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15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 **DR. SEUSS ENTERPRISES, L.P.,**

18 Plaintiff,

19 v.

20 **COMICMIX LLC; GLENN**
21 **HAUMAN; DAVID JERROLD**
22 **FRIEDMAN a/k/a DAVID**
23 **GERROLD; and TY TEMPLETON,**

24 Defendants.

Case No. 3:16-cv-02779-JLS-BGS

**DEFENDANTS' NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT
PURSUANT TO FED. R. CIV. P. 56**

Assigned to Hon. Janis L. Sammartino
United States District Judge

Hearing Date: January 31, 2019
Hearing Time: 1:30 p.m.
Hearing Place: Schwartz Courthouse,
Courtroom 4A

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendants will and hereby do move the Court pursuant to Rule 56 of the Federal Rules of Civil Procedure to grant summary judgment against Plaintiff on all claims raised in its First Amended Complaint, and for Defendants on their Twelfth Affirmative Defense (Fair Use) as to Plaintiff's copyright claims, and their Thirty-Seventh Affirmative Defense (First Amendment) as to Plaintiff's claims based on its alleged trademark rights.

This motion will be heard on January 31, 2019, at 1:30 p.m., or as soon thereafter as the matter may be heard before the Honorable Judge Sammartino, in

1 Courtroom 4A of the Edward J. Schwartz United States Courthouse, located at 940
2 Front Street, San Diego, California 92101.

3 Summary judgment is proper in this case because there is no genuine issue of
4 material fact and because Defendants are entitled to judgment as a matter of law.
5 Defendants request that the Court dismiss all claims against them because their fair
6 use defeats Plaintiff’s claim of copyright infringement, and because Plaintiff’s
7 claims of trademark infringement and unfair competition under the Lanham Act and
8 California Business and Professions Code Section 17200 *et seq.* are defeated by the
9 First Amendment under the Ninth Circuit’s application of the *Rogers* test.

10 The instant motion is based on this notice of motion; the memorandum of
11 points and authorities, declaration, statement of material facts, and exhibits thereto,
12 filed in support hereof; the papers on file in this matter; and on such other evidence
13 or argument as the Court may consider in a hearing on this matter.

14
15 Respectfully submitted,
16 DATED: December 11, 2018

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18 BOOTH SWEET LLP

SPRINKLE LLOYD & LICARI LLP

19
20 /s/ Dan Booth

/s/ Michael Licari

21 Dan Booth
22 *Admitted Pro Hac Vice*

Michael Licari
Local Counsel

23
24 *Attorneys for Defendants ComicMix LLC, Glenn Hauman,*
25 *David Gerrold and Ty Templeton*

CERTIFICATE OF SERVICE

I hereby certify that on this December 11, 2018 I electronically filed the foregoing document by using the Court’s ECF system, thereby causing a true copy thereof to be served upon counsel of record for each party to have appeared to date, as identified on the Notice of Electronic Filing.

/s/ Dan Booth

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