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THE WALT DISNEY COMPANY,
11 WALT DISNEY PICTURES,
DISNEY ENTERPRISES, INC. and PIXAR

12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**
16

17 JAKE MANDEVILLE-ANTHONY,
an individual,

18 Plaintiff,

19 v.

20 THE WALT DISNEY COMPANY,
21 WALT DISNEY PICTURES,
22 DISNEY ENTERPRISES, INC.,
PIXAR d/b/a PIXAR ANIMATION
STUDIOS; and DOES 1-10, inclusive,

23 Defendants.
24
25

Case No. CV 11-2137 VBF (JEMx)

Complaint Filed: March 14, 2011

**DEFENDANTS' NOTICE OF
MOTION AND MOTION FOR
JUDGMENT ON THE
PLEADINGS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

Date: July 25, 2011

Time: 1:30 p.m.

Location: Courtroom 9

Hon. Valerie Baker Fairbank

1 **PLEASE TAKE NOTICE THAT** on July 25, 2011, at 1:30 p.m., or as soon
2 thereafter as the matter can be heard by the Honorable Valerie Baker Fairbank in
3 Courtroom 9 of this Court, located at 312 N. Spring Street, Los Angeles, California
4 90012, defendants The Walt Disney Company, Walt Disney Pictures, Disney
5 Enterprises, Inc. and Pixar (“Defendants”) will, and hereby do, move this Court for
6 judgment on the pleadings and an order dismissing plaintiff Jake Mandeville-
7 Anthony’s (“Plaintiff”) Complaint with prejudice.

8 This Motion is brought pursuant to Federal Rules of Civil Procedure, Rule
9 12(c) on the following grounds:

10 Plaintiff’s First Cause of Action for Copyright Infringement should be
11 dismissed with prejudice for failure to state a claim because the parties’ respective
12 works are not substantially similar as a matter of law.

13 Plaintiff’s Second Cause of Action for Breach of Implied Contract should be
14 dismissed for failure to state a claim because it is barred by the applicable statute of
15 limitations.

16 This Motion is made following a conference of counsel pursuant to Local
17 Rule 7-3, which took place on June 3, 2011.

18 This Motion is based upon this Notice of Motion and Motion, the attached
19 Memorandum of Points and Authorities, the pleadings and papers on file herein,
20 Plaintiff’s purported copyrighted works (which are part of the pleadings and lodged
21 concurrently herewith),

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1 Defendants' alleged infringing works (which are part of the pleadings and lodged
2 concurrently herewith), and such other matters as may be presented to the Court or
3 otherwise at the hearing.

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Date: June 16, 2011

HOGAN LOVELLS US LLP

By: _____/s/_____
David R. Singer

Attorneys for Defendants
THE WALT DISNEY COMPANY,
WALT DISNEY PICTURES,
DISNEY ENTERPRISES, INC.
and PIXAR

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants’¹ 2006 animated motion picture *CARS* is an award-winning commercial success. Set in a world populated entirely by anthropomorphic cars and other vehicles, it tells the touching story of an arrogant racecar who learns to slow down and appreciate life, love and friendship. *CARS* was such a hit that Defendants produced a spin-off series of animated shorts, as well as a motion picture sequel that will be released on June 24, 2011.

Five years after *CARS* was released, Plaintiff Jake Mandeville-Anthony (“Plaintiff”) filed this action claiming Defendants’ three *CARS* works are substantially similar to his *Cookie & Co.* (“*Cookie*”) and *Cars/Auto-Excess/Cars Chaos* (“*Cars Chaos*”) works, which he allegedly created twenty years ago, but only registered with the U.S. Copyright Office last year. Unfortunately for Plaintiff, a comparison of the relevant works destroys his copyright claims. After reading Plaintiff’s works, and watching Defendants’ motion pictures, no reasonable person could conclude they are substantially similar. They simply are not.

Cookie is a movie script about two Englishmen who drive across Europe, Asia and Australia in a vintage car; *Cars Chaos* is merely a synopsis for a proposed animated television series involving cartoon cars (based on famous real car designs) that race each other. The only thing Defendants’ *CARS* works have in common with *Cookie* is the general, unprotectable concept of car racing. The only similarity between Defendants’ works and *Cars Chaos* is the familiar idea of animated anthropomorphic cars, that is, animated car characters with human characteristics. However, it is well settled that general concepts and ideas like “car racing” and “anthropomorphic cars” are not protectable under U.S. copyright law. In short, Plaintiff cannot claim a monopoly over all racing or anthropomorphic car stories,

¹ “Defendants” refers to The Walt Disney Company, Walt Disney Pictures, Disney Enterprises, Inc. and Pixar.

1 just as Defendants cannot claim a monopoly over all stories about princesses and
2 frogs. More importantly, an objective comparison of the works conclusively
3 demonstrates that they are completely dissimilar in plot, characters, dialogue, theme,
4 setting and mood. Anyone who reads and watches the parties' works will
5 immediately recognize that Defendants' works are nothing like those of Plaintiff.

6 Plaintiff's second claim for breach of implied contract fails because it is time-
7 barred by the two-year statute of limitations: his contract claim accrued in 2006
8 when *CARS* was released, and this lawsuit was filed five years later.

9 10 **II. BACKGROUND**

11 **A. Defendants' Works**

12 **(1) *CARS***

13 *CARS* is an animated, family motion picture set in an imaginary world
14 populated entirely by anthropomorphic, talking cars and other vehicles. The motion
15 picture opens with the last race of the Piston Cup, a NASCAR-type race in which
16 the picture's hero, Lightning McQueen, is vying for first place. McQueen is a
17 young, hotshot racing sensation who wants to be the first "rookie" to win the
18 championship. He is arrogant, self-centered and focused only on speed, winning,
19 and gaining a lucrative sponsorship deal with the Dinoco racing team owned by Tex,
20 a Cadillac oil magnate. After alienating his teammates and ignoring the advice of
21 his pit crew, McQueen ends the race in a three-way tie. A tie-breaker is scheduled
22 for one week later in Los Angeles. But when McQueen's agent offers him free
23 tickets to the race for his friends, we learn that despite his popularity among fans,
24 McQueen has no real friends.

25 Desperate to win the tie-breaker, and eager to start practicing in California as
26 soon as possible, McQueen selfishly prods Mack, his transport truck, to drive
27 through the night even though Mack is tired. An accident ensues when Mack falls
28 asleep on the interstate, causing McQueen to be released from the trailer and

1 dumped onto the highway. Mack, oblivious to what has happened, drives on
2 towards California. As McQueen blindly chases after Mack in the dark (racecars
3 have no headlights), he speeds through Radiator Springs, a forgotten desert town on
4 old Route 66. The Sherriff sees him speeding and chases him until McQueen
5 crashes into a bed of flowers, a tire store and barbed wire, and drags the town
6 monument down from its pedestal, tearing up and destroying the town’s only road.

7 After being arrested, McQueen appears in court before a crusty judge named
8 Doc Hudson (a blue Hudson Hornet from the 1950’s voiced by Paul Newman). The
9 town prosecutor, Sally Carrera (a beautiful blue 2002 Porsche), convinces the judge
10 to sentence McQueen to repair the town’s road before he leaves for California.

11 The heart of the motion picture takes place in Radiator Springs, where the
12 stranded McQueen is forced to repave the road and contemplate the meaning of life
13 and the importance of friendship. At first, McQueen acts arrogantly towards the
14 small-town residents who are oblivious to his fame. He belittles the town’s rusty,
15 dilapidated tow truck, Mater, despite Mater’s child-like infatuation with him. Doc
16 Hudson distrusts McQueen and does not like his “type” (*i.e.*, arrogant racecar).
17 Sally disdains McQueen’s arrogance and initially rebuffs his romantic advances.

18 Eventually, McQueen begins interacting with the colorful characters of
19 Radiator Springs and learns to admire them. He discovers there is more to life than
20 winning trophies and becoming famous. He develops a true friendship with the
21 rambunctious but genuine Mater; he and Sally fall in love; and, after discovering that
22 Doc Hudson is once a three-time Piston Cup champion, McQueen grows to better
23 understand him and seeks his valuable mentorship. McQueen also learns to
24 appreciate the economic struggles – and the sheer beauty – of this once-booming
25 tourist town that fell off the map when Interstate 40 replaced a winding strip of old
26 Route 66 and bypassed Radiator Springs to “save ten minutes” of travel time. As
27 McQueen’s character matures, he begins to give back to the town and its residents.
28 He masterfully repaves the town road, helps Doc Hudson overcome his bitter

1 retirement from racing, and buys products from many of the town's struggling
2 businesses. For the first time in years, Radiator Springs starts to show signs of life.

3 Meanwhile, the racing world is searching for McQueen (who has been
4 missing for almost one week). He is eventually located by the news media and
5 whisked off to Los Angeles for the big tie-breaker race. However, McQueen is a
6 changed car. His new friends from Radiator Springs have followed him to Los
7 Angeles and formed his pit crew. After following the advice of his new crew chief,
8 Doc, McQueen is the first to approach the finish line of the race. But, to the
9 amazement of the spectators and announcers, McQueen screeches to a halt a few
10 inches from the finish line because he has noticed that his nemesis, Chick Hicks, has
11 run another racer, The King, off the track with some dirty tricks. McQueen turns
12 around to help The King cross the finish line with dignity and, in doing so, sacrifices
13 winning the race. The crowd cheers McQueen for his selfless act. Tex, the owner of
14 Dinoco, is impressed and invites McQueen to join the Dinoco team. McQueen
15 respectfully declines, choosing instead to keep his new team of friends, remain loyal
16 to his original, small-time sponsor, and return to Radiator Springs.

17 **(2) CARS 2**

18 In *CARS 2*, we meet Miles Axelrod, a billionaire oil tycoon that recently
19 renounced fossil fuels in favor of renewable energy, converted himself into an
20 electric car, and declared that his life will be devoted to marketing the renewable,
21 clean-burning fuel Allinol. In support of his mission, Axelrod has organized the
22 "World Grand Prix," a series of three races in Tokyo, Porto Corsa (a fictional city on
23 the Italian Riviera), and London. The world's fastest cars will participate, and all
24 must use Allinol instead of regular gasoline to support Axelrod's goal of proving the
25 virtues of alternative fuel and ridding the world of "big oil."

26 The hero from *CARS*, Lightning McQueen, enters the World Grand Prix race
27 and invites his best friend, tow truck Mater, to join him on the adventure. Luigi and
28 Guido (also from *CARS*) accompany McQueen as his pit crew. From the moment

1 Mater arrives overseas, he stands out like an unrefined American tourist and
2 embarrasses McQueen. For example, in Tokyo Mater mistakes wasabi for pistachio
3 ice cream and creates a public spectacle after gulping down the flaming hot mustard.
4 After being scolded by McQueen (and told to “stop acting like himself”), Mater
5 wanders off and is mistaken for an American superspy by a British Intelligence
6 agent, Finn McMissile, and his associate Holley Shiftwell. Before long, Mater is
7 caught up in an adventure of international espionage as he and the British spies
8 pursue an evil syndicate of “lemons” – defective cars like Pacers and Gremlins –
9 who appear to be plotting nothing short of world domination.

10 Meanwhile, McQueen races in the first two legs of the World Grand Prix
11 where he goes head-to-head with an arrogant Formula racer named Francesco
12 Bernoulli. Bernoulli wins the first race, and McQueen the second. But, to the
13 surprise of the racing world, some of the strongest competitors in the World Grand
14 Prix suffer exploding engines and cannot finish the race. As a result of this string of
15 mysterious engine failures, the news media start questioning whether the
16 environmentally-friendly Allinol fuel is to blame.

17 Before the third and final race begins, Mater, McMissile and Shiftwell unravel
18 the lemons’ evil plot and save McQueen from his own brush with death.² In the end,
19 Mater proves to be a skilled detective and develops an unlikely friendship with the
20 sophisticated British agents. McQueen comes to regret how he treated Mater and
21 realizes that true friends never ask each other to change who they are.

22 (3) *CARS Toon: Mater’s Tall Tales*

23 *CARS Toon: Mater’s Tall Tales* is a series of nine short animated motion
24 pictures (each a few minutes in length) featuring the characters Mater and Lightning
25 McQueen. Each short follows the same formula: Mater (who is prone to

26 _____
27 ² Because this brief is a publicly-filed document, and because *CARS 2* has not yet
28 been commercially released in theatres, Defendants are careful not to give away the
entire plot. Defendants will, however, make appropriate arrangements for the Court
to view *CARS 2* in its entirety.

1 exaggeration) tells McQueen a farfetched story about something Mater claims to
2 have done in the past, which is then shown as a flashback. For example, in one
3 story, Mater claims to have been “Heavy Metal Mater,” a pioneer rock star; in
4 another, Mater is “El Materdor,” a famous “bulldozer” fighter; in a third story he is
5 “Moon Mater” and travels to the moon. Each story is met with disbelief by
6 McQueen, but each picture ends with Mater as the hero because, when Mater
7 finishes his story, McQueen witnesses something (usually a reference or character
8 from one of Mater’s stories) that suggests Mater’s story might have been true.

9 **B. Plaintiff’s Works**

10 **(1) *Cookie***

11 *Cookie* is a script for a live-action motion picture based on the true-life
12 adventure of Mike Perkins and Brian Mollineaux, two eccentric English
13 businessmen who, in 1988, won a vintage car endurance rally from London to
14 Sydney. The script chronicles the race from beginning to end, as Mike and Brian
15 drive through various cities and countries in their flashy, yellow, 1924 Vauxhall car
16 that they call “Cookie.” The beginning of the race is a rather commonplace scene of
17 slapstick chaos in which multiple drivers jockey for a lead position, and a number of
18 vintage cars fall apart immediately or crash. Mike and Brian, who are laidback and
19 apparently in no rush, drive their car slowly and steadily through the chaos. From
20 that point forward, the story essentially focuses on the long road trip across multiple
21 continents with no competitors in sight.

22 In the script, Mike and Brian observe foreign landmarks, tell crude jokes, talk
23 about sex and women, and frequently get drunk. As they pass through different
24 cities, their bright yellow car attracts a lot of attention and intrigues local residents.
25 They even develop a small following of news media. Other than a few flat tires,
26 occasional mechanical problems, and delays getting travel visas from some Middle
27 Eastern countries, the long-distance journey is generally smooth. Indeed, less than
28

1 half way through the script, we learn that all of the other racers have been
2 disqualified and that Mike and Brian need only finish the race to win.

3 The drive through Europe is given short shrift; most of the focus is on the two
4 drivers' time in the Middle East (Egypt, Jordan, Saudi Arabia, etc.), India, and the
5 Australian Outback. While in Bombay, they participate in a local car race, which
6 they win by slowly and steadily progressing after all the other cars crash.
7 Eventually, Mike and Brian arrive in Sydney to much fanfare as they are declared
8 the rally winners.

9 (2) *Cars Chaos*

10 *Cars Chaos* is a seven-page synopsis of a proposed television series which,
11 according to Plaintiff's own description, features "cartoon characters of all the well
12 known manufactured cars, past and present; involved in a continuous round of races,
13 rallies, and adventures[.]" The synopsis lists more than 40 proposed characters in
14 alphabetical order with no apparent lead roles. Each character name is derived from
15 the model and make of the car (e.g., James Aston-Martin is an Aston Martin; Benzol
16 Beetle is a Volkswagen Beetle; and Ms. Thunderbird Ford is, not surprisingly, a
17 Ford Thunderbird). Plaintiff provides a one- or two-sentence general description of
18 each character that conforms to stereotypes. For example, Antonio Alfa Romeo is
19 "An Italian romeo, fast & good looking car in a swarthy continental way."

20 *Cars Chaos* lists various general ideas for future scripts of television shows,
21 such as "Races and Rallies to all parts of the world." The synopsis also puts forth
22 ideas for product merchandising and computer games.

23 The *Cars Chaos* synopsis is followed by a four-page outline for a proposed
24 episode titled "Alpine Antics," in which Plaintiff's various characters compete in a
25 single road race through the Swiss Alps. The race begins with chaos and is followed
26 by crashes, cars vying for better positions and scenes of cars racing around the Swiss
27 Alps. The only dialogue consists of a few catch phrases spoken by some of the cars
28 when there is a crash. The story ends with the winning car crashing when its brakes

1 fail. *Cars Chaos* includes black and white, two-dimensional hand drawings of ten
2 cartoon car characters.

3
4 **III. PLAINTIFF’S COPYRIGHT INFRINGEMENT CLAIMS SHOULD BE DISMISSED**

5 **A. The Court Can Dismiss Copyright Claims At The Pleading Stage**

6 It is well-settled that the issue of substantial similarity in a copyright
7 infringement case may be determined by the court as a matter of law at the pleading
8 stage by examining and comparing the relevant works. *Zella v. E.W. Scripps Co.*,
9 529 F. Supp. 2d 1124, 1130 (C.D. Cal. 2007) (Collins, J.) (“the Ninth Circuit has
10 noted that ‘there is ample authority for holding that when the copyrighted work and
11 the alleged infringement are both before the court, capable of examination and
12 comparison, non-infringement can be determined on a motion to dismiss.’”), citing
13 *Christianson v. West Pub. Co.*, 149 F.2d 202, 203 (9th Cir. 1945). “[J]udgment on
14 the pleadings may be granted where the facts asserted by the non-moving party in its
15 pleadings – including the attached works themselves – and all reasonable inferences
16 from those facts, show the absence of substantial similarity.” *Identity Arts v. Best*
17 *Buy Ent. Svcs. Inc.*, 2007 WL 1149155, *5 (N.D. Cal., April 18, 2007).³

18 **B. The Parties’ Works Are Not Substantially Similar**

19 To state a claim for copyright infringement, a plaintiff must allege, among
20 other things, that “the works at issue are substantially similar in their protected
21 elements.” *Zella*, 529 F. Supp. 2d at 1133. “To assess substantial similarity as a
22 matter of law, the Court must apply the objective ‘extrinsic test.’” *Id.*, citing *Funky*
23 *Films v. Time Warner Ent. Co.*, 462 F.3d 1072, 1077 (9th Cir. 2006). “The extrinsic
24

25 ³ The Court may properly consider the parties’ respective works referenced in the
26 complaint, even though Plaintiff failed to attach copies. *Zella*, 529 F. Supp. 2d at
27 1128. Plaintiff’s alleged works *Cookie* and *Cars Chaos* are attached to the
28 concurrently-filed Declaration of David R. Singer, and DVD copies of the *CARS*
motion picture and *CARS Toon* animated shorts are being lodged with the Court. At
the June 20, 2011 Scheduling conference, Defendants will discuss suitable
arrangements for the Court to view the yet-to-be released *CARS 2*.

1 test focuses on ‘articulable similarities between the plot, themes, dialogue, mood,
2 setting, pace, characters, and sequence of events’ in the two works.” *Funky Films*,
3 462 F.3d at 1077 (internal quotes omitted), citing *Kouf v. Walt Disney Pictures &*
4 *Television*, 16 F.3d 1042, 1045 (9th Cir. 1994). In applying the test,

5 the Court ‘must take care to inquire only whether the
6 *protectable elements, standing alone*, are substantially
7 similar.’ This requires the Court to ‘filter out and
8 disregard the non-protectable elements in making [the]
9 substantial similarity determination.’ The protectable
elements must demonstrate not just ‘similarity,’ but
‘substantial similarity,’ and it must be measured at the
level of concrete ‘elements’ of each work, rather than at
the level of the basic ‘idea,’ or ‘story’ that it conveys.

10 *Zella*, 529 F. Supp. 2d at 1133, citing *Funky Films*, 462 F.3d at 1077 (internal cites
11 and quotes omitted). In this case, the protected elements of plot, sequence of events,
12 pace, dialogue, theme, setting, and mood in Plaintiff’s works are not similar, let
13 alone “substantially similar,” to those in Defendants’ works.

14 (1) Plot, Sequence of Events, and Pace

15 The plots of the parties’ respective works are wildly different. *Cookie*
16 revolves around a single long-distance trip, the repetitive immature “road-trip”
17 banter between male chauvinists Mike and Brian, and their random encounters with
18 local residents and foreigners. The story chronicles their trip like a diary, and has no
19 basic plot complications other than finishing the race. Action never builds from one
20 scene to the next; instead, the story moves from one location to another. The pace of
21 *Cookie* is slow and takes place over many months. There is no suspense because the
22 story is based on real events and early on it is revealed that all other racers have been
23 disqualified. In the final scene, Mike and Brian win as expected.

24 Plaintiff’s second work, *Cars Chaos*, does not even have a plot. The synopsis
25 merely proposes very general ideas like “Races and Rallies to all parts of the world,”
26 “[w]ould be love affairs, national friendships and rivalries,” and “obstacles likely to
27 be encountered” in particular parts of the world like “camels in Arabia, elephants in
28

1 India, kangaroos in Australia, [and] skiers and snow drifts in Switzerland.” The
2 synopsis never spells out any specific action, problem, conflict or plot.

3 The *Cars Chaos* outline for a possible television episode titled “Alpine
4 Antics” describes a single, short, car race through the Swiss Alps. Other than
5 winning the race and avoiding crashes, there are no conflicts or hurdles for the
6 characters to overcome, and no resolutions of any kind. In short, there is no story,
7 let alone a protectable story. Plaintiff’s outline admits as much, stating “most of the
8 detailed storyline and action [will be] blocked out and constructed by the animators”
9 at a later point in time. The pace of Plaintiff’s sample outline is very rapid, lasting
10 only a few minutes. The final scene is anticlimactic because the winner (Chris
11 Chrysler) is just one of many undeveloped characters that happen to be racing; he
12 has no back-story, no apparent motivation for racing, and the victory has no meaning
13 other than winning one of many random races.

14 In sharp contrast to Plaintiff’s works, Defendants’ *CARS* works involve
15 complete stories with fully fleshed out plots and multiple sub-plots. For example,
16 the first *CARS* motion picture is about Lightning McQueen’s journey of self
17 discovery. While the motion picture begins and ends with a rally car race, it is really
18 a story about friendship, falling in love, and being part of a community. *CARS 2*
19 involves three car races in Tokyo, Italy, and England, but as the plot develops, the
20 races themselves – and who wins them – are of minor consequence to the story
21 which focuses instead on good cars triumphing over evil cars, and Mater’s
22 entanglement in an international spy operation. The *CARS Toon* shorts play on the
23 developed personalities and deep friendship of Mater and McQueen and, as
24 described above, follow a formula that reveals that the seemingly unsophisticated
25 Mater really is a hero who knows what he’s talking about.

26 Faced with these stark distinctions, Plaintiff tries to argue that there is
27 substantial similarity because (1) his works, like *CARS 2*, depict international car
28 racing; (2) both parties’ works “revolve around the lead character interacting with

1 other cars and finding themselves[,] with a number of events [sic] intermixed to
2 bring about humor and romance and both with the backdrop of a race;” and (3) *Cars*
3 *Chaos* and Defendants’ *CARS* works both take place in a world “without humans”
4 inhabited only by anthropomorphic cars. Cplt., at ¶ 21. To begin with, Plaintiff’s
5 description of his works is patently inaccurate on its face. However, even if
6 accurate, neither individually, nor in the aggregate, would these claimed similarities
7 remotely add up to the substantial similarity that copyright law requires. To the
8 contrary, they are, at most, precisely the kind of generic “basic plot ideas” that are
9 not protected. *Campbell v. Walt Disney Co.*, 718 F. Supp. 2d 1108, 1112-1113
10 (N.D. Cal. 2010) (granting motion to dismiss copyright infringement claims against
11 Disney based on the motion picture *CARS* and holding that basic storyline about “a
12 race-car driver personified by an animated stock car who learns life lessons from an
13 older mentor” is not protectable), citing *Cavalier v. Random House, Inc.*, 297 F.3d
14 815, 824 (9th Cir. 2002); *Thomas v. Walt Disney Co.*, 2008 WL 425647, *4 (N.D.
15 Cal., Feb. 14, 2008) (granting motion to dismiss and finding no substantial similarity
16 between two stories about young, anthropomorphic, talking fish in the ocean that are
17 captured by divers and put in a fish tank), *aff’d* 337 Fed. Appx. 694 (9th Cir. 2009).

18 Indeed, courts have routinely declined protection of ideas far more developed
19 than those Plaintiff is seeking to hang his hat on here. *See, e.g., Funky Films*, 462
20 F.3d at 1081 (finding no protection for similar plots involving “the family-run
21 funeral home, the father’s death, and the return of the ‘prodigal son,’ who assists his
22 brother in maintaining the family business.”); *Kouf v. Walt Disney Pictures &*
23 *Television*, 16 F.3d at 1045-46 (9th Cir. 1994) (finding no protection for similar
24 plots of shrunken kids, the life struggle of kids fighting insurmountable dangers, and
25 random similarities such as “a lawnmower scene, a sprinkler scene, the presence of
26 an attic, danger scenes, concerned parents, and kids sleeping outside overnight.”);
27 *Berkic*, 761 F.2d 1293 (finding no protection for similar plots of “criminal
28 organizations that murder healthy young people, then remove and sell their vital

1 organs to wealthy people in need of organ transplants” and the general story of the
2 “adventures of a young professional who courageously investigates and finally
3 exposes, the criminal organization.”); *Williams v. Crichton*, 84 F.3d 581, 589 (2d.
4 Cir. 1996) (holding that similarities of a “dinosaur zoo or adventure park, with
5 electrified fences, automated tours, dinosaur nurseries, and uniformed workers . . .
6 are classic *scenes a faire* that flow from the uncopyrightable concept of a dinosaur
7 zoo.”).⁴

8 Further, even if Plaintiff could assert a literary monopoly over these general
9 concepts, there would still be no substantial similarity as a matter of law. In point of
10 fact, the underlying unprotectable concepts are totally dissimilar. For instance,
11 although Plaintiff notes that Defendants’ works are based on the concept of
12 anthropomorphic vehicles in “a world without humans,” the same is not true with
13 respect to either of Plaintiff’s works. *Cookie* is a story entirely about two humans
14 engaged in a long race in one car, and while *Cars Chaos* does feature
15 anthropomorphic cartoon cars, it also has humans and a very different plot concept.
16 For example, Plaintiff’s very first scene depicts “villagers,” “reporters,” and
17 “photographers,” as well as a “fat Swiss man.” His proposed story also includes
18 animals and refers to “cows” and a “goat herd” in the first few scenes. Thus, even
19 the non-protectable concepts underlying the parties’ plots are different. *See*
20 *Rosenfeld v. Twentieth Century Fox Film*, 2009 WL 212958, *2 (C.D. Cal., Jan. 28,
21 2009) (finding no substantial similarity as a matter of law between stories about
22 robots where plaintiff’s work had human characters and defendant’s had no
23 humans).

24 _____
25 ⁴ Plaintiff also bases his substantial similarity claim on the fact that one of the three
26 alternate titles of his *Cars/Auto Excess/Cars Chaos* synopsis was “Cars.” Not only
27 is such a one-word title generic and descriptive, but a claim of copyright
28 infringement cannot be based on titles alone. *Phillips v. Murdock*, 543 F. Supp. 2d
1219, 1225 (D. Haw. 2008). Courts analyzing substantial similarity are especially
reluctant to consider the similarity of titles when the titles naturally flow from the
story’s non-protectable basic plot. *Id.* Here, Plaintiff’s and Defendants’ works are
both about cars.

1 The parties’ use of the non-protectable concept of car racing is also
2 fundamentally different. Plaintiff’s plots revolve around the race itself: in *Cookie*
3 the whole story is about the main characters racing in a six-month rally; in *Cars*
4 *Chaos* the proposed episode begins when the race begins and ends when the race
5 ends. By comparison, the races in Defendants’ motion pictures are catalysts or
6 backdrops for the main plot and not the focus of the stories themselves. In *CARS*,
7 Lightning McQueen races at the beginning and end, but spends most of the motion
8 picture stranded in the now-neglected town of Radiator Springs. In *CARS 2*, the
9 three races – and who wins them – are of little significance to the overall story about
10 espionage, spies, good versus evil and solving the exploding car engines mystery.
11 These differences in structure and sequencing of the non-protectable idea of car
12 racing foreclose any claim of purported similarities. *See Thomas*, 2008 WL 425647,
13 at *4 (no substantial similarity between two plots where the anthropomorphic fish is
14 captured by humans at the end of plaintiff’s story and the beginning of defendant’s
15 story).

16 Because the parties’ plots are based on different concepts, and because they
17 express those concepts in entirely different ways, there is no similarity between the
18 plots. Moreover, there is certainly no “substantial similarity” of protected elements.

19 (2) **Characters**

20 Plaintiff claims there are substantial similarities between the characters drawn
21 or described in *Cars Chaos* and the animated three-dimensional car characters from
22 Defendants’ *CARS* works. But, as discussed above, Plaintiff cannot assert a
23 monopoly over the stock idea of animated, anthropomorphic car characters. *See*
24 *Cory Van Rijn, Inc. v. California Raisin Adv. Bd.*, 697 F. Supp. 1136, (E.D. Cal.
25 1987) (plaintiffs cannot claim copyright protection in the idea of a humanized raisin
26 character); *Buggs v. Dreamworks, Inc.*, 2010 WL 5790251, *5 (C.D. Cal., Dec. 28,
27 2010) (“the basic plot idea of pests with human attributes getting flushed [down the
28 sink] and [then] saving their communities is not protectable.”); *Mattel, Inc. v. MGA*

1 *Ent., Inc.*, 616 F.3d 904, 916 (9th Cir. 2010) (“Mattel can’t claim a monopoly over
2 fashion dolls with a bratty look or attitude, or dolls sporting trendy clothing – these
3 are all unprotectable ideas.”) Furthermore, “characters which naturally flow from a
4 ‘basic plot idea’ are ‘scenes-a-faire’ not protected by copyright.” *Campbell*, 718 F.
5 Supp. 2d at 1115.

6 Here, the fact that Plaintiff’s synopsis and Defendants’ works contain talking
7 car characters with human features flows directly from the idea of anthropomorphic
8 cars and, as such, is not protectable. *Thomas*, 2008 WL 425647, at *5 (the fact that
9 both parties’ works involved a talking fish was not protectable because it “directly
10 flows from the idea of a young fish discovering the ocean”); *see also, Alchemy II*,
11 *Inc. v. Yes! Entertainment Corp.*, 844 F. Supp. 560, 567 (C.D. Cal. 1994) (elements
12 of expression that necessarily flow from an idea are not protectable). Indeed, for
13 decades cartoons and animated works have featured real-life objects that can talk,
14 have personalities, and express “human” emotion. No one has a lock on that
15 enormously popular genre.

16 Similarly, the fact that some of the parties’ respective car characters share
17 common attributes that flow from a well-known car’s make and country of origin
18 does not support Plaintiff’s claim. Anyone animating an Italian sports car would
19 naturally endow it with the personality traits of an Italian racer, just as an animator
20 would give a Rolls Royce the personality traits of a British aristocrat. Those
21 elements necessarily flow from the idea of creating cars based on hugely famous car
22 designs. *See Aliotti v. R. Dakin & Co.*, 831 F.2d 898, 901 (9th Cir. 1987) (holding
23 that plaintiff copyright owner of stuffed dinosaur design “may place no reliance
24 upon any similarity in expression resulting from either the physiognomy of
25 dinosaurs or from the nature of stuffed animals”); *Alchemy II*, 844 F. Supp. at 568
26 (owner of copyright in talking teddy bear design cannot protect against copying of
27 design features derived from the non-protectable idea of talking teddy bears).

28

1 Nor can Plaintiff claim substantial similarity based on character traits that are
2 established stereotypes – like a 1950’s glamorous girl, an emotional Italian, or a
3 British secret agent – because “there can be no property interest in stereotyped
4 characters.” *Midas Prod., Inc. v. Baer*, 437 F. Supp. 1388, 1390 (C.D. Cal. 1977).
5 Yet, this is precisely what Plaintiff argues here. For example, *Cars Chaos* describes
6 the “James Aston-Martin” character as: “A James Bond type character. Every time
7 he crashes instead of saying ‘0,0, seven,’ he says ‘0,0, blast’ in a cool, Sean Connery
8 type voice.” That is Plaintiff’s entire written description of the character. From that,
9 Plaintiff would now claim that no one else can create an animated car character that
10 is a British secret agent. That, of course, is nonsense and the sort of monopolization
11 of basic concepts which copyright laws prevent.

12 Additionally, Plaintiff readily concedes that his car drawings are themselves
13 mere copies of famous cars designed and built by others. For example, his James
14 Aston-Martin character is depicted as a hand-drawn, 1965 Aston Martin DB5.
15 Putting aside the fact that Defendants’ Finn McMissile spy character is not an Aston
16 Martin (it is an original design), Plaintiff has no standing to sue for copyright
17 infringement of a third party’s car design. *Aurora World, Inc. v. Ty, Inc.*, 719 F.
18 Supp. 2d 1115, 1137 (C.D. Cal. 2009) (“[copyright] protection extends only to those
19 components of a work that are original to the author.”) (citation omitted) (emphasis
20 added).

21 In a case such as this, where a creative concept can only be expressed in a
22 limited number of ways, courts impose a heightened burden on plaintiffs alleging
23 copyright infringement. *Mattel, Inc. v. MGA Ent., Inc.*, 616 F.3d 904, 915 (9th Cir.
24 2010) (plaintiff must show “virtually identical copying”) (emphasis added); *Cory*
25 *Van Rijn, Inc.*, 697 F. Supp. at 1140-41 (where similarity of expression necessarily
26 results from a common idea that is “only capable of expression in more or less
27 stereotyped form . . . only exact copying is infringement”) (emphasis added)
28

1 (citations omitted). Plaintiff cannot begin to meet this burden with respect to the
2 anthropomorphic cars in his synopsis.

3 First, Plaintiff depicts all of his cars with headlights that are eyes. Defendants
4 anthropomorphize their cars by using the entire windshield for the eyes and eyelids,
5 resulting in a completely different stylization than Plaintiff's work.⁵

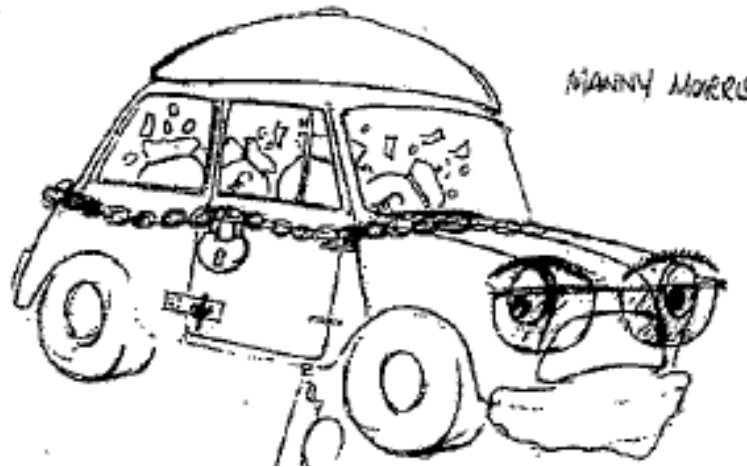
6 Second, Plaintiff's cars have human-like appendages such as arms and hands
7 (e.g., Stanley Standard, Bertie Bentley). One of Plaintiff's cars, Miss Thunderbird
8 Ford, even has large breasts. None of the CARS characters has human appendages;
9 instead, their doors and tires twist and bend in subtle ways to mimic human body
10 parts.

11 Third, Plaintiff's cars have hair, eyelashes and eyebrows (e.g., Manny Morris,
12 Miss Thunderbird Ford, Benzol Beetle, Bertie Bentley, James Aston-Martin, and
13 Viktor Volvo). None of Defendants' cars has hair, eyelashes or eyebrows.

14 Fourth, Plaintiff's cars are simply two-dimensional, black and white, hand
15 drawings. By contrast, Defendants have created complex three-dimensional, full-
16 color, computer-animated characters (using proprietary software and technology) to
17 create eye-popping, photorealistic car characters. These cars have glossy paint, tires
18 that look like real rubber, scratches and rust that are highly textured, and shiny
19 chrome surfaces that reflect their surroundings. No reasonable juror could compare
20 Plaintiff's car drawings to Defendants' artwork and conclude they are anything
21 alike. See, e.g., *Silberstein v. John Does*, 242 Fed. Appx. 720, 722 (2nd Cir. 2007)
22 (holding that no reasonable juror could find substantial similarity between plaintiff's
23 "crudely drawn two-dimensional, monochromatic, static character" and defendant's
24 "three-dimension[al]" character with "fur, nose, eyes, mouth, and extremities [that]
25 are rendered in lifelike detail and realistic color and shade.")

26
27 ⁵ If anything, the characters in the CARS works derive from *Susie the Little Blue*
28 *Coupe*, a 1952 Disney animated short depicting a similar-looking anthropomorphic
car named Susie.

1 By way of example, Plaintiff’s complaint alleges that his Manny Morris
2 character is similar to Defendants’ Mater character, who appears prominently in
3 *CARS*, *Mater’s Tall Tales*, and *CARS 2*. Cplt. at ¶ 22(d). This is Plaintiff’s Manny
4 Morris character:



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15 This is Defendants’ Mater character:



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25 How Plaintiff can contend these characters are similar is mystifying. But, going
26 beyond the drawings, Plaintiff’s written description of his Manny Morris character is
27 nothing like Mater. In *Cars Chaos*, Plaintiff describes Manny Morris as: “Small,
28

1 Morris Mini, Jewish market trader car. Always out for a deal. Sets up [a] trailer to
2 sell refreshments in pit stops and breaks between races. Also buys up second hand
3 car parts to sell to other cars in emergencies after their many crashes and shunts.”
4 As seen in the picture above, Manny Morris wears what appears to be a skullcap, has
5 a front fender shaped like a large nose, and keeps his moneybags locked up with a
6 chain.

7 Putting aside Plaintiff’s offensive depictions, his Manny Morris character
8 does not remotely resemble Mater. Mater is an unsophisticated, small-town tow
9 truck with buck teeth and a dilapidated body. His personality is child-like,
10 hyperactive, and fun. All he wants is friendship and attention, not money. More
11 importantly, Mater develops a crucial relationship with Lightning McQueen, who
12 initially ignores Mater before eventually becoming his best friend. Plaintiff’s
13 Manny Morris never develops a lasting relationship with another character. Indeed,
14 there are no interactions of substance between or among any of Plaintiff’s cars other
15 than racing each other.

16 In short, the parties’ expressions of the general idea of animated,
17 anthropomorphic cars are extremely different. Any suggestion that the parties’
18 characters are similar – let alone, substantially similar – “would defy the Ninth
19 Circuit’s exhortation that copyright law protects only the *specific* details of an
20 author’s rendering of an idea, and not the idea itself.” *Identity Arts v. Best Buy Ent.*
21 *Svcs. Inc.*, 2007 WL 1149155, *16 (N.D. Cal., Apr. 18, 2007), citing *Berkic*, 761
22 F.2d at 1293.

23 (3) Dialogue

24 To allege similarities in dialogue between the works at issue, a plaintiff must
25 set forth specific examples. *Campbell*, 718 F. Supp. 2d at 1114 (general allegations
26 about “similar” dialogue and conversations between characters without specific
27 examples cannot be used to support a claim of substantial similarity). Here,
28 Plaintiff cannot seriously claim any similarity between the dialogue in his works and

1 those of Defendants. To begin with, *Cars Chaos* has only four lines of dialogue. In
2 fact, it is a stretch to even call it “dialogue.” Instead, a few of Plaintiff’s car
3 characters merely blurt out occasional “catch phrases” like “Dashed good chap,
4 what?” (Dr. Damien Daimler), “Wizard prang” (Jimmy Jensen), and “0,0 blast”
5 (James Aston-Martin). These apparent British expressions are not only fleeting, but
6 would likely be meaningless to American audiences.

7 In *Cookie*, Plaintiff’s other work, the cars do not even speak. There is only
8 dialogue between the humans. And that dialogue is R-rated, crude, immature and
9 crafted to elicit quick laughs. Plaintiff’s characters Mike and Brian are constantly
10 swearing; they refer to each other as “bitch” and they talk incessantly about sex,
11 genitalia and alcohol. The work is hardly similar to Defendants’ *CARS* works,
12 which are intended for a family audience. Furthermore, Defendants’ works consist
13 of fully fleshed-out dialogue, and thoughtful conversations so that audiences can
14 easily forget they are watching anthropomorphic cars rather than people. In short,
15 Plaintiff cannot show substantial similarity of dialogue between the parties’ works.

16 (4) Central Themes

17 Plaintiff’s *Cookie* has no broad message. At most, its theme is the banal
18 “slow and steady wins the race.” There is no moral to the story; no lessons learned.
19 Instead, the main characters seem utterly unchanged by their road trip. By the end
20 of their journey, they have not grown or changed in any way. Plaintiff’s *Cars Chaos*
21 synopsis about cartoon cars racing and crashing is even more devoid of any
22 particular meaning or message.

23 In stark contrast, Defendants’ works convey numerous broad messages and
24 morals. In *CARS*, Lightning McQueen learns that: winning isn’t everything; there is
25 more to life than fame and fortune; it takes teamwork to succeed; love conquers all;
26 don’t judge a car by its body; seemingly simple people can teach you important
27 lessons; and true friends will always be there for you. *CARS 2* also conveys
28 meaningful morals and messages, like the dangers of depending on fossil fuels; the

1 importance of not asking others to change who they are; and believing in yourself
2 even if others make fun of you. *CARS Toon* similarly plays on the message that you
3 cannot judge a car by its body, as well as the relationship between McQueen and
4 Mater.

5 In sum, there is no similarity whatsoever between the themes explored by
6 Defendants' works and Plaintiff's works (which essentially have no themes).

7 (5) Settings

8 *Cookie* takes place in 1988. The long-distance rally takes the characters
9 through England, France, Italy, Switzerland, Greece, Egypt, Jordan, Saudi Arabia,
10 Kuwait, Bahrain, Qatar, Abu Dhabi, Dubai, India, Malaysia, Singapore and
11 Australia. The *Cars Chaos* synopsis discusses the general concept of developing
12 stories in various international settings, and the single proposed episode actually
13 outlined by Plaintiff is set in the Swiss Alps. Aside from a few references to
14 "cliffs," "snow drifts," "mountain peaks," and the "Mont Blanc Tunnel," the outline
15 provides virtually no additional details or descriptions of the landscape or setting.

16 By comparison, *CARS* takes place in the present day and is set in an imaginary
17 version of the United States. The opening and ending sequences take place at
18 NASCAR-like racing circuits; one of them is described as the fictional "Los Angeles
19 International Speedway." The bulk of *CARS* takes place in Radiator Springs, a
20 fictional highway town on old Route 66 (in "Carburetor County"). Defendants'
21 visual depiction of the American Southwest landscape and scenery is spectacular
22 and almost photographic in its realism and attention to detail. *CARS* boasts
23 panoramic views of mountains and plateaus (sometimes shaped like hood
24 ornaments), water features, and forests unlike typical animated motion pictures. The
25 beauty of the landscape – and the poignant story of a small town's decline – is also
26 crucial to the storyline for at least two reasons. First, it explains why Sally "left the
27 big city" and fell in love with Radiator Springs. Second, the stunning setting
28 inspires Lightning McQueen to appreciate the world around him.

1 The town itself also plays an important role in *CARS*. Though the buildings
2 are modeled after real-world structures, upon closer inspection they reveal original
3 designs that flow from the premise of a world inhabited exclusively by cars. For
4 example, doorways are all large enough to accommodate cars; Flo’s Diner serves
5 gas and oil; Sally’s motel is a series of oversized orange cones that are also car-
6 ports; and the doctor’s office is a service station.

7 The setting for *CARS 2* is rich with similar details and contains the same
8 fictional twist on real landmarks and buildings adapted for a world inhabited by
9 anthropomorphic cars. For example, a significant portion of *CARS 2* takes place in
10 Porto Corsa, Italy, a fictional city on the Italian Riviera with massive bridges, rock
11 formations shaped like cars, and casinos where cars can gamble. Defendants’
12 settings are an original combination of pure fantasy and detailed realism. They are
13 nothing like the generic settings depicted in Plaintiff’s works.

14 **(6) Mood**

15 The mood of the parties’ respective works is also totally different. *Cookie* is
16 an upbeat “guy movie” about two buddies on a road trip, doing things “guys” are
17 often shown to do on such trips. Plaintiff uses the well-worn elements of slapstick
18 comedy, sex and car crashes to get laughs. *Cars Chaos* has a light mood that relies
19 on chaotic car crashes and a few British quips for humor.

20 Defendants’ *CARS* works are completely different and take audiences on an
21 emotional ride. They have innovative comedic scenes, such as when Mater shows
22 McQueen his favorite pastime: sneaking up on sleeping tractors, scaring them, and
23 watching them helplessly roll onto their backs (a play on “cow-tipping”). *CARS* also
24 has romantic scenes, most notably Sally and McQueen’s long drive through the
25 forest and mountains when they are falling in love. At times, the mood of *CARS* is
26 sad, such as the flashback comparing a once-bustling Radiator Springs to its present-
27 day economic blight, or the scenes in *CARS 2* when the characters are somberly
28 remembering Doc Hudson (voiced by Paul Newman) who has since passed away (a

1 tribute to the late, great actor). Additionally, unlike Plaintiff's works, the *CARS*
2 works are full of suspense. For example, in *CARS 2* Mater and the British spies
3 spend the better part of the story trying to solve a mystery and avert disaster. In
4 terms of mood, the parties' respective works are nothing alike.

5 * * *

6 In summary, applying the extrinsic test for substantial similarity to the parties'
7 works, and analyzing the factors discussed above, conclusively demonstrates that the
8 parties' respective works are dissimilar as a matter of law. Accordingly, the Court
9 should dismiss Plaintiff's copyright infringement claim with prejudice. *Zella*, 529 F.
10 Supp. 2d at 1133; *Funky Films*, 462 F.3d at 1077.

11
12 **IV. PLAINTIFF'S BREACH OF IMPLIED CONTRACT CLAIM IS TIME-BARRED**

13 The statute of limitations for breach of implied contract is two years from the
14 date of the alleged breach. Cal. Code Civ. Proc. § 339(1); *Thompson v. California*
15 *Brewing Company*, 191 Cal. App. 2d 506, 507 (1961); *Kourtis v. Cameron*, 419 F.3d
16 989, 1001 (9th Cir. 2005), *abrogated on other grounds*, *Taylor v. Sturgel*, 533 U.S.
17 880 (2008). Where, as here, a plaintiff alleges an implied promise by defendants to
18 pay for his idea, the limitations period begins to run on the date defendants first
19 began to use the plaintiff's idea. *Thompson*, 191 Cal.App.2d at 507. Specifically, in
20 the case of a purported promise to compensate a plaintiff for a motion picture idea,
21 the Ninth Circuit has held that the claim accrues no later than the date on which the
22 motion picture is released in theatres. *Kourtis*, 419 F.3d at 1000-01. Plaintiffs
23 cannot "attempt to extend the statute of limitations based upon a continuing
24 violation theory[.]" *Id.*

25 Here, Plaintiff claims there was an implied promise by Defendants to
26 compensate him for his "novel ideas for stories concerning 'anthropomorphic' cars
27 characters." Cplt. at ¶ 37. Plaintiff's complaint further alleges that "[i]n or about
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1 June 2006, Defendants released their ‘Cars’ motion picture worldwide for theatrical
2 exploitation.” Cplt. at ¶ 23. Therefore, on the face of the Complaint, Plaintiff’s
3 contract claims accrued no later than June 2006 – nearly five years ago.
4 Accordingly, the claim is time-barred as a matter of law. Code Civ. Proc. § 339(1);
5 *Thompson*, 191 Cal. App. 2d at 507; *Kourtis*, 419 F.3d at 1001 (affirming dismissal
6 of complaint as time-barred). Because Plaintiff is bound by the judicial admissions
7 in his Complaint, and because leave to amend would be futile, the implied contract
8 claim should be dismissed with prejudice. *Reddy v. Litton Indus., Inc.*, 912 F.2d
9 291, 296 (9th Cir. 1990) (district court may deny leave to amend when any proposed
10 amendment would be futile because it would require Plaintiff to make allegations
11 inconsistent with prior pleading).

12
13 **V. CONCLUSION**

14 Because a comparison of the parties’ works conclusively shows no substantial
15 similarity as a matter of law, the Court should dismiss Plaintiff’s First Cause of
16 Action for copyright infringement with prejudice. The Court should also dismiss
17 Plaintiff’s Second Cause of Action for breach of implied contract with prejudice
18 because Plaintiff’s own allegations conclusively show that it is time-barred.

19 Date: June 16, 2011

HOGAN LOVELLS US LLP

21 By: _____ /s/
22 David R. Singer

23 Attorneys for Defendants
24 THE WALT DISNEY COMPANY,
25 WALT DISNEY PICTURES,
26 DISNEY ENTERPRISES, INC.
27 and PIXAR
28