictions on who can *access* and *use* the  
21 Blooming Elegant Trio font software are contractual rights separate, apart, and substantively  
22 different from Nicky Laatz’s rights to control who can *reproduce and/or distribute* the Blooming  
23 Elegant Trio font software.

24 **3. Nicky Laatz Is Entitled to Summary Judgment as to Liability on the**  
25 **Fifth Claim for Relief Against Zazzle for Copyright Infringement**

26 Copyright protection extends to works that contain original expression. 17 U.S.C. § 102(a);  
27 *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). “Original, as the term is used  
28 in copyright, means only that the work was independently created by the author ... and that it



1 possesses at least some minimal degree of creativity.” *Id.* “[A] prima facie claim of copyright  
2 infringement requires proof of two elements: ‘(1) ownership of a valid copyright, and (2) copying  
3 of constituent elements of the work that are original.’” *Id.* at 361; *see also* 17 U.S.C. § 501(a)  
4 (“Anyone who violates any of the exclusive rights of the copyright owner ... is an infringer of the  
5 copyright ...”). The second prong of the analysis includes two components: copying and unlawful  
6 appropriation. *Skidmore as Tr. for Randy Craig Wolfe Tr. v. Led Zeppelin*, 952 F.3d 1051, 1064  
7 (9th Cir.), cert. denied sub nom. *Skidmore as Tr. for Randy Craig Wolfe Tr. v. Zeppelin*, 141 S. Ct.  
8 453 (2020), reh’g denied, 141 S. Ct. 946 (2020).

9 **a. Nicky Laatz Has Valid Copyrights to the Blooming Elegant Trio**

10 A certificate of registration from the U.S. Copyright Office raises the presumption of  
11 copyright validity and ownership. *Micro Star v. Formgen Inc.*, 154 F.3d 1107, 1110 (9th Cir.  
12 1998). “In any judicial proceedings the certificate of a registration made before or within five  
13 years after first publication of the work shall constitute prima facie evidence of the validity of the  
14 copyright and of the facts stated in the certificate.” 17 U.S.C. § 410(c). When the plaintiff presents  
15 such evidence, the burden shifts to defendants to “rebut[ ] the facts set forth in the copyright  
16 certificate.” *United Fabrics Int’l, Inc. v. C&J Wear, Inc.*, 630 F.3d 1255, 1257 (9th Cir. 2011). To  
17 do so, the alleged infringer must offer some evidence or proof to dispute or deny the plaintiff’s  
18 prima facie case. *Id.* The evidentiary weight to be accorded the certificate of a registration made  
19 after five years is within the discretion of the court. 17 U.S.C. § 410(c).

20 The Effective Date on each of Nicky Laatz’s Certificates of Registration is February 18,  
21 2021, and the Registration Decision Date is July 16, 2021. (Steinberg Decl. Exs. 7-9.)  
22 Additionally, the date of first publication is February 16, 2016. *Id.* Although Nicky Laatz  
23 registered her copyright shortly after five years of the first publication, under the statute it is  
24 within the Court’s discretion to consider Nicky Laatz’s certificates of registration as evidence that  
25 Nicky Laatz owns valid copyrights for the software, thereby shifting the burden to Zazzle to rebut  
26 this evidence.

27 Courts routinely accept late-filed registrations. *See e.g., Teller v. Dogge*, 8 F. Supp. 3d  
28 1228, 1233 (D. Nev. 2014) (even though work was not registered until 7 years after its first



1 performance, the court found that plaintiff proved ownership of a valid copyright); *Lifetime*  
 2 *Homes, Inc. v. Residential Dev. Corp.*, 510 F. Supp. 2d 794, 801 (M.D. Fla. 2007) (the court  
 3 granted summary judgment as to ownership element of claim where although plaintiff did not file  
 4 the copyright registration until almost 7 years after work was first published, defendant did not  
 5 point to any evidence to support a finding that plaintiff did not own the copyright). There is no  
 6 dispute that Nicky Laatz owns the copyright to the Blooming Elegant, Blooming Elegant Hand  
 7 and Blooming Elegant Sans font software and they have all been duly registered. (Laatz Decl. ¶ 4;  
 8 Steinberg Decl. ¶¶ 2-4, Exs. 1-9.) Zazzle has no evidence indicating that Nicky Laatz’s certificates  
 9 of registration are invalid. In fact, it is undisputed that Zazzle’s employee Alkhatib even licensed  
 10 the software from Nicky Laatz, albeit only for a single-seat license. (J. Laatz Decl. Ex. B.)

11 Additionally, Nicky Laatz has established the originality of the software. It is not difficult  
 12 to meet the low bar for originality for copyright protection. *Feist*, 499 U.S. at 345 (“The sine qua  
 13 non of copyright is originality”; “[t]he vast majority of works make the grade quite easily . . . .”);  
 14 *see also* 17 U.S.C. § 102(a) (“Copyright protection subsists . . . in original works of authorship . . .  
 15 .”). Nicky Laatz’s description in her declaration establishes sufficient originality of the software to  
 16 support copyright protection, thus satisfying the first prong. (Laatz Decl. ¶¶ 2-6.)

17 **b. Nicky Laatz Demonstrated that Defendants Copied Nicky**  
 18 **Laatz’s Blooming Elegant Trio Font Software**

19 A plaintiff must show “copying” of a protected work to prove copyright infringement. This  
 20 analysis includes two separate components: copying and unlawful appropriation. *Skidmore as Tr.*  
 21 *for Randy Craig Wolfe Tr.*, 952 F.3d at 1064.

22 **(i) Direct Evidence of Copying**

23 “[D]irect evidence of copying is rarely available.” *Baxter v. MCA, Inc.*, 812 F.2d 421, 423  
 24 (9th Cir. 1987). “Direct evidence of copying . . . includes evidence such as party admissions,  
 25 witness accounts of the physical act of copying, and common errors in the works of plaintiffs and  
 26 the defendants.” *Humphreys & Partners Architects, L.P. v. Lessard Design, Inc.*, 790 F.3d 532,  
 27 537 (4th Cir. 2015), as amended (June 24, 2015) (citation omitted). Unlike most cases, Nicky  
 28 Laatz has direct evidence that Zazzle copied her software. Specifically, Zazzle’s Legal Director,

1 admitted “that the Blooming Elegant font was among four fonts purchased on a company card by  
 2 Mohamed Alkhatib, our Sr. Network Engineer, *for use on our site ...*.” (Steinberg Decl. Ex. 12  
 3 (emphasis added).) Thus, Nicky Laatz has demonstrated that Zazzle copied her work.

4 **(ii) Substantial Similarities**

5 Unlawful appropriation is proven by showing that the works share substantial similarities.  
 6 *Newton v. Diamond*, 388 F.3d 1189, 1193 (9th Cir. 2004). The Ninth Circuit uses a two-part test to  
 7 determine whether a defendant’s work is substantially similar to the plaintiff’s copyrighted work.  
 8 *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822 (9th Cir. 2002). The first part, the extrinsic  
 9 test, compares the objective similarities of specific expressive elements in the two works. *Id.*  
 10 Because only substantial similarity in protectable expression may constitute actionable copying  
 11 that results in infringement liability, “it is essential to distinguish between the protected and  
 12 unprotected material in a plaintiff’s work.” *Id.* (citing *Swirsky v. Carey*, 376 F.3d 841, 845 (9th  
 13 Cir. 2004)). The second part, the intrinsic test, “test[s] for similarity of expression from the  
 14 standpoint of the ordinary reasonable observer, with no expert assistance.” *Jada Toys, Inc. v.*  
 15 *Mattel, Inc.*, 518 F.3d 628, 637 (9th Cir. 2008) (citations omitted). Both tests must be satisfied for  
 16 the works to be deemed substantially similar. *Skidmore*, 952 F.3d at 1064.

17 Both tests are satisfied here because Zazzle has unequivocally admitted its use of Nicky  
 18 Laatz’s software. (J. Laatz Decl. Exs. B, D; Steinberg Decl. Ex. 12.) Alkhatib purchased a single-  
 19 seat license and then permitted Zazzle to upload the Blooming Elegant Trio font software onto its  
 20 internal servers for use by Zazzle’s customers. The products here are admittedly identical, not just  
 21 substantially similar.

22 Moreover, in August 2022, Zazzle began removing the Blooming Elegant Trio of fonts  
 23 from its website, replacing it with a font called Morgana. (J. Laatz Decl. ¶ 6.) However, Morgana  
 24 was a copy of the Blooming Elegant font and software. Specifically, in May 2022, Zazzle  
 25 contacted Peter Olexa about licensing the Morgana font for use on its website. (Declaration of  
 26 Peter Olexa, ¶ 3.) Around June 2022, Mr. Olexa agreed to license the Morgana font to Zazzle. (*Id.*  
 27 at 6.) On August 8, 2022, a representative for Plaintiffs contacted Mr. Olexa and informed him  
 28 that the Morgana font appeared to have been copied from Blooming Elegant. (*Id.* at 7.) Mr. Olexa

1 then contacted the designer from whom he purchased the rights to use Morgana, who then  
 2 confirmed that she copied the Morgana font from the Blooming Elegant font. (*Id.* at 2, 8.) Mr.  
 3 Olexa contacted Zazzle that same day and notified them that Morgana was copied from the  
 4 Blooming Elegant font and requested that Morgana be taken down from Zazzle’s website, which  
 5 Zazzle has not yet done. (*Id.* ¶ 8; J. Laatz Decl. ¶ 6.) Thus, Zazzle continues to infringe Nicky  
 6 Laatz’s copyright to the Blooming Elegant Trio font software by its continued use of Morgana.

7  
 8 **c. Defendants’ Violation of Plaintiff’s Exclusive Right of Display  
 and Distribution Was Willful**

9 Nicky Laatz has established Zazzle’s violation of her exclusive display right through direct  
 10 evidence that Zazzle copied the Blooming Elegant Trio font software onto its servers without a  
 11 license and made the font available to its designers, users, and customers. Zazzle’s violation of  
 12 Nicky Laatz’s exclusive rights under the U.S. Copyright Act were willful. To prove willfulness, a  
 13 plaintiff must establish that: (1) the defendant was actually aware of the infringing activity; or  
 14 (2) that the defendant’s actions were the result of reckless disregard for, or willful blindness to the  
 15 copyright holder’s rights. *Louis Vuitton Malletier, S.A. v. Akanoc Sols., Inc.*, 658 F.3d 936, 944  
 16 (9th Cir. 2011). As discussed above, there is no doubt that Zazzle’s actions were willful. Zazzle  
 17 initially asked for a license in perpetuity for server-based use for the Blooming Elegant Trio, but  
 18 did not receive one. (Laatz Decl. Ex. 1.) Zazzle then directed Alkhatib to purchase a single-seat  
 19 license in his own name and upload it to Zazzle’s servers for use by its customers. (J. Laatz Decl.  
 20 Ex. B.) This alone establishes willfulness.

21 **4. Nicky Laatz Is Entitled to Summary Judgment as to Liability on the  
 22 Sixth Claim for Relief Against Zazzle for Trademark Infringement**

23 The undisputed facts here support a finding of summary judgment for trademark  
 24 infringement because they establish that Zazzle used a “reproduction, counterfeit, copy, or  
 25 colorable imitation of [Plaintiff’s] registered mark” in commerce without the consent of the  
 26 trademark owner in a manner “likely to cause confusion.” 15 U.S.C. § 1114(1)(a). *See also United*  
 27 *States Futsal Fed’n v. USA Futsal LLC*, No. 17-CV-04206-LB, 2018 WL 2298868, at \*\*10-12  
 28 (N.D. Cal. May 21, 2018) (outlining the elements of trademark infringement).

1            “[W]here the evidence is clear and tilts heavily in favor of a likelihood of confusion,’ the  
2 Ninth Circuit has ‘not hesitated to affirm summary judgment’ on the issue of infringement.”  
3 *Gianni Versace, S.p.A., v. Versace 19.69 Abbigliamento Sportivo SRL*, 328 F. Supp. 3d 1007, 1014  
4 (N.D. Cal. 2018) (citing *Au-Tomotive Gold, Inc. v. Volkswagen of Am., Inc.*, 457 F.3d 1062, 1075-  
5 76 (9th Cir. 2006) (reversing the district court’s denial of summary judgment where, despite the  
6 absence of evidence of actual confusion, the plaintiffs’ marks were strong, the defendants’ marks  
7 incorporated exact copies of plaintiffs’ marks, and the products at issue were “destined for the  
8 same buyers”); *Nissan Motor Co. v. Nissan Computer Corp.*, 378 F.3d 1002, 1019 (9th Cir. 2004)  
9 (affirming summary judgment upon finding “legally identical” marks, a relationship between the  
10 goods at issue, and overlapping marketing channels); *E. & J. Gallo Winery v. Grenade Beverage,*  
11 *LLC*, 670 F. App’x 634 (9th Cir. 2016) (affirming summary judgment where at least five of the  
12 eight relevant factors favored the plaintiff). “Courts in this circuit have accordingly granted  
13 summary judgment where there is no genuine issue of material fact as to the likelihood of  
14 confusion.” *Versace*, 328 F. Supp. 3d at 1014 (collecting cases).

15            The undisputed facts here demonstrate Nicky Laatz is entitled to summary judgment for  
16 Zazzle’s Trademark infringement of Blooming Elegant. First, it is undisputed that “Blooming  
17 Elegant” is a valid, protectable trademark owned by Nicky Laatz, as demonstrated by the trade  
18 registration certificate. (Steinberg Decl. at ¶ 5, Ex. 10.) Federal registration provides prima facie  
19 evidence of the mark’s validity and entitles Nicky Laatz to a strong presumption that the mark is  
20 protectable. *See* 15 U.S.C. §§ 1057 and 1115; *United Artists Corp. v. United Artist Studios LLC*,  
21 No. CV 19-828 MWF-MAA, 2020 WL 4369778, at \*8 (C.D. Cal. July 7, 2020). “[T]he  
22 presumption of validity is difficult to overcome, even at the summary judgment stage. *Solid 21,*  
23 *Inc. v. Breitling USA, Inc.*, 512 F. App’x 685, 686 (9th Cir. 2013). Zazzle cannot meet the heavy  
24 burden required to overcome summary judgment here. In fact, Zazzle acknowledged Nicky  
25 Laatz’s ownership when their Senior Product Marketing Manager contacted Nicky Laatz,  
26 requesting to make the Blooming Elegant Trio available to Zazzle’s designers and customers, and  
27 specifically asking for “a license in perpetuity for server-based use”. (Laatz Decl. Ex. 1.)

28            Second, Zazzle has admittedly used and offered for sale “Blooming Elegant” without

1 consent by incorporating both the font and the name “Blooming Elegant” in their design tool for  
2 sale without Nicky Laatz’s authorization. (Steinberg Decl. ¶¶ 9-10, Exs. 14-15.)

3 Finally, Nicky Laatz has sufficiently demonstrated Zazzle’s use of “Blooming Elegant” in  
4 its design tool was in a manner likely to cause confusion among ordinary consumers. “To  
5 determine whether a likelihood of consumer confusion exists, the Ninth Circuit ‘relies on the  
6 eight-factor *Sleekcraft* test, which reviews: (1) the strength of the mark; (2) proximity or  
7 relatedness of the goods; (3) similarity of the marks; (4) evidence of actual confusion; (5)  
8 marketing channels used; (6) type of goods and the degree of care likely to be exercised by the  
9 purchaser; (7) the defendant’s intent in selecting the mark; and (8) the likelihood of expansion of  
10 the product lines.’” *Iglesia Ni Cristo v. Cayabyab*, No. 18-cv-00561-BLF, 2020 WL 1531349, at  
11 \*9 (N.D. Cal. Mar. 31, 2020) (quoting *JL Beverage Co., LLC v. Jim Beam Brands Co.*, 828 F.3d  
12 1098, 1106 (9th Cir. 2016)). “The test is a fluid one and the plaintiff need not satisfy every factor,  
13 provided that strong showings are made with respect to some of them.” *Survivor Media, Inc. v.*  
14 *Survivor Prods.*, 406 F.3d 625, 631 (9th Cir. 2005). “In an online context, the first three factors are  
15 the most important.” *Crocs, Inc. v. La Modish Boutique*, No. 2:21-CV-05641-SVW-KK, 2021 WL  
16 8441527, at \*2 (C.D. Cal. Dec. 9, 2021) (citing *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d  
17 1199, 1205 (9th Cir. 2000)). *See also Brookfield Commc'ns v. West Coast Ent.*, 174 F.3d 1036,  
18 1054 n.16 (9th Cir. 1999) (noting the test is a “pliant” one but that the “similarity of the marks and  
19 whether the two companies are direct competitors—will always be important”), overruled on other  
20 grounds by *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 27 (2008).

21 Here, the three most important factors—similarity of the marks, relatedness of the goods or  
22 services, and marketing channel used—are all met. One, the marks at issue are not just similar, but  
23 in fact are *identical* because Zazzle admittedly used Nicky Laatz’s trademarked font design. (J.  
24 Laatz Decl. Ex. B; Steinberg Decl. Ex. 12.) Two, the parties operate in the same niche market:  
25 both offer graphic design-related products on their websites and via certain online markets and  
26 thus have highly related services. (Laatz Decl. Ex. 2-3; Steinberg Decl. ¶¶ 8-9, Exs. 13-14.) Three,  
27 the parties use the same trade channels, including marketing through their websites and social-  
28 media platforms. (*Id.*) Accordingly, the most important factors in this web context suggest a high

1 likelihood of confusion.

2 Other factors similarly support finding a high likelihood of confusion sufficient to warrant  
 3 summary judgment in favor of Nicky Laatz. Nicky Laatz’s allegations support the notion that its  
 4 mark is strong and distinctive, having been extremely popular and financially successful. (Laatz  
 5 Decl. ¶ 3.) Despite having secured it through unlawful means, Zazzle also clearly intended to pass  
 6 the “Blooming Elegant” font off on its website as though it had a license from Nicky Laatz,  
 7 through the combination of directly using her design and including “Blooming Elegant” in the  
 8 product name. (J. Laatz Decl. Ex. B; Steinberg Decl. Ex. 12.) “This apparent intent to confuse  
 9 carries ‘great weight’ in the analysis.” *Crocs*, 2021 WL 8441527, at \*3 (citing *Kendall-Jackson*  
 10 *Winery, Ltd. v. E. & J. Gallo Winery*, 150 F.3d 1042, 1052 n. 11 (9th Cir. 1998) (emphasis in  
 11 original)); *see also Versace*, 328 F. Supp. 3d at 1020 (“intent to deceive is strong evidence of a  
 12 likelihood of confusion.”). Further, as fonts are a “relatively modest purchase, consumers will  
 13 likely not exercise a high degree of care to determine the source of the product they buy.” *Crocs*,  
 14 2021 WL 8441527, at \*3 (citing *GoTo.com*, 202 F.3d at 1205). Lastly, a showing of actual  
 15 confusion among consumers provides strong support for the likelihood of confusion. *Comphy Co.*  
 16 *v. Comfy Sheet*, No. 220CV03029ODWEX, 2021 WL 5051929, at \*5 (C.D. Cal. Nov. 1, 2021).  
 17 Here, consumers have posted comments on Zazzle’s website demonstrating their belief that  
 18 “Blooming Elegant” must be licensed to Zazzle. (Steinberg Decl. Ex. 19 at pp. 7-9, 13, 14.)<sup>1</sup>  
 19 Taken altogether, there is more than ample support for the conclusion that Zazzle created a  
 20 likelihood of confusion and infringed upon Plaintiff’s trademark.

21 **5. Nicky Laatz Is Entitled to Summary Judgment as to Liability on the**  
 22 **Seventh Claim for Relief Against Alkhatib for Breach of Contract**

23 It cannot be disputed that Alkhatib breached the Blooming Elegant License. To prevail on  
 24 a claim for breach of contract, Nicky Laatz need only show (1) the existence of a contract,

25 \_\_\_\_\_  
 26 <sup>1</sup> Nicky Laatz’s showing for summary judgment is therefore stronger and more clear cut than other  
 27 trademark infringement actions where “[t]he failure to prove instances of actual confusion is not  
 28 dispositive against a trademark plaintiff, because actual confusion is hard to prove; difficulties in  
 gathering evidence of actual confusion make its absence generally unnoteworthy.” *Brookfield*  
*Commc’ns*, 174 F.3d at 1050.



1 (2) Nicky Laatz’s performance or excused non-performance of their obligations under the  
2 contract, (3) Alkhatib’s breach of the contract, and (4) damages. *Consolidated World Investments,*  
3 *Inc. v. Lido Preferred Ltd.* (1992) 9 Cal. App. 4th 373, 380. No element is in dispute.

4 First, Alkhatib entered into the Blooming Elegant License with Nicky Laatz when he  
5 purchased the license, in his own name, through Creative Market. (J. Laatz Decl. Ex. B.) This was  
6 a valid contract for which the parties exchanged consideration: Alkhatib in the form of twenty  
7 dollars and the agreement to abide by the terms of the license, Nicky Laatz in the form of granting  
8 Alkhatib the right to download and implement the Blooming Elegant Trio font software. (*Id.*)

9 Second, Nicky Laatz performed fully her portions of the contract by providing Alkhatib  
10 with a copy of the Blooming Elegant Trio font software for download after he purchased the  
11 license. (*Id.*; Steinberg Decl. Ex. 12) Nicky Laatz holds no other obligations to Alkhatib under the  
12 Blooming Elegant License. (*See generally* Laatz Decl. Ex. 3.)

13 Third, it cannot be disputed that Alkhatib breached the terms of the Blooming Elegant  
14 License. The license is specifically limited to “one seat per license,” which covers one user. (Laatz  
15 Decl. Ex. 3 at 1.) Alkhatib breached this requirement when he downloaded the font software and  
16 permitted it to be uploaded to Zazzle’s servers. (J. Laatz Decl. Ex. D.) Similarly, the Blooming  
17 Elegant License granted Alkhatib a “non-transferrable right to use” the Blooming Elegant Trio  
18 font software. (Laatz Decl. Ex. 3 at 1.) This term was indisputably breached when Alkhatib  
19 permitted Zazzle—who was not a party to the Blooming Elegant License—to use and implement  
20 the Blooming Elegant Trio font software for its own purposes. (J. Laatz Decl. Ex. D; Steinberg  
21 Decl. Ex. 12.)

22 The Blooming Elegant License also prohibits “sublicens[ing], ... shar[ing], transfer[ing],  
23 or otherwise redistribut[ing]e the [fonts] (e.g., as stock, in a tool or template, with source files,  
24 and/or not incorporated into an End Product) under any circumstances, not even for free.” (Laatz  
25 Decl. Ex. 3 at ¶ 5.) Alkhatib breached this term by permitting Zazzle to install the Blooming  
26 Elegant fonts for use in its online design tool. (J. Laatz Decl. Ex. D; Steinberg Decl. ¶ 10, Ex. 12.)

27 Further, the Blooming Elegant License prohibits Alkhatib from “mak[ing] the [fonts]  
28 available on a digital asset management system, shared drive, or the like for the purposes of

1 sharing or transferring the [fonts], and [the user] must not permit an end user of the end product to  
2 extract the [fonts] and use [them] separately from the End Product.” (Laatz Decl. Ex. 3 at ¶ 6.)  
3 This term was also breached by Alkhatib when he permitted Zazzle to upload the Blooming  
4 Elegant Trio font software onto its servers and then extract and rasterize the fonts for use in  
5 Zazzle’s online design tool. (J. Laatz Decl. Ex. D; Steinberg Decl. Ex. 12.) In short, based on the  
6 unambiguous admissions of Zazzle and the actions of Alkhatib, it cannot be disputed that Alkhatib  
7 breached the Blooming Elegant License.

8 Finally, it cannot be disputed that Nicky Laatz suffered damages from these breaches. By  
9 transferring the Blooming Elegant Trio font software to Zazzle for Zazzle to grant access to the  
10 font software to its 600,000 designers and nearly 100 million users and customers, Nicky Laatz  
11 was denied license revenue that she otherwise would have received from Zazzle’s users and  
12 designers had those users and designers had to purchase a license from Nicky Laatz or other  
13 services that compensate Nicky Laatz for the license. (Laatz Decl. ¶¶ 9-10, 13, 15.)

14 Nicky Laatz has shown, without dispute, that Alkhatib violated the Blooming Elegant  
15 License. Accordingly, Nicky Laatz asks that the Court grant summary judgment as to Alkhatib’s  
16 liability on this claim for relief so that the parties may focus their efforts on determining the  
17 measure of damages caused by Alkhatib’s breach of the Blooming Elegant License.

#### 18 **6. None of Nicky Laatz’s Claims Are Time-Barred**

19 It cannot be disputed that each of Nicky Laatz’s claims has been brought within the  
20 applicable statutes of limitations. Under California law, the discovery rule “protects those who are  
21 ignorant of their claim for relief through no fault of their own. It permits delayed accrual until a  
22 plaintiff knew or should have known of the wrongful conduct at issue.” *April Enterprise, Inc. v.*  
23 *KTTV* (1983) 147 Cal. App. 3d 805, 832. There is no dispute over the fact that Nicky Laatz did not  
24 discover Zazzle’s unlawful use of the Blooming Elegant Trio font software until August 25, 2020,  
25 when Nicky Laatz was contacted by a Zazzle user for assistance with using the Blooming Elegant  
26 font on Zazzle’s design tool. (Laatz Decl. ¶ 9.) Nor did Nicky Laatz have *reason* to believe that  
27 Alkhatib and Zazzle defrauded her in order to obtain and unlawfully use the font software for the  
28 Blooming Elegant Trio. Indeed, the license purchased by Alkhatib was purchased in his individual



