JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHRISTINE SAWICKY, Plaintiff, v. AMC NETWORKS INC., a Delaware corporation; DOES 1-10, inclusive, Defendants.	CASE NO. CV 18-114-R ORDER GRANTING AMC'S MOTION FOR JUDGMENT ON THE PLEADINGS

Before the Court is Defendant AMC Networks Inc.'s ("AMC") Motion for Judgment on the Pleadings, filed on May 1, 2018. (Dkt. 33). Having been thoroughly briefed by both parties, this matter was taken under submission on May 31, 2018.

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). Motions under Federal Rules of Civil Procedure 12(b) and 12(c) are "functionally identical." *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). Dismissal under Rule 12(b)(6) is proper only when a complaint exhibits either a "lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). Under *Twombly* and *Iqbal*, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face," so the defendant has "fair notice of what the…claim is and the

grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). On a Rule 12(c) motion, "the allegations of the non-moving party must be accepted as true," and judgment on the pleadings is proper when "the moving party clearly establishes on the face of the pleadings that no material issue of fact remains." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989). When considering a motion for judgment on the pleadings, a court typically does not consider material beyond the pleadings. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). However, a court may consider material the complaint relies on if the material's authenticity is uncontested. *Id.*

Plaintiff Christine Sawicky, appearing pro se, brings five claims: (1) copyright infringement, (2) unfair competition, (3) breach of contract, (4) breach of implied contract, and (5) breach of confidence.[1] AMC seeks dismissal of all claims.

As an initial matter, Sawicky requests leave to file a sur-reply in support of this motion based on AMC's "misinterpreted arguments." (Dkt. 52). All of AMC's arguments on reply are in direct response to Sawicky's opposition. It appears Sawicky seeks a second bite at the apple but does not show good cause to do so. Therefore, her request is denied.

Copyright Infringement

First, Sawicky alleges AMC violated the Copyright Act by infringing on her copyrighted reality television "concept," *Sons of the Legends* ("*SotL*"). She alleges AMC adapted protected elements of *SotL* into AMC's reality television series, *Growing Up Hip Hop* ("*GUHH*").

Sawicky alleges she owns a copyright in *SotL*, embodied in a PowerPoint presentation comprising a nine-sentence synopsis of *SotL*, biographies of three proposed *SotL* cast members, and a picture of Gandhi accompanied by a brief description of *SotL*'s inspirational theme. According to the synopsis, *SotL* purports to "follow[] the sons of some of the most legendary figures in American history" as they learn to "stand on their own and becom[e] their own person." *GUHH* is a reality television series that follows the children of famous hip hop musicians.

"To establish infringement, two elements must be proven: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). Copying is established by proof that (1) the

[1] Courts must liberally construe pro se pleadings. *Litmon v. Harris*, 768 F.3d 1237, 1241 (9th Cir. 2014).

defendant had access to the work and (2) the works are substantially similar in their protected elements. *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822 (9th Cir. 2002). Here, Sawicky's copyright ownership is not disputed—thus, two issues remain: (1) whether AMC had access to *SotL*, and (2) whether *SotL* and *GUHH* are substantially similar. The Court does not reach the question of access because, even assuming AMC had access to *SotL*, the two works are not substantially similar as a matter of law.

On a motion for judgment on the pleadings, a court may compare two works to determine whether they are substantially similar. *See Zella v. E.W. Scripps Co.*, 529 F. Supp. 2d 1124, 1130 (C.D. Cal. 2007). In preparing to rule on this motion, this Court has reviewed Sawicky's PowerPoint and watched the first season of *GUHH*.

"'Substantial similarity' refers to similarity of expression, not merely similarity of ideas or concepts." *Dr. Seuss Enters., L.P. v. Penguin Books USA, Inc.*, 109 F.3d 1394, 1398 (9th Cir. 1997). The Ninth Circuit's two-part method for determining whether two works are substantially similar involves both an objective, extrinsic test and a subjective, intrinsic test. *Narell v. Freeman*, 872 F.2d 907, 912 (9th Cir. 1989). Only the extrinsic test is important on a motion for judgment on the pleadings. *See Zella*, 529. F. Supp. 2d at 1133. A plaintiff who cannot satisfy this test loses as a matter of law. *Kouf v. Walt Disney Pictures & Television*, 16 F.3d 1042, 1045 (9th Cir. 1994).

"The extrinsic test is an objective test based on specific expressive elements: the test focuses on articulable similarities between the plot, themes, dialogue, mood, setting, pace, characters, and sequence of events in two works." *Benay v. Warner Bros. Entm't, Inc.*, 607 F.3d 620, 624 (9th Cir. 2010). "A court must take care to inquire only whether the protectable elements, standing alone, are substantially similar." *Id.* To do so, the court must filter out "unprotectable elements," including ideas, facts, and any elements borrowed from the public domain. *Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129, 1176-77 (C.D. Cal. 2001). The court then compares the remaining protected elements to look for objective similarities. *Id.* at 1177-78.

Sawicky's claim fails the extrinsic test because *SotL* does not share any protectable similarities with *GUHH*. In fact, the two works share little more than the same general premise—

1 following the children of famous people. First, *SotL*'s characters do not boast any protectable
2 elements. The PowerPoint lists a proposed cast for *SotL* that includes only factual biographies of
3 three real people.[2] Sawicky does not create any characters, and the general idea of casting
4 children of famous people is not protectable expression. *See Bethea v. Burnett*, 2005 U.S. Dist.
5 LEXIS 46944, at *40 (C.D. Cal. June 28, 2005) (a creator cannot copyright the idea of casting a
6 real person on a show). Moreover, none of *SotL*'s proposed cast members appeared on *GUHH*.
7 Second, Sawicky contends the settings of both works are "identical," but her PowerPoint
8 does not describe where *SotL* might take place. Third, Sawicky contends the moods of the two
9 works are similar but only generally characterizes the mood as "inspiration[al] and positiv[e]."
10 The general idea of creating an uplifting mood is unprotectable.
11 Finally, Sawicky contends that the works share an identical theme. In her PowerPoint,
12 Sawicky writes that *SotL* will "provide hope when all hope seems lost" and "provide the world
13 with content that actually makes people think about their place in life and how they…like anyone
14 else…can make a change." A picture of Gandhi also appears. The idea of creating a show that is
15 hopeful, inspirational, and positive does not constitute protectable expression. Moreover, *GUHH*
16 is not objectively hopeful or positive, instead focusing on the romantic and personal drama of its
17 cast.
18 In sum, Sawicky does not meet the extrinsic test because *SotL* and *GUHH* do not share any
19 protectable similarities. Accordingly, the works are not substantially similar as a matter of law,
20 and the copyright claim fails.
21 **Unfair Competition**
22 Second, Sawicky alleges unfair competition under California Business and Professions
23 Code Section 17200. AMC argues the claim is preempted by the Copyright Act.
24 Courts in the Central District routinely hold that "[c]laims for unfair competition are
25 preempted when they are essentially claims for copyright infringement." *Micro/sys v. DRS Techs.,*
26 *Inc.*, 2015 U.S. Dist. LEXIS 190099, at *15-16 (C.D. Cal. Feb. 18, 2015); *Bethea*, 2005 U.S. Dist.
27 LEXIS 46944, at *40; *Motown Record Corp. v. George A. Hormel & Co.*, 657 F. Supp. 1236,
28 1239-40 (C.D. Cal. 1987).

[2] One such biography is copied verbatim from the individual's Wikipedia page. Mot., Ex. B at 15-16.

1 Here, Sawicky's unfair competition claim is essentially a claim for copyright infringement.
2 Sawicky claims AMC violated Section 17200 by "appropriat[ing] and us[ing] Sawicky's
3 copyrighted works at little or no cost," without "authorization or consent," leading to "business
4 loss and injury." The misappropriation of intellectual property without permission is at the heart
5 of a copyright claim. Therefore, the unfair competition claim is preempted by the Copyright Act.
6 **Breach of Contract**
7 Third, Sawicky alleges breach of contract. She claims that she and AMC entered into a
8 nondisclosure agreement ("NDA"), which AMC breached when it aired *GUHH*. The NDA states
9 that AMC's obligations "do not extend to information that is…publicly known at the time of
10 disclosure or subsequently becomes publicly known through no fault of [AMC]."
11 Sawicky's own admissions demonstrate that the information covered by the NDA was
12 already publicly known. Sawicky alleges she filed her *SotL* synopsis with Copyright Office in
13 February 2013, well before AMC signed the July 2014 NDA. *See KEMA, Inc. v. Koperwhats*, 658
14 F. Supp. 2d 1022, 1030-31 (N.D. Cal. 2009) (information becomes public upon submission to the
15 Copyright Office). She further admits that several third parties were aware of *SotL*, and a
16 proposed cast member even posted the concept to his public social media page. These admissions
17 demonstrate that any public knowledge of *SotL* was not AMC's fault, and any information AMC
18 might have used was already publicly known. Thus, Sawicky's breach of contract claim fails.
19 **Breach of Implied Contract**
20 Fourth, Sawicky alleges breach of implied contract. AMC argues this claim fails because
21 the NDA is an express agreement that supersedes any purported implied contract.
22 Under California law, contracts may be formed expressly or by implication. *Guz v.*
23 *Bechtel Nat'l Inc.*, 24 Cal. 4th 317, 336 (2000). "[I]t is well settled that an action based on an
24 implied-in-fact or quasi-contract cannot lie where there exists between the parties a valid express
25 contract covering the same subject matter." *Lance Camper Mfg. Corp. v. Republic Indem. Co.*, 44
26 Cal. App. 4th 194, 203 (1996).
27 Here, Sawicky's claim fails because the NDA and alleged implied contract cover the same
28 subject matter. The NDA prohibits AMC from using or disclosing confidential information

related to *SotL* without Sawicky's authorization. Sawicky alleges that the implied contract similarly prohibits AMC from disclosing or using confidential information related to *SotL* without Sawicky's permission. Because both contracts cover identical subject matter, the breach of implied contract claim fails.

Breach of Confidence

Fifth, Sawicky alleges breach of confidence. To prevail on a claim for breach of confidence under California law, a plaintiff must demonstrate that she conveyed "confidential and novel" information to the defendant. *Berkla v. Corel Corp.*, 302 F.3d 909, 917 (9th Cir. 2002). As discussed above, Sawicky's idea was public and therefore not confidential. Thus, her breach of confidence claim fails.

IT IS HEREBY ORDERED that AMC's Motion for Judgment on the Pleadings is GRANTED. (Dkt. 33).

Dated: July 11, 2018.

MANUEL L. REAL
UNITED STATES DISTRICT JUDGE