

1 “outrageous.” Math aside, Audiosocket also did not plead facts needed to establish that the
2 liquidated damages amount reasonably approximated the actual damages it suffered, or that the
3 amount of such damages is difficult or impossible to ascertain. Since Audiosocket is in the
4 business of licensing music, it cannot plausibly assert that determining the fair market value of a
5 license for the subject songs used for a “political purpose” and for “broadcast on cable
6 television” is difficult or impossible to ascertain – which presumably is why it did not even try.

7 Third, the Copyright Act preempts Audiosocket’s contract claims. Both sets of claims
8 depend on the exact same acts, and allege invasion of the exact same right – the copyright
9 owner’s right to control how its work is used. If Ms. Schachner and Mr. Couture prove their
10 claims, the Copyright Act would make them whole. To allow Audiosocket to pursue separate
11 claims for alleged invasion of that same right would risk providing a double recovery. After all,
12 Audiosocket did not compose the subject songs; it just acted as licensing agent for the people
13 who did. To justify pursuing separate claims, plaintiffs also must strangely argue that by
14 entering into licensing agreements and paying them money, Madison McQueen harmed them
15 more than if it had not done so, and had simply stolen the subject songs. Preemption would
16 avoid such perverse results.

17 Finally, plaintiffs cannot legitimately dispute that Ted Cruz’s campaign for president has
18 ended. As such, they cannot show they have a “reasonable expectation” that Cruz for President
19 or Madison McQueen will do anything in the future to run the subject commercials. There are
20 no future acts they reasonably can expect to occur that an injunction needs to restrain.
21 Therefore, the issue is moot. Plaintiffs’ misguided reliance on overruled authority governing
22 preliminary injunctions does not change this result. Indeed, the correct legal standard indicates
23 that mootness is an important factor when considering an injunction request, and is one that bars
24 plaintiffs’ request here.

1 **A. Unless Ms. Schachner and Mr. Couture Can Provide Basic Information About**
 2 **Their Alleged Copyright Filings, the Court Should Dismiss Their Claims.**

3 Plaintiffs Schachner and Couture failed to provide even basic information about their
 4 ostensible copyright filings. They did not allege they own valid copyrights; they did not allege
 5 they own copyright registrations; they did not allege the Copyright Office received their
 6 applications for registration; and they did not allege they submitted the required deposit copy of
 7 their works.¹ Plaintiffs strangely also did not attach their applications for registration to their
 8 Complaint.² Consequently, defendants do not know when plaintiffs' filings supposedly
 9 occurred; what work(s) are covered by their filings; who the stated rights-holders are; or whether
 10 their works were made for hire. This information is not superfluous; it goes to whether plaintiffs
 11 can make out their claims. *See, e.g., Cosmetic Ideas, Inc. v. IAC/Interactivecorp.*, 606 F.3d 612,
 12 621 (9th Cir. 2010); *Apple Barrel Prods., Inc. v. Beard*, 730 F.2d 384, 386-87 (5th Cir. 1984)
 13 (a copyright plaintiff must "prove payment of the required fee, deposit of the work in question,
 14 and receipt by the Copyright Office of a registration application"); *Newborn v. Yahoo!, Inc.*, 391
 15 F. Supp.2d 181, 188-89 (D.D.C. 2005) (dismissing copyright claims because plaintiff "provided
 16 the defendants with only scant information to which they can evaluate the claims against
 17 them.").

18 If Ms. Schachner and Mr. Couture can supply the information missing from their
 19 Complaint, they should be required to do so before defendants are required to answer. If they
 20 cannot, their claims should be dismissed.

21
 22 ¹ Plaintiffs did not allege these facts in their Complaint, and they did not allege them in Plaintiffs' Response to
 23 Defendants' Motion to Dismiss for [*sic*] Judgment on the Pleadings (Ct. Dkt. 7) ("Opposition Brief" or "Opp'n
 24 Brief"). They simply ignored these elements, presumably hoping the Court will presume they exist. However,
 25 because plaintiffs did not attach registration certificates to their Complaint (or even allege that such certificates
 exist), they cannot ask the Court to make those presumptions. *See Dream Games of Arizona, Inc. v. PC Onsite*, 561
 F.3d 983, 987 n.2 (9th Cir. 2009), *citing Micro Star v. Formgen Inc.*, 154 F.3d 1107, 1110 (9th Cir. 1998), and *Ets-
 Hokin v. Skyy Spirits, Inc.*, 225 F.3d 1068, 1075-76 (9th Cir. 2000).

26 ² *See* Complaint.

1 **B. Audiosocket Cannot Support Its Astronomical Claim for Liquidated Damages.**

2 As pled, Audiosocket seeks liquidated damages for “any” breach of the ostensible subject
3 license agreements,³ which it claims occurred “each” time Madison McQueen caused the songs
4 to be played for a “political purpose” or “broadcast on cable television.”⁴ Audiosocket alleges
5 such breaches occurred “thousands of times.”⁵ Multiplying those thousands of alleged breaches
6 by the ostensible \$25,000 in liquidated damages⁶ results in the ridiculous claim for more than
7 \$2.2 billion. While Audiosocket now rightly appears embarrassed by such a claim,⁷ it is the
8 claim that Audiosocket pled:

9 35. Madison McQueen breached its contractual obligation to not use “Lens”
10 for a political purpose thousands of times. Madison McQueen breached its
11 contractual obligation to not broadcast “Lens” on cable television at least 86
times.

12 36. Madison McQueen agreed to pay \$25,000 for each of its breaches. . . .⁸

13 ***

14 40. Madison McQueen breached its contractual obligation to not use [“Fear of
15 Complacency”] for a political purpose thousands of times.

16 41. Madison McQueen agreed to pay \$25,000 for each of its breaches. . . .⁹

17
18 ³ *Id.* at ¶ 24 (“Madison McQueen also agreed to pay liquidated damages of \$25,000 for any breach....”) (emphasis
19 added), ¶ 31 (same).

20 ⁴ *Id.* at ¶¶ 34, 36, 39, 41.

21 ⁵ *Id.* at ¶¶ 35, 40.

22 ⁶ *Id.* at ¶¶ 36, 41.

23 ⁷ *See, e.g.*, Opp’n Brief at 17:4-5 (“Audiosocket is not claiming over \$2 billion in damages. Audiosocket realizes
24 the amount of its damages must be ultimately proven and decided by the Court.”), 17:9 (correctly characterizing a
25 claim for over \$2 billion as an “outrageous sum”).

26 ⁸ Complaint at ¶¶ 35, 36 (emphasis added).

⁹ *Id.* at ¶¶ 40, 41 (emphasis added). As noted in Defendants’ Motion, though Audiosocket refers to “Lens” here, it
appears to have meant to refer to “Fear of Complacency.”

1 The Court should reject this absurd claim for several reasons. First, a claim for
 2 liquidated damages of \$2.2 billion for the alleged infringement of two songs cannot be “plausible
 3 on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009), quoting *Bell Atlantic Corp. v.*
 4 *Twombly*, 550 U.S. 544, 570 (2007). Having been forced to consider the math, Audiosocket now
 5 concedes that such an award would be “outrageous.”¹⁰ Madison McQueen agrees, and the Court
 6 should dismiss its claim for this reason alone.

7 Second, Audiosocket does not claim that any of the alleged infringements were
 8 qualitatively different.¹¹ Though it retreats to the obvious position that “the amount of its
 9 damages must be ultimately proven and decided by the Court,”¹² Audiosocket does not explain
 10 how it could possibly (let alone plausibly) be entitled to liquidated damages for “each” breach, as
 11 it requests. Its Complaint merely alleges that Madison McQueen caused the songs to be played
 12 without permission over and over.¹³ Tellingly, it also ignores Madison McQueen’s Ninth Circuit
 13 authority that unauthorized use of a copyrighted work only gives rise to one set of damages per
 14 work.¹⁴ See *Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 701 (9th Cir. 2008)
 15 (defendant’s repeated distribution of a copyrighted work without permission “does not transform
 16 those distributions into many separate and distinct infringements”). Since Audiosocket alleges that
 17 Madison McQueen only infringed two works, the most it can recover is two sets of liquidated
 18 damages.¹⁵ By nonetheless seeking liquidated damages for “each” of the 90,086+ alleged breaches,
 19
 20

21 ¹⁰ Opp’n Brief at 17:9.

22 ¹¹ *Id.* at 17:3-19:9.

23 ¹² *Id.* at 17:7-8.

24 ¹³ See Complaint.

25 ¹⁴ Opp’n Brief at 17:3-19:9; Motion to Dismiss at 13:16-14:22.

26 ¹⁵ See Complaint.

1 Audiosocket states a claim that is not “plausible on its face.” *Iqbal*, 556 U.S. at 663, quoting
 2 *Twombly*, 550 U.S. at 570.

3 Third, even aside from its admittedly “outrageous” multiplication of damages,
 4 Audiosocket has never claimed that \$25,000 in liquidated damages is a “reasonable forecast of
 5 just compensation” for the alleged harm caused by each breach.¹⁶ *Walter Implement, Inc. v.*
 6 *Focht*, 107 Wn.2d 553, 559 (1987) (citations omitted). Its failure to do so prevents Audiosocket
 7 from supporting its liquidated damages claim. *See id.* (“A provision in a contract which bears no
 8 reasonable relation to actual damages will be construed as a penalty.”) (citation omitted). The
 9 multitude of inferences Audiosocket asserts it is entitled to in its Opposition Brief¹⁷ does not
 10 supply the needed facts it failed to plead in its Complaint. As such, Audiosocket fails to satisfy
 11 the first element of the *Walter Implement* test as required to support its claim.

12 Fourth, Audiosocket similarly failed to plead that the harm it allegedly suffered is
 13 “incapable or very difficult of ascertainment.”¹⁸ *Id.* The Complaint makes no factual allegations
 14 whatsoever to support such a claim.¹⁹ Nor can Audiosocket escape the fact that it is in the
 15 business of licensing music, an issue Madison McQueen raised in its motion,²⁰ which
 16 Audiosocket completely ignored.²¹ It literally is Audiosocket’s business to know the commercial
 17 value of licensing songs for “political purposes” and for “broadcast on cable television” – both
 18 what it charges, and what its competitors charge. Even if that amount happened to be \$25,000

19
 20 ¹⁶ *See id.*

21 ¹⁷ *See* Opp’n Brief at 18:8-19:9.

22 ¹⁸ *See* Complaint.

23 ¹⁹ *See id.*

24 ²⁰ *See* Motion to Dismiss at 12:11-13 (“Audiosocket is in the business of licensing music. As such, it should know
 25 the commercial value of licenses covering songs used for ‘political purposes’ and for ‘broadcast on cable
 television.’”), *citing* Complaint at ¶ 8.

26 ²¹ *See* Opp’n Brief at 18:1-19:9.

1 (a showing Audiosocket has never made), the fact that it is not difficult or impossible to
 2 ascertain that number constitutes independent reason why Audiosocket cannot support its
 3 liquidated damages claim. It simply does not allege facts needed to meet the second element of
 4 the *Walter Implement* test.

5 **C. The Copyright Act Preempts Audiosocket’s Contract Claims.**

6 Logic dictates that preemption applies in this case. It is the only way to avoid a double
 7 recovery. It also is the only way to avoid anomalously granting plaintiffs better rights than they
 8 would have had if defendants had simply stolen their songs, rather than entering into license
 9 agreements to use them and allegedly exceeding the scope of the permission they received.
 10 Plaintiffs nonetheless push for a double recovery, and for the strange proposition that Madison
 11 McQueen should be put in a worse position for paying Audiosocket money and entering into the
 12 agreements than if it had not done so. Fortunately, copyright preemption prevents such perverse
 13 results.

14 As the Court will recall, Ms. Schachner and Mr. Couture claim that Cruz for President
 15 and Madison McQueen infringed their copyrights by using their songs for a “political purpose”
 16 and on “cable television” without permission.²²

17 Audiosocket, asserting rights it obtained from Ms. Schachner and Mr. Couture, similarly
 18 claim that Madison McQueen breached their contracts by using Ms. Schachner’s and Mr.
 19 Couture’s songs for a “political purpose” and on “cable television” without permission.²³

20 Since both claims stem from the same right – the copyright holder’s right to control how
 21 his or her work is used – the Copyright Act preempts the inconsistent right that sounds in
 22 contract. *See* 17 U.S.C. § 106 (giving copyright holders the exclusive right to reproduce,
 23 distribute, and display copyrighted material), § 301(a) (providing for the preemption of “all legal

25 ²² *See* Complaint at ¶¶ 45, 50.

26 ²³ *See id.* at ¶¶ 34-35, 39-40.

1 or equitable rights that are equivalent to any of the exclusive rights within the general scope of
 2 copyright. . . .”). Plaintiffs argue that applying preemption here would leave them without a
 3 remedy.²⁴ In actuality, however, preemption would not affect Ms. Schachner’s and Mr.
 4 Couture’s claim for copyright infringement. If their right to control their songs was infringed,
 5 the Copyright Act would make them whole. Because Audiosocket’s identical rights likewise
 6 flow from the Copyright Act, its contract with Mr. Schachner and Mr. Couture presumably
 7 provides for a sharing of any recovery that Mr. Schachner and Mr. Couture might receive.²⁵

8 Regardless, to allow both sets of claims to proceed without regard for each other would
 9 potentially would allow for a double recovery. For the exact same acts, and for the alleged
 10 invasion of the exact same right, plaintiffs would have the Court require defendants to pay
 11 Audiosocket more than \$2.2 billion under the ostensible terms of the parties’ contracts, and also
 12 to pay Ms. Schachner and Mr. Couture an unknown amount that “exceeds \$75,000” under the
 13 Copyright Act.²⁶ Preemption would avoid a double recovery.

14 Put another way, the Copyright Act gives Ms. Schachner and Mr. Couture the right to
 15 control how their songs are used. *See* 17 U.S.C. § 106. They then entered into a contract with
 16 Audiosocket, by which they which passed on those rights to Audiosocket to assert as their
 17 licensing agent.²⁷ If defendants infringed Ms. Schachner’s and Mr. Couture’s right to control
 18 how their songs are used, they would be liable to Ms. Schachner and Mr. Couture for copyright
 19 infringement. Since Audiosocket is merely Ms. Schachner’s and Mr. Couture’s agent, if the
 20 Copyright Act made them whole, there would be no separate injury left for Audiosocket to
 21

22 ²⁴ *See* Opp’n Brief at 12:7-11.

23 ²⁵ *See, e.g.*, Complaint at ¶ 10 (stating that Audiosocket and its artist clients split “gross licensing revenue” on a
 24 50/50 basis).

25 ²⁶ *See id.* at ¶¶ 35-36, 40-41, 45-46, 50-51.

26 ²⁷ *See id.* at 2:14 (“Audiosocket Is a Music Licensing Service for Artists.”), ¶ 9 (“Audiosocket is a music publisher
 whose primary purpose is to find licensing opportunities for the artists that it represents.”).

1 pursue. Audiosocket did not write the subject songs; it only has standing in this case to the
2 extent it stands in its songwriter-clients' shoes.

3 For this reason, the success of Audiosocket's claims depends wholly on the success of
4 Ms. Schachner's and Mr. Couture's claims. If defendants interfered with the exclusive right to
5 use the songs, Ms. Schachner and Mr. Couture would prevail in copyright. Audiosocket would
6 prevail in contract, too. There is no "extra" element to save Audiosocket's contract claim from
7 being preempted. *See Del Madera Props. v. Rhodes & Gardner, Inc.*, 820 F.2d 973, 976-77 (9th
8 Cir. 1987) (requiring an "extra" element from those needed to establish a copyright claim to
9 avoid preemption). Professor Nimmer's call for the preemption of contract claims that do
10 nothing more than restate rights provided by the Copyright Act bears this out. *See Canal+*
11 *Image UK Ltd. v. Lutvak*, 773 F. Supp.2d 419, 446 (S.D.N.Y. 2011), *quoting* 1 Nimmer on
12 Copyright § 1.01[B][1][a] [iii]. While Audiosocket asserts that defendants took Professor
13 Nimmer's words out of context,²⁸ they did nothing of the sort. Because both sets of claims
14 depend on nothing more than invasion of an exclusive right the Copyright Act provides,
15 Audiosocket's contract claim cannot separately stand, exactly as Professor Nimmer states: when
16 a breach of contract claim serves as "a subterfuge to control nothing other than the reproduction,
17 adaptation, public distribution, etc. of works within the subject matter of copyright," that claim is
18 preempted. *Id.*, *quoting* 1 Nimmer on Copyright § 1.01[B][1][a] [iii].

19 This is why the Copyright Act preempted the plaintiff's contract claim in *Canal+*. As
20 here, plaintiff's contractual right to control use of the copyrighted work "flowed from the
21 Copyright Act, not from the Agreement." *Id.* at 446. Thus, its claim that defendants'
22 unauthorized use of the work breached the contract was "nothing more than a claim that
23 [d]efendants have violated a right of [plaintiff] under the Copyright Act." *Id.* The court applied
24 preemption, and dismissed the claim because the alleged breach of contract "would, by itself,
25

26 ²⁸ Opp'n Brief at 13:9-10.

1 infringe one of the exclusive rights provided by federal copyright law.” *Id.* (citation omitted).
 2 The same is true here. While plaintiffs try to distinguish *Canal+* on the ground that the plaintiff
 3 both owned the copyright and was party to the contract,²⁹ that is not a meaningful distinction.
 4 Here, Ms. Schachner and Mr. Couture own the copyrighted works, and Audiosocket stood in
 5 their shoes as their licensing agent when it entered into the subject license agreements on their
 6 behalf.³⁰ If plaintiffs were strangers, they might have a point.³¹ But because the rights
 7 Audiosocket asserts come directly from Ms. Schachner and Mr. Couture, and Ms. Schachner’s
 8 and Mr. Couture’s rights come directly from the Copyright Act, preemption applies.

9 To conclude otherwise would invite a bizarre result. Consider, for example, if defendants
 10 had not entered into a license agreement with Audiosocket, and had simply copied and used the
 11 subject songs without obtaining any permission at all. Their doing so would subject them to
 12 copyright liability, and nothing more. Since there would be no contract to speak of, they
 13 obviously would not be subject to a claim for breach of contract. Here, however, plaintiffs
 14 allege that Madison McQueen did not just steal their songs. They allege it paid money to and
 15 entered into license agreements with Audiosocket.³² When they allege that Madison McQueen
 16 exceeded the scope of authority granted in those licenses, they are asking the Court not only to
 17 find that Madison McQueen is liable for copyright infringement, but also that it is liable for
 18 breach of contract. This, they argue, entitles them to broader rights than they would have if
 19 Madison McQueen has simply stolen their songs. They are saying that by paying them money

20
 21 _____
 22 ²⁹ *See id.* at 14:4-15:2.

23 ³⁰ *See* Complaint at 2:14, ¶ 9.

24 ³¹ Indeed, plaintiffs rely on the fiction that they are indeed strangers. *See, e.g.*, Opp’n brief at 12:11-13
 25 (“Defendants *may* have had a preemption argument if the copyright holders, Schachner and Courture [*sic*], had
 brought contract claims with their copyright claims, but they have not.”). Yet, this fiction cannot stand when
Defendants admit they were Ms. Schachner’s and Couture’s agents. *See* Complaint at 2:14, ¶ 9.

26 ³² *See id.* at ¶¶ 21, 29.

1 and entering into agreements with them, Madison McQueen somehow injured them more when
 2 it allegedly exceeded the scope of its licenses than if Madison McQueen had not entered into
 3 those contracts. That would be an absurd result. Preemption is needed to avoid it.

4 **D. Plaintiffs' Request for Injunctive Relief Is Moot, and Plaintiffs Rely on the Wrong**
 5 **Legal Standard to Argue to the Contrary.**

6 Finally, the Court should deny Ms. Schachner's and Mr. Couture's request for injunctive
 7 relief because the issue is moot. As discussed in defendants' motion³³ – and ignored in
 8 plaintiffs' response³⁴ – it is proper for the Court to take judicial notice of a fact in considering a
 9 motion to dismiss. *See, e.g., Milo & Gabby, LLC v. Amazon.com, Inc.*, 12 F. Supp.3d 1341,
 10 1351 (W.D. Wash. 2014) (“Federal courts have long recognized procedures for considering
 11 documents outside the pleadings when ruling on motions to dismiss.”). Indeed, plaintiffs
 12 themselves ask the Court to do so.³⁵ Since there is no reasonable question that Ted Cruz's
 13 presidential campaign has ended, the Court should take judicial notice of that fact here. Though
 14 plaintiffs half-heartedly argue that the campaign is merely “suspended” – suggesting it could be
 15 restarted at any moment – the article they cite in support of that proposition indicates the
 16 opposite is true: it is titled, “Ted Cruz Drops Presidential Bid,” and leads with the news that
 17 “Ted Cruz bowed out of the Republican presidential race Tuesday. . . .”³⁶ Thus, plaintiffs' own
 18 evidence supports the well-known fact that Ted Cruz is no longer running for president.

19 Consequently, there can be no legitimate dispute that Cruz for President and its
 20 advertising agency, Madison McQueen, have no interest in causing further campaign
 21 commercials to be run – either online, on cable television, or through any other medium. To this

22 ³³ Motion to Dismiss at 19:3-9.

23 ³⁴ *See* Opp'n Brief at 19:10-21:16.

24 ³⁵ *See id.* at 19:19-23.

25 ³⁶ *See id.* at 19 n.3 (citing M. Reston, “Ted Cruz Drops Presidential Bid,” CNN (May 4, 2016, 9:37 AM),
 26 <http://www.cnn.com/2016/05/03/politics/ted-cruz-drops-out>).

1 end, the authority defendants cited in their motion is perfectly on point. Because Ms. Schachner
 2 and Mr. Couture cannot show (and have not pled) that they have a “reasonable expectation” that
 3 they will be subject to the same claimed injury again, their request for injunctive relief is moot.
 4 *Native Vill. of Noatak v. Blatchford*, 38 F.3d 1505, 1509 (9th Cir. 1994) (emphasis added), *citing*
 5 *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975). Plaintiffs’ *ipse dixit* assertion to the contrary³⁷
 6 does not manufacture the “reasonable expectation” they need to obtain an injunction. Simply
 7 put, there are no further acts that an injunction is needed to restrain.

8 Not that it matters given the above authorities, but plaintiffs also cite the wrong legal
 9 standard for obtaining a preliminary injunction.³⁸ After the Supreme Court’s decisions in *eBay*
 10 *Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006), and *Winter v. Natural Resources Defense*
 11 *Council, Inc.*, 555 U.S. 7 (2008), “[a] plaintiff seeking a preliminary injunction must establish
 12 that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the
 13 absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction
 14 is in the public interest.” *Am. Trucking Associations, Inc. v. City of Los Angeles*, 559 F.3d 1046,
 15 1052 (9th Cir. 2009), *quoting Winter*, 555 U.S. at 20. Mootness goes to each of these elements.
 16 If future infringement is not likely (as is the case here), it stands to reason that the plaintiff would
 17 not likely succeed on the merits of its case, it would not likely to suffer future irreparable harm,
 18

19 _____
 20 ³⁷ See *id.* at 21:11-12 (“[I]t is plausible that Ted Cruz could restart his suspended campaign and Defendants could
 21 renew their infringements and breaches. It is not clear at this very early stage that the Defendants have or will cease
 their unlawful behavior.”). Such speculation does not satisfy the “reasonable expectation” of future harm the Ninth
 Circuit requires. See *Native Vill. of Noatak*, 38 F.3d at 1509, *citing Weinstein*, 423 U.S. at 149.

22 ³⁸ Plaintiffs erroneously cite the pre-*Winter* authority of *LGS Architects, Inc. v. Concordia Homes of Nevada*, 434
 23 F.3d 1150, 1153 (9th Cir. 2006). See Opp’n Brief at 20:4-16. However, that has not been the standard governing
 24 preliminary injunctions in the Ninth Circuit for at least seven years. Further, notwithstanding plaintiffs’ claim to the
 25 contrary, the Ninth Circuit no longer presumes the existence of irreparable harm in motions for preliminary
 26 injunction after a showing of a likelihood of success on the merits. See Opp’n Brief at 20:10-24 (relying on the
 overruled standard); *Flexible Lifeline Sys., Inc. v. Precision Lift, Inc.*, 654 F.3d 989, 995 (9th Cir. 2011) (“[A]fter
 the Supreme Court’s *eBay* and *Winter* decisions in 2006 and 2008, this circuit’s long-standing practice of presuming
 irreparable harm upon the showing of likelihood of success on the merits in a copyright infringement case is no
 longer good law.”) (emphasis added). Plaintiffs’ reliance on these overruled standards is completely misplaced.

1 the balance of equities would not tip in its favor, and that an injunction would not be in the
2 public interest. Thus, applying the correct legal standard reveals that mootness is an important
3 consideration in granting a request for injunctive relief – and one that defeats plaintiffs’ request
4 here.

5 DATED this 1st day of July, 2016.

6 By /s/ Michael G. Atkins

7 Michael G. Atkins

8 WSBA# 26026

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15 Madison McQueen

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and I hereby certify that I served a true and correct copy of the document as follows:

Stephen P. VanDerhoef
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Attorneys for Plaintiffs

- U.S. Mail, Postage Prepaid
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Dated: July 1, 2016

/s/ Michael G. Atkins

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