

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

JS-6

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz	N/A
Deputy Clerk	Court Reporter / Recorder

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

**Proceedings:** IN CHAMBERS ORDER GRANTING MOTION FOR SUMMARY JUDGMENT [117].

**I. Introduction**

Plaintiffs Stephanie Counts (“Counts”) and Shari Gold (“Gold”) (collectively “Plaintiffs”) filed this copyright infringement action against Defendants Elizabeth Meriwether and Elizabeth Meriwether Pictures (“Meriwether”); William Morris Endeavor Entertainment, LLC (“WME”); Peter Chernin, the Chernin Group, LLC, and Chernin Entertainment, LLC (“Chernin”); Twenty-First Century Fox, Inc. and ten related entities (“Fox”); Jacob Kasdan (“Kasdan”); Brett Baer (“Baer”); David Finkel (“Finkel”); and American Nitwits. (Dkt. 97). Plaintiffs assert that Defendants used Plaintiffs’ screenplay *Square One* in the television show *New Girl*. After several rounds of motions to dismiss, Defendants moved for summary judgment against Plaintiffs’ remaining copyright infringement claim. (Dkt. 117). The Court held a hearing on the motion on September 21, 2015 and deferred ruling on the motion to allow Plaintiffs to depose Kelli Ward, the head of the Story Department at Defendant WME on issues related to access. On November 23, 2015, the parties submitted the transcript of the deposition. (Dkt. 165). For the following reasons, the Court GRANTS Defendants’ motion.

**II. Factual Background**

**A. The Parties**

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CIVIL MINUTES - GENERAL

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The facts are well-known to the parties and are recited at length in the Court’s October 15, 2014 Order. (Dkt. 84). The Court therefore only briefly touches upon the facts as they relate to the instant motion.

Plaintiffs wrote two versions of *Square One* in 2008 and 2009 (collectively “*Square One*”). (Plaintiffs’ Genuine Issues of Material Fact in Opposition to Summary Judgment (“GIMF”) ¶ 85). *Square One* is based on Counts’s own life experiences. (*Id.* ¶ 87). In 2008, Adam Venit (“Venit”), of Defendant WME, received a copy of *Square One* from Plaintiffs’ representative, Holly Harter (“Harter”). (*Id.* ¶ 89).<sup>1</sup> *Square One* was scanned into WME’s system and Venit ordered that coverage<sup>2</sup> be performed. (*Id.* ¶¶ 90-91). The coverage received a favorable grade. (*Id.* ¶ 92).

Harter was later introduced to David Karp (“Karp”), another agent who worked for Venit. (Harter Decl. ¶ 11). Karp received two versions of *Square One*, which were also scanned into WME’s system. (*Id.* ¶ 96).

In October of 2009, Plaintiffs parted ways with Harter after feeling frustrated with the slow advancement of *Square One*. (Counts Decl. ¶¶ 23-24). Plaintiffs remained in periodic contact with Karp from 2009 until June of 2010, although no progress was made on advancing *Square One* and they were never able to meet in-person to discuss the screenplay. (*Id.* ¶¶ 25-27).

In February of 2011, Counts discovered an article about a comedy entitled *Chicks & Dicks* written by Defendant Meriwether, set to premiere in September of 2011. (*Id.* ¶ 29). On July 25, 2011, Plaintiffs sent a cease and desist letter to Defendants Chernin and Fox. (Pl. Opp., Ex. 4, at 1458). On September of 2011, Defendant Fox premiered *New Girl* on its Fox television network.

Defendant Meriwether states that she drew inspiration for the show based on *Three’s Company*

<sup>1</sup> Although Plaintiffs allege that WME solicited *Square One*, there is no evidence that WME or Venit actually solicited the screenplay; rather, even in Harter’s declaration, she only goes as far as stating, “Venit was kind enough to consider the project I was developing at the time. . . .” (Harter Decl. ¶ 2).

<sup>2</sup> “Coverage” is an industry term used when a script is in the analysis and grading phase.

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CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
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and the British comedy, *Green Wing*. (Meriwether Decl. ¶ 7). Meriwether contacted Katherine Pope, President of Television at Chernin Entertainment, several times during August and September of 2010 regarding Meriwether’s concept for the show. (*Id.* ¶¶ 8-10). By September 18, 2010, Meriwether’s concept involved a reverse-*Three’s Company* where a woman moves in with three men and the show explores the characters’ messy dating lives as well as comedic moments naturally arising from their housing situation. (*Id.*, Ex. E). In January of 2011, Meriwether completed the pilot script, entitled *Chicks & Dicks*, which was shortly thereafter re-titled *New Girl*. (*Id.* ¶ 15-16).

**B. *Square One* (2008, 2009)<sup>3</sup>**

Plaintiffs’ screenplay begins with Greer McIntyre, a married woman in her thirties, driving across Georgia to Atlanta. Greer stops at a gas station, where she calls and leaves a voicemail for her best friend. In her message, she tells her friend that she is leaving her husband, Spencer, and will be living with some of her brother’s friends rent-free. Upon arriving at her brother’s friends’ house, she meets two of her new housemates, JC and Keegan. JC is described as clean-cut and Keegan is described as a former football player who is slightly out of shape. The home is a messy “bachelor pad.”

Greer spends some time alone in her room and Keegan, concerned for Greer, calls Greer’s brother who in turn calls Greer’s friend, Cat. Cat is married, in her thirties, and has two children. She checks in on Greer to make sure Greer is alright. Greer then cooks a full Southern spread for her new housemates. Greer decides to ask Ben, JC and Keegan’s older friend who lives in their converted garage, if he would like to join them for dinner. Upon stopping by the garage, Greer accidentally walks in on Ben’s girlfriend putting on her clothes. All of the housemates eat together and then Greer and Ben bond outside over a cigar.

JC gets Greer a job at an Atlanta hotel where he works. Greer meets a co-worker named Jasmine and her stern boss named Eleanor. After Greer’s first day, her housemates take her out to a bar where Ben works. They meet up with Greer’s brother, Jack, and his wife. Greer’s husband, Spencer, shows up at the bar after tracking down Greer. He apologizes and tells Greer that he will be a better partner and will try to have a child with her.

<sup>3</sup> As Plaintiffs’ 2008 and 2009 versions are virtually identical, the Court discusses both collectively.

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UNITED STATES DISTRICT COURT  
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CIVIL MINUTES - GENERAL

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

Greer leaves with Spencer to return to her home in Georgia. Upon returning home, a number of scenes occur: (1) Greer and Spencer visit a Home Depot where Greer flirts with an attractive employee; (2) Greer and Spencer visit a preacher for marriage therapy; and (3) Greer and Spencer attend a party at a country club. In one version of Plaintiffs’ screenplay, Greer also visits a high-end boutique with her sister-in-law and their mothers, and they buy dresses for her sister-in-law’s bridal shower.

At the bridal shower, Greer gets drunk and loud. She stumbles home and finds Spencer sleeping in the living room. When Spencer’s phone rings, Greer picks it up and hears a woman on the other end who says, “Hey Sexy,” thinking Spencer is on the line. Greer believes Spencer is cheating on her and goes out onto the front porch and creates a bonfire out of personal items from the house. Greer does a “little sexual dance” around the fire and the police come to arrest her. A crowd emerges including Spencer and Greer’s family, and Greer’s best friend, Cat. While leaving with the police, Greer breaks things off with Spencer for good.

Greer moves back in with JC, Keegan, and Ben in Atlanta. She returns to find a clean house and flowers. Greer then pawns her wedding ring and returns to her job at the hotel.

Although Plaintiffs focus their copyright claim on the first half of *Square One*, the Court briefly highlights the remaining major plot points as they provide context to analyze the similarity of characters, mood, and themes between *Square One* and *New Girl*:

- Greer attends Keegan’s office party as his “wingwoman” to help him connect with a woman he is interested in.
- While the housemates are at the bar where Ben works, JC makes dismissive comments about women in front of JC’s girlfriend, Becs. Greer later finds Becs upset in the bathroom and attempts to cheer her up.
- At the hotel, Greer’s boss, Eleanor, tells Greer that she will be responsible for taking care of Dusty Adams, a NASCAR driver staying at the hotel that week. Greer’s housemates are all excited, especially Ben, who grew up racing and is infatuated with Dusty.
- Greer runs into Ben’s 25-year old girlfriend, Pam, in the bathroom and they discuss how many sexual partners they have had. Greer mentions that she has only had one partner, Spencer. Pam gives Greer a makeover and presents her to her housemates as their “new, hotter roommate.” The housemates cheer approvingly.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

- At the hotel, Greer meets Dusty Adams and the two immediately share a connection and sleep with each other. Eleanor stops by Dusty’s room and Greer hides in the bathroom.
- Back home, Greer is contacted by Spencer, who has had her car towed as revenge for pawning her wedding ring. Greer gets drunk that night and is late for work the next day.
- When Greer arrives at the hotel, she finds Dusty meditating with his shirt off in the hotel lobby, surrounded by fans. Greer distracts the crowd and Dusty takes her to a spa and to lunch to help her with her hangover.
- Dusty asks Greer to go on tour with him. At that moment, Greer gets a call that her brother’s wife is about to give birth. Dusty drives Greer to the hospital with the help of a police escort. Greer then hosts a party for her friends and family at the house. At the party, Greer also gives JC advice on how to reconcile with his girlfriend, Becs.
- The next day, Greer works a black-tie event at the hotel. She tells Dusty she is not going on tour with him. While the 2008 and 2009 versions diverge slightly at this point, in both, Greer’s boss, Eleanor, fires Greer after seeing her kiss Dusty. In one version, after Greer arranges for two young NASCAR drivers to have a rendezvous with Eleanor in her office, Eleanor retracts the firing and gives Greer a promotion.
- The screenplay ends by flashing forward several months. JC and Becs are getting married, Ben now owns the bar, and Greer has bought a house of her own and has started a relationship with Ben.

*C. New Girl*

Although Plaintiffs do not identify the exact scope of Defendants’ alleged infringement, Plaintiffs allege that the majority of infringing activities occurs in the first two episodes of *New Girl*.

**1. *New Girl* (Episode 1)**

The pilot episode begins with Jessica (“Jess”) Day, a single woman, explaining that her story is like a bad horror movie. The show flashes back to Jess in a taxi wearing nothing but a trench coat, on her way to surprise her boyfriend, Spencer. She explains her plan to her best friend Cece, over the phone. When Jess arrives at Spencer’s house, she performs an awkward and clumsy strip tease, but is interrupted when another woman and Spencer come out of the bedroom in their underwear. The show flashes forward to the present, where it is revealed that Jess is telling this story to three men in a loft.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

Jess explains that she found their ad seeking a roommate on Craigslist and is interested in moving in due to her aforementioned experience with Spencer. The housemates are: (1) Nick, a grumpy bartender who is struggling to get over a former girlfriend; (2) Schmidt, a conceited, over-the-top womanizer, and (3) Coach, a personal trainer. Schmidt says something obnoxious and the other roommates make him put money in the “douchebag jar,” which becomes a running gag throughout the show. Jess describes herself as a teacher and warns the housemates that she likes to sing to herself, is emotional, and may watch *Dirty Dancing* repeatedly. The housemates agree to let Jess move in.

Jess spends her time grieving on the couch, crying, and watching *Dirty Dancing* repeatedly. The housemates become tired of seeing her upset and decide to take her out to find “rebound sex.” They go to the bar where Nick works.

At the bar, two sub-plots develop. First, Jess initially fails in approaching men due to her awkward, quirky personality. However, by the end of the night, she succeeds in scheduling a date for the following evening. Second, Schmidt tries desperately to convince Nick to call his ex-girlfriend because she is a promoter for a “Wild West” charity event taking place the following evening and can get them inside. Although Nick has not gotten over his break-up, he eventually calls his ex-girlfriend.

The next day, Jess’s best friend, Cece, meets the housemates in the loft. Cece is an attractive and confident model. Schmidt attempts to flirt with and impress Cece, but she rebuffs his advances. Cece helps prepare Jess for her date by giving her a makeover and presents her to the housemates. The housemates are impressed for a moment, but Jess quickly ruins the moment by performing a quirky and goofy dance, reminding them of her personality.

The housemates arrive at the Wild West charity event. Nick bonds with his ex-girlfriend. Nick then sees the man who is supposed to be on a date with Jess and learns that he stood her up. The housemates decide to leave the charity event to find Jess. They find her alone at a restaurant, about to be kicked out by the waitress, and tell the waitress that Jess’s dates have arrived. Jess is touched and begins to cry. The housemates start singing “Time of My Life” from *Dirty Dancing* to make her smile. They all get kicked out of the restaurant and spend the evening watching *Dirty Dancing* together on the couch.

**2. New Girl (Episode 2)**

The second episode begins with Jess accidentally breaking the housemates’ TV because of her

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

clumsiness. Jess mentions she has a TV at her ex-boyfriend's (Spencer's) house and the housemates demand that she retrieve it. The episode then follows Jess as she tries and fails to retrieve the TV from Spencer. Although Jess and Spencer meet at a park, Jess is unable to demand that he return her belongings and acquiesces to his request to drive his new girlfriend to the airport. Jess attempts to purchase a TV from a pawn shop to avoid confronting Spencer again, but does not have enough money.

Back at the loft, the housemates inspire Jess to be stronger against Spencer and accompany her to Spencer's house. When Jess arrives, she almost gives in to Spencer again, but sees that he has not been watering her plants. Jess becomes furious and runs into Spencer's house to collect her belongings. As she stumbles back to the car, Spencer confronts her and refuses to return some of her belongings. The housemates and Cece exit the car to support Jess. Jess finally stands up for herself and ends things with Spencer. The group returns to the loft.

### III. Analysis

#### A. Legal Standard

Rule 56(c) requires summary judgment for the moving party when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *See Fed. R. Civ. P. 56(c); Tarin v. County of Los Angeles*, 123 F.3d 1259, 1263 (9th Cir. 1997).

The moving party bears the initial burden of establishing the absence of a genuine issue of material fact. *See Celotex Corp v. Catrett*, 477 U.S. 317, 323-24 (1986). That burden may be met by "showing – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. Once the moving party has met its initial burden, Rule 56(e) requires the nonmoving party to go beyond the pleadings and identify specific facts that show a genuine issue for trial. *See id.* at 323-34; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1968). "A scintilla of evidence or evidence that is merely colorable or not significantly probative does not present a genuine issue of material fact." *Addisu v. Fred Meyer*, 198 F.3d 1130, 1134 (9th Cir. 2000). Only genuine disputes – where the evidence is such that a reasonable jury could return a verdict for the nonmoving party – over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *See Anderson*, 477 U.S. at 248; *see also Aprin v. Santa Clara*

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PMC  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

*Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001) (the nonmoving party must identify specific evidence from which a reasonable jury could return a verdict in its favor).

**B. Copyright Infringement**

To prevail on a claim for copyright infringement, a plaintiff must prove three essential elements: (1) plaintiff’s ownership of a valid copyright, (2) defendant’s access to the copyrighted work, and (3) “substantial similarity” between plaintiff’s copyrighted work and defendant’s allegedly infringing work. *See Funky Films, Inc. v. Time Warner Entertainment Co., L.P.*, 462 F.3d 1072, 1076 (9th Cir. 2006); *Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 481 (9th Cir. 2000); *Sid and Marty Krofft Television Productions, Inc. v. McDonald's Corp.*, 562 F.2d 1157, 1162 (9th Cir. 1977). As to the second element, if a plaintiff cannot demonstrate access, she may still prevail if she is able to demonstrate “striking similarity” between the works at issue. *Three Boys Music*, 212 F.3d at 485.

In the present action, Defendants do not dispute Plaintiffs’ valid copyright. However, Defendants contend that they did not have access to the copyrighted work, and that the works are not substantially similar as a matter of law.

**1. Access<sup>4</sup>**

**a. Evidence Considered**

Plaintiffs offer the expert opinion of Kathryn Arnold (“Arnold”) on the issue of access. Defendants argue that Arnold’s declaration should be stricken because she is not qualified to opine on matters of access under Fed. R. Evid. § 702.

Arnold possesses experience in “film production, acquisition, distribution, international sales, and film financing.” (Arnold Decl. ¶ 4). She has “worked in the development and production process on television shows and TV movies, served as an executive and head of production for the independent

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<sup>4</sup> The requirement to offer proof of access cannot be excused in this case because, for the reasons discussed *infra* in the Court’s substantial similarity analysis, the two works at issue are not “so strikingly similar as to ‘preclude the possibility of independent creation.’” *Jones v. Blige*, 558 F.3d 485, 493 (6th Cir. 2009).

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

production company, Cineville, LLC, and was instrumental in launching Cineville’s international film sales division in May 1998.” (*Id.*). Plaintiffs submit that Arnold is qualified to render an expert opinion on issues related to “access” because she has worked extensively within the entertainment industry and has, therefore, acquired knowledge about “industry practices, procedures, and about how things are done in Hollywood.” (Pl. Opp. Mot. in Limine, at 2).

The Court notes that Arnold may have some insight into industry practices by virtue of her interaction with agents over the last two decades. However, Arnold has never worked as an agent or at an agency herself, let alone at William Morris Endeavor or at either predecessor, William Morris or Endeavor. Arnold’s knowledge is limited to how scripts advance through agencies from the perspective of someone on the outside submitting a script. Therefore, Arnold cannot opine on how scripts are actually accessed within agencies (e.g., through electronic databases, word-of-mouth, etc.), and whether or how scripts are shared within a particular agency. *See Gable v. Nat’l Broad Co.*, 438 Fed.Appx. 587, 589 (9th Cir. June 16, 2011), *aff’g*, 727 F. Supp. 2d 815 (C.D. Cal. 2010) (finding the Court did not err in excluding David Nimmer’s expert report on substantial similarity because while he was undoubtedly an expert in the field of copyright law, he failed to establish that he had “knowledge, skill, experience, training, or education relevant to the evidence at issue). In light of Arnold’s lack of experience working in any agency, the Court is additionally skeptical of her strong conclusion that “Defendants most definitely had access to the script Square One . . . there is no question that Square One would have been widely available [sic] easily accessed by agents at WME and their clients who wrote and produced *New Girl*.” (Arnold Decl. ¶ 90). Accordingly, the Court does not find Arnold qualified to render an expert opinion on the issue of “access” in this case.

**b. Analysis**

To demonstrate access, Plaintiffs must show that Defendants had a “reasonable opportunity” or “reasonable possibility” of viewing Plaintiffs’ work prior to the creation of the infringing work. *Three Boys Music*, 212 F.3d at 482. Reasonable access requires more than a “bare possibility,” and “may not be inferred through mere speculation or conjecture.” *Three Boys Music*, 212 F.3d at 482. “In order to support a claim of access, a plaintiff must offer ‘significant, affirmative and probative evidence.’” *Jorgensen v. Epic/Sony Records*, 351 F.3d 46, 51 (2d Cir. 2003).

Absent direct evidence of access, a plaintiff may provide circumstantial evidence showing: “(1) a particular chain of events . . . between the plaintiff’s work and the defendant’s access to that work . . . or

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

(2) the plaintiff’s work has been widely disseminated.” *Three Boys Music*, 212 F.3d at 482. In the present case, Plaintiffs attempt to prove access by establishing a chain of events linking Plaintiffs’ screenplay with Defendants’ work.

Plaintiffs offer several theories of access to show that Defendant Meriwether, Defendant Chernin, or their agents, had a reasonable possibility of access to Plaintiffs’ script, *Square One*. Plaintiffs argue that: (1) in 2008, Adam Venit, a top WME partner and board member, solicited a copy of *Square One* from Plaintiffs’ former agent, Holly Harter; (2) Venit ordered that coverage of the script be performed; (3) the script received favorable coverage; (4) as a favorably covered script, *Square One* was widely accessible by all agents and was discussed at meetings; (5) Defendant Meriwether’s agent, Cori Wellins (“Wellins”), as well as Defendant Chernin’s agent, Rick Rosen (“Rosen”), were also agents at WME; (6) either Wellins or Rosen (or both) accessed *Square One* and passed it on to Defendant Meriwether or Defendant Chernin. Plaintiffs also offer evidence that (1) Venit referred another agent, David Karp, to communicate with Plaintiffs regarding *Square One*; and (2) Meriwether met Venit at a cocktail party around the time Meriwether allegedly created *New Girl*. Finally, Plaintiffs contend that Defendant Chernin was given material for development by WME as part of a deal between the two in exchange for WME representing Chernin’s television interests.

Defendants contend that Plaintiffs’ evidence of access only amounts to “bare corporate receipt,” which has been found insufficient to create a triable issue of fact as to access. *See Bernal v. Paradigm Talent & Literary Agency*, 788 F. Supp. 2d 1043, 1056 (C.D. Cal. 2010). In *Bernal*, the plaintiff argued that the defendant had access to plaintiff’s work through plaintiff’s submission of her screenplay to the defendant talent agency. *Id.* at 1043. The plaintiff argued the following chain of access: (1) she interacted with one agent at the firm regarding her script, (2) the firm was small, and (3) the agent who received plaintiff’s script often interacted with the agent for the creator of the allegedly infringing work, thereby creating a reasonable possibility of access. *Id.* at 1057-58. This Court rejected plaintiff’s theory of access and held that the plaintiff had not shown that the creator of the allegedly infringing work or her agent had any direct access to plaintiff’s work. *Id.* at 1056. In the present case, Defendants argue that Plaintiffs’ alleged chain of access ends with the agents to whom they submitted their work, Venit and Karp, and neither represented any clients involved in *New Girl*. (*See Venit Depo.*, 43:6-2, *Karp Depo.*, 143:22—144:3 (stating consistently with their declarations that they were not involved in any way with *New Girl* and did not discuss *Square One* or any coverage related to *Square One* with anyone)).

While Plaintiffs have offered more evidence of access than the plaintiff in *Bernal*, the Court

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

finds that Plaintiffs have only provided additional theories of access, rather than a qualitatively stronger theory of access than that of bare corporate receipt. First, that Venit and Karp received *Square One*, that they ordered coverage of *Square One*,<sup>5</sup> and that *Square One* received favorable coverage, is not probative of access without a link between their actions and either Defendant Meriwether, Defendant Chernin, or their agents, Cori Wellins and Rick Rosen. See *Meta-Film Associates, Inc. v. MCA, Inc.*, 586 F. Supp. 1346, 1358 (C.D. Cal. 1984) (stating that at a minimum, “the dealings between the plaintiff and the intermediary and between the intermediary and the alleged copier must involve some overlap in subject matter to permit an inference of access”). Otherwise, that Plaintiffs may have interacted with a few agents at WME is insufficient to show that other agents had a reasonable opportunity to access *Square One*. Plaintiffs put forth four theories establishing this link: (1) Meriwether met Venit around the time Meriwether allegedly created *New Girl*; (2) WME and Defendant Chernin have a special relationship where the former feeds promising material to the latter; (3) Meriwether’s and Chernin’s agents, Wellins and Rosen, work with Venit; and (4) favorably covered scripts at WME are accessible by all agents and are discussed at meetings.

First, although Meriwether admits to attending a cocktail party at Venit’s house, the party took place months after Meriwether came up with the premise for *New Girl* in September of 2010. (Roberts Decl. ¶ 6; Meriwether Decl. ¶¶ 8-14). The party was held on December 9, 2010, for the actress Emma Stone after she had finished the motion picture *The Help*. (Roberts Decl. ¶ 6). Moreover, even if the party had taken place prior to September of 2010, that Meriwether and Venit may have met briefly at a cocktail party does not, without any additional evidence, suggest that Meriwether therefore had access to *Square One*.

Second, Defendant WME admits that Defendant Chernin has asked WME to provide him with specific scripts and material for possible development in the past. (Answer ¶ 70). However, beyond this general admission, Plaintiffs offer no evidence detailing the scope of this relationship or how this relationship differs from an agency’s typical role of connecting and packaging screenwriters, directors, producers, and networks.

Third, Plaintiffs attempt to establish a link with the fact that Meriwether’s agent, Wellins, works for Venit and Chernin’s agent, Rosen, is a long-time partner of Venit at WME. However, there is

<sup>5</sup> Although Plaintiffs contend that coverage is a rare occurrence, in his deposition Venit testified that it is “standard practice” and that he “always” asks for coverage to be done. (Venit Depo., 23:3-13).

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

insufficient evidence that Venit or Karp worked with Wellins or Rosen on any projects, let alone *New Girl*. (See Venit Depo., 43:6-20 (stating that Wellins is one of roughly 4000 people who work for Venit and that he does not work with Wellins frequently because Wellins is a television agent)).

Fourth, Plaintiffs have not provided sufficient evidence that favorably covered scripts at WME were widely accessible by all agents. Plaintiffs offer a declaration by Kalli Knight, a former assistant who worked at Endeavor talent agency from 2003 to 2005. (Knight Decl. ¶ 3). Knight states that “[w]hen a submitted script received favorable coverage at Endeavor, it was subsequently widely distributed within the agency. All agents would have access to both the scripts and coverage.” (*Id.* ¶ 5). Moreover, Knight states that “[s]cripts that received favorable coverage were discussed in staff meetings at which agents, assistants, and partners were present.” (*Id.* ¶ 6). However, the Court finds that Knight lacks the personal knowledge necessary to support her statements. Fed. R. Evid. §§ 601, 602. Knight’s employment occurred three years prior to any of the events in this case took place. Moreover, Knight’s employment was at Endeavor, prior to the merger between Endeavor and William Morris. Accordingly, the Court finds that Knight does not have personal knowledge of how coverage was handled at William Morris Endeavor during the relevant time period (beginning in 2008 when Plaintiffs first sent *Square One* to Venit).<sup>6</sup>

What remains is undisputed testimony that at the time coverage of *Square One* was performed, any coverage, favorable or otherwise, was entered into WME’s computerized database, and only searchable by script title, artist, or date. (Ward Decl. ¶ 8). This level of access does not rise to the degree of dissemination Plaintiffs assert occurred; rather, the record establishes that if Defendant Meriwether’s or Defendant Chernin’s agents, Wellins or Rosen, wanted to access the script, they would have had to know at least some information about the screenplay they were searching for. In other words, Wellins or Rosen could not have searched the database for a “romantic comedy” that received a favorable rating in its coverage. (*Id.*).

Plaintiffs have not established any link between Venit and Karp’s exposure to *Square One* and Defendant Meriwether, Defendant Chernin, or their agents, Wellins or Rosen. Accordingly, without such a link, Plaintiffs’ theory is simply one of bare corporate receipt and the record is insufficient to

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<sup>6</sup> Even if the Court accepted Knight’s declaration, there would still be insufficient evidence to show that a favorably covered script in an agency’s motion picture department would also be widely distributed to and discussed in the agency’s television department.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

allow a reasonable jury to infer that Meriwether or Chernin had access to *Square One*. However, even if Plaintiffs presented sufficient evidence to create a triable issue of fact on access, Plaintiffs would still have to show that a reasonable jury could conclude that *Square One* and *New Girl* are substantially similar. As discussed below, Plaintiffs have failed to present sufficient evidence establishing substantial similarity between *Square One* and *New Girl*.

**2. Substantial Similarity**

In addition to access, the issue of substantial similarity provides an independent ground for granting summary judgment. To determine whether two works are substantially similar, the Ninth Circuit applies a two-part test consisting of intrinsic and extrinsic components. *Rice v. Fox Broadcasting Co.*, 330 F.3d 1170, 1174 (9th Cir. 2003). The extrinsic test involves an objective comparison of the two works. The Court must consider “whether [the works] share a similarity of ideas and expression as measured by external, objective criteria.” *Swirsky v. Carey*, 376 F.3d 841, 845 (9th Cir. 2004).

“For summary judgment, only the extrinsic test is important.” *Kouf v. Walt Disney Pictures & Television*, 16 F.3d 1042, 1045 (9th Cir. 1994). “A plaintiff who cannot satisfy the extrinsic test necessarily loses on summary judgment, because a jury cannot find substantial similarity without evidence on both the extrinsic and intrinsic tests.” *Id.* Further, because the intrinsic test relies on the subjective judgment of the ordinary person, it must be left to the jury. *Swirsky*, 376 F.3d at 845. Therefore, the Court’s analysis on summary judgment is limited to the extrinsic test.

Where literary works such as films, screenplays, and television series are at issue, the extrinsic test is an objective evaluation of “the articulable similarities between the plot, themes, dialogue, mood, setting, pace, characters, and sequence of events.” *Id.* In applying the test, the Court must distinguish between protectable and unprotectable material, because a party claiming infringement may not rely on expressions from unprotected elements. *Rice*, 330 F.3d at 1174. For example, general plot ideas are not protectable and cannot give rise to a copyright infringement claim. *Berkic v. Chrichton*, 761 F.2d 1289, 1293 (9th Cir. 1985) (“General plot ideas are not protected by copyright law; they remain forever the common property of artistic mankind.”). Further, the doctrine of *scenes a faire* “holds that expressions indispensable and naturally associated with the treatment of a given idea ‘are treated like ideas and are therefore not protected by copyright.’” *Rice*, 330 F.3d at 1175. Accordingly, the extrinsic test examines “not the basic plot ideas for stories, but the actual concrete elements that make up the total sequence of events and the relationships between the major characters.” *Berkic*, 761 F.2d at 1293.

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Initials of Preparer

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PMC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

Summary judgment on the issue of substantial similarity is appropriate “if no reasonable juror could find substantial similarity of ideas and expression.” *Kouf*, 16 F.3d at 1045. Although summary judgment is not highly favored on the issue of substantial similarity in copyright cases, “substantial similarity may often be decided as a matter of law.” *Funky Films*, 462 F.3d at 1077. Indeed, the Ninth Circuit “ha[s] frequently affirmed summary judgment on the issue of substantial similarity.” *Shaw*, 919 F.2d at 1355.

**a. Evidence Considered**

The Court engaged in a detailed analysis of the works at issue. The Court reviewed: (1) the *Square One* screenplay written by Plaintiffs in 2008; (2) the *Square One* screenplay written by Plaintiffs in 2009; (3) Defendant Meriwether’s *Chicks & Dicks* script; and (4) the entire first season of *New Girl* on DVD. As Plaintiffs allege that *New Girl*’s first two episodes “draw most heavily from Plaintiffs’ intellectual property and infringe on their rights,” the Court focused special attention on these episodes. (Third Amended Complaint ¶ 11 n.2). The Court also considered the parties’ briefs and supporting papers, as well as the expert reports submitted by Plaintiffs’ expert, Kathryn Arnold (“Arnold”), and Defendants’ expert, Mark Rose (“Rose”).

Defendants argue that the Court should reject Arnold’s report because she is not qualified to render an expert opinion regarding literary analysis. (Mot. in Limine No. 1, Dkt. 155). The Court disagrees. Arnold has “read, reviewed, and analyzed thousands of scripts.” (Arnold Decl. ¶ 2). Arnold has routinely provided “notes, revisions, changes, and critiques concerning character development, narrative, ideas, theme, and dialogue.” (Arnold Report, at 2). Arnold’s experience includes, but is not limited to, serving as the Head of Script Development at Monte Cristo from 2000 to 2009, writing and directing “Shining Stars: The Official Story of Earth, Wind & Fire,” and working as Head of Production and Script Development at Cineville from 1995 to 1999. (*Id.* at 2-3). Therefore, the Court finds Arnold qualified to opine as a literary expert.

The Court also finds Defendants’ expert, Mark Rose, qualified to opine as a literary expert. Rose possesses a Ph.D. in English literature from Harvard University, and has taught a wide range of literature courses for over forty years at various universities including Yale University, University of Illinois, Urbana, and University of California, Santa Barbara. (Rose Report, at 1). Rose has published ten books on literary and historical subjects and on the history of copyright. (*Id.*). Finally, Rose has been

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PMC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

retained as an expert in issues related to copyright infringement several times in the past. (*Id.*).

Although the Court finds both experts qualified to opine on the issue of substantial similarity, the Court notes that the existence of dueling experts does not necessarily present a triable issue of fact for the jury. Numerous cases have found in favor of defendants on the issue of substantial similarity despite the existence of expert testimony offered by plaintiffs. *See, e.g., Rice*, 330 F.3d at 1180; *Olson v. Nat'l Broadcasting Co., Inc.*, 855 F.2d 1446, 1451 (9th Cir. 1988); *Bernal*, 788 F. Supp. 2d at 1062. Therefore, summary judgment on the issue of substantial similarity is appropriate where, even considering the experts' testimony, no reasonable jury could conclude that the objective components of the works are substantially similar. *Bernal*, 788 F. Supp. 2d at 1062.

The Court also notes that expert testimony is far less critical in a case such as this, where the works are targeted at a general audience and deal with subject matter readily understandable by any ordinary person, including the Court. Here, specialized knowledge is not required to dissect the objective components of the copyrighted works. *Compare Swirsky*, 376 F.3d at 847-48 (relying on expert testimony comparing the objective elements—pitch, melodies, baselines, tempo, chords, structure, and harmonic rhythm—of musical works) *with Rice*, 330 F.3d at 1179 (upholding the district court's decision to disregard the parties' expert reports where the court engaged in an extensive analysis of the alleged similarities in expressive elements of the works and "neither expert opinion [was] very relevant to the conclusions drawn by the court"); *Olson*, 855 F.2d at 1450-51 (holding that the district court's decision to discount expert testimony was appropriate where the expert de-emphasized dissimilarities between the works and compared *scenes a faire*); *Shaw*, 919 F.2d at 1355 (viewing the expert report with caution where it focused on random similarities in the works).

Therefore, while the Court has considered both parties' expert reports, and the objective facts stated therein regarding the works, the Court finds that both reports offer little to that which the Court has observed in its own independent review of the works.

Ultimately, the Court concludes that no reasonable jury could find that *Square One* and *New Girl* are substantially similar.

**b. Plot and Sequence of Events**

Plaintiffs argue that the first two episodes of *New Girl* share over 15 plot points with *Square One*

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PMC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

in identical sequence. In particular, Plaintiffs highlight the following similarities:

- The protagonists are women in their late 20s, early 30s;
- Both works begin with the protagonists leaving their ex-partners named Spencer—in *Square One* he was her husband and in *New Girl* he was her long-term boyfriend;
- The reason for both break-ups is that the protagonists catch Spencer cheating;
- Both works begin with the protagonists needing to quickly find a new place to live;
- The breakdown of that long-term relationship with Spencer is the direct impetus for the move;
- The protagonists are hopelessly depressed, lie on the couch, and consume junk food while watching TV;
- The protagonists, in the romantic sense, are completely dependent and lost without Spencer;
- The protagonists’ new roommates hold an intervention given her depressed state;
- The protagonists’ best friend comes over to the bachelor pad to help her cope;
- The protagonists and the new roommates visit a bar where one of the roommates works;
- After the bar outing, the protagonists harbor hope that the relationship with Spencer can be saved, and the roommate who works at the bar attempts to convince the protagonist that Spencer needs to be forgotten;
- The protagonists go back to Spencer’s house, still harboring hope that things can work out;
- The protagonists, upon realizing that Spencer is completely unworthy and will not change, spectacularly and publicly end the relationship once and for all on Spencer’s front lawn;
- After the public humiliation in both works, the best friend character sarcastically tells Spencer off;
- In both works, the roommate who works at the bar has an immediate connection with the protagonist, and the connection grows over the course of both works (in the episodes of *New Girl*).

While at first blush, these similarities in plot and sequence of events appear significant, after sifting through various mischaracterizations of the plot and excluding *scenes a faire*, the Court finds that few similarities remain.

First, many of the similarities highlighted by Plaintiffs are *scenes a faire* or familiar stock scenes that flow naturally from the basic premise of a protagonist suffering from a break-up and ultimately moving past the break-up. Therefore, the sequence of (1) a break-up due to a partner’s infidelity; (2) the

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Initials of Preparer  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

protagonist leaving the cheating partner; (3) the protagonist going through a phase of depression; and (4) the protagonist receiving support from her best friend is not protectable. Moreover, a temporary regression by the protagonist in returning to her cheating partner is a familiar stock scene that naturally flows from this concept. Therefore, after sifting through these unprotected elements, what remains, at most, are the few scenes in the following sequence: (1) the protagonist goes to a bar where one of the roommates works, (2) then goes back to the cheating partner's house hoping the relationship will work out, and finally (3) ends the relationship on the cheating partner's front lawn.

However, even this sequence appears differently in the two works when considered in context. In *Square One*, Spencer tracks down Greer at a bar, apologizes, and convinces her to go back to their home in Georgia. Spencer and Greer then spend an extended period of time together. They go shopping, attend therapy with a preacher, and go to a party at a country club. Then, Greer finally confirms Spencer's infidelity when she catches him receiving a phone call from another woman. This sparks her decision to finally end things with Spencer. She burns his personal property on his front lawn and is taken away from the scene by the police. In *New Girl*, the roommates' visit to the bar is unrelated to Jess contacting Spencer; Spencer does not track down Jess or attempt to contact her in any way. Rather, Jess's breaking of her housemates' television serves as the catalyst for her reaching out to Spencer so that she can retrieve the television she left at Spencer's house. Moreover, while in *Square One*, Greer and Spencer attempted to reconcile after Greer moved back to Georgia with Spencer, there was no comparable attempt to repair the relationship between Jess and Spencer in *New Girl*. Rather, Jess could not stand up for herself and agreed to drive Spencer's new girlfriend to the airport. Finally, in *New Girl*, although Jess also finalizes her break-up with Spencer on his front lawn, it is not precipitated by her confirming that Spencer is cheating on her (as she had already witnessed it first hand); rather, it is through seeing that Spencer had not watered her plants, as well as through the support of her new housemates, that she finally stands up to Spencer.

The remaining purported similarities are also distinguishable. For example, although Plaintiffs claim that both plots involve a "strip tease," they are completely different when considered in context. In *New Girl*, Jess performs an awkward and clumsy strip tease in an attempt to seduce Spencer. In *Square One*, after Greer confirms Spencer's infidelity, she creates a bonfire on Spencer's lawn and dances seductively around the fire, ultimately ripping off her dress and throwing it in the fire as well. Greer does not dance around the fire and strip her clothing for Spencer or for anyone else; it cannot accurately be described as a strip tease.

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Initials of Preparer

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PMC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

In *Funky Films, Inc.*, both plots centered on the death of a family patriarch who left the family’s two sons to run the family funeral home. 462 F.3d at 1075. Both works also involved the return of one son to his hometown to help in the business, another son changing his religion to aid the business, and a competitor bidding on the business. The Ninth Circuit noted these similarities, but concluded that “general plot ideas are not protected by copyright law, they remain forever the common property of artistic mankind.” *Id.* at 1081. Similarly, in *Benay v. Warner Bros. Ent., Inc.*, the Ninth Circuit found that no substantial similarity existed between two works that shared (1) identical titles, (2) the historically unfounded premise of an American war veteran going to Japan to help the Imperial Army by training it in the methods of modern Western warfare for its fight against a samurai uprising, (3) protagonists who were authors of non-fiction studies on war and who had flashbacks to battles in America, (4) meetings with the Emperor and numerous battle scenes, (5) reverence toward Japanese culture, and (6) the feature of the leader of the samurai rebellion as an important foil to the protagonist. 607 F.3d 620, 625 (9th Cir. 2010).

Similar to the works in *Funky Films* and *Benay*, *Square One* and *New Girl* are not substantially similar in their plot and sequence of events when looking only at the protectable elements of the works.

Plaintiffs also argue that even if the Court finds that the general ideas in the copyrighted work are not protectable, the Ninth Circuit has held that the “presence of so many generic similarities and the common patterns in which they arise” can satisfy the substantial similarity test. *Metcalf v. Bochco*, 294 F.3d 1069, 1073-74 (9th Cir. 2002). In *Metcalf*, the Ninth Circuit found that the works had the same setting in the same location and city, dealt with identical issues, had similar looking characters in identical professions, facing identical challenges, and had an identical sequence of events. *Identity Arts v. Best Buy Enterprise Servs.*, 2007 WL 1149155, at \*27 (N.D. Cal. Apr. 18, 2007) (summarizing the facts in *Metcalf*). Since *Metcalf*, however, courts within this circuit have been reluctant to expand the concept of finding copyright protection for a pattern of unprotected elements in literary works beyond the clear-cut case in *Metcalf*. See, e.g., *Gable v. Nat’l Broad Co.*, 727 F. Supp. 2d 815, 843-44 (C.D. Cal. 2010); *Shame on You Productions, Inc. v. Elizabeth Banks*, 2015 WL 4885221, at \*31-32 (C.D. Cal. Aug. 14, 2015); *Zella v. Scripps Co.*, 529 F. Supp. 2d 1124, 1138 (C.D. Cal. 2007); *Identity Arts*, 2007 WL 1149155, at \*28; *Flynn v. Surnow*, 2003 WL 23411877, at \*9 (C.D. Cal. Dec. 9, 2003). The Court finds the present case distinguishable from *Metcalf* for the same reasons—the generic similarities here hardly rise to the degree of striking similarity found in *Metcalf*.

For the foregoing reasons, the Court finds that *Square One* and *New Girl* are not substantially

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Initials of Preparer

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

similar in their plot and sequence of events.

**c. Characters**

Generalized character types are not protected by copyright law. *Rice*, 330 F.3d at 1175; *Kouf*, 16 F.3d at 1046. However, the Ninth Circuit has “allowed copyright protection for characters who are especially distinctive.” *Olson*, 855 F.2d at 1452.

Plaintiffs argue that the following pairs of characters are similar: (1) Greer and Jess; (2) Spencer and Spencer; (3) Cat and Cece; (4) Ben and Nick; (5) Keegan and Schmidt; and (6) JC and Coach. The Court finds that none of the characters in *Square One* are sufficiently distinctive to be afforded copyright protection and, even if they were, they are not substantially similar to the characters in *New Girl*.

Both *Square One* and *New Girl* have leading female characters in their 20s/30s. Plaintiffs argue that both protagonists are optimists, sexually inexperienced, feminine, have a hard time fitting in, attempt to cook and be domestic for their roommates, and use outdated phrases. As the Court stated above, most of these similarities are ordinary and cannot be afforded protection. Moreover, while Jess is overtly quirky, awkward and goofy in her personality, Greer does not possess similarly distinctive qualities. Greer certainly is not portrayed in *Square One* as quirky, awkward, or goofy.

Both works also contain the protagonists’ unfaithful partner named Spencer. However, although the similarity in name may be relevant to whether the two characters are similar, the name “Spencer” itself is not protectable. See C.F.R. § 202.1 (“Material Not Subject to Copyright”). Beyond the same name and role as an unfaithful partner, the characters do not share any similarities. In *Square One*, Spencer is from an affluent family and is portrayed as preppy and wealthy. He spends time at the local country club, and makes disrespectful comments to Greer. In response to Greer pawning her wedding ring, Spencer has Greer’s car towed. In *New Girl*, Spencer is portrayed as a relatively mellow and oblivious character. Spencer is certainly disrespectful toward Jess in that he cheated on her, but he does not act vindictively toward Jess. Further, he does not command any wealth, and is not preppy or well-refined in any respect (i.e., he did not even own a car to be able to drive his new girlfriend to the airport).

While Cat and Cece play the roles of Greer’s and Jess’s best friends, respectively, they are not substantially similar. While both characters are confident and assist the protagonists out of their

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Initials of Preparer

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PMC  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

depression following their break-up, that role flows naturally from the basic plot premise and cannot be afforded protection. Similarly, that both Cat and Cece “do[] not like Spencer and let him know it” is not a protectable characteristic. (Pl. Opp. at 21). Beyond that, the characters are not substantially similar as Cat is a married mother of two children, while Cece is a single, fashion model.

In both *Square One* and *New Girl*, Ben and Nick share similarities in that they work at a local bar<sup>7</sup> and ultimately become the love interest for the protagonist. However, beyond these general similarities, the characters are not sufficiently distinctive to be afforded protection. In *Square One*, Ben is first portrayed as the older, laid-back roommate, who is dating a younger, sexy girlfriend. Ben lives in the converted garage to the house. He appears to lack motivation, but ultimately owns the bar where he works at the end of the screenplay. In *New Girl*, Nick is portrayed as grumpy and curmudgeonly. Nick was roommates with Schmidt in college and is not portrayed as an older housemate in the group. Moreover, while Ben calmly handles his break-up with his girlfriend, Nick has extreme difficulty moving past his break-up and has a severe breakdown in the first few episodes of *New Girl*.

Plaintiffs also compare Keegan and Schmidt.<sup>8</sup> Plaintiffs compare both characters as the “loveable narcissist who has a lack of self-confidence masked by being overly masculine,” who “constantly draws attention to himself,” and who has the closest relationship with the protagonist. However, the two characters are not substantially similar. First, in *Square One*, Keegan is described as a former football player who is slightly out of shape. In *New Girl*, Schmidt is in the best shape of the housemates and takes off his shirt multiple times in the first few episodes to show off his body. Second, while Schmidt is portrayed as the young professional of the housemates who makes the most income, Keegan does not have a similar role in *Square One*. In fact, Plaintiffs’ expert describes Keegan as “a former football player who doesn’t have new direction in his life.” (Arnold Report, at 12). Third, while

<sup>7</sup> The Court also notes Defendants’ argument that while Ben works at a local bar, it is not clear that he is a bartender like Nick. *Square One* only indicates that Ben works at a local bar and is involved with the musical dimension of the enterprise.

<sup>8</sup> To illustrate the unprotectable traits of these characters, the Court notes that Plaintiffs initially drew a comparison between JC and Schmidt, and Keegan and Coach, in their cease and desist letter to Defendants. (Pl. Opp., Ex. 4, at 1459) (comparing JC and Schmidt as “both socially conscious, young professional types who fancy themselves as playboys” and Keegan and Coach as “both out of shape, ex-athlete types who have a difficult time relating to women.”).

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Initials of Preparer

\_\_\_\_\_  
PMC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

Keegan is portrayed as a slightly sloppy character (e.g., spilling a glass and not bothering to pick it up, scratching his balls in the morning, etc.), Schmidt is very concerned with presenting himself as neat and clean-cut, often obsessing over high-quality beauty products and cleaning the apartment. Finally, although Plaintiffs describe both characters as having difficulty relating to women, this trait only appears at a surface level and applies to almost all of the characters in the works.

Plaintiffs compare JC and Coach/Winston. Plaintiffs argue that of the three roommates, he has a tertiary role, and that Greer helps JC to better connect with his girlfriend, similar to how Jess helps Coach talk to women. These apparent similarities are too general to be afforded protection. Moreover, to the extent these traits would be protectable, the Court finds that Coach/Winston actually share more similarities to Keegan, than to JC.

Finally, the Court notes that several key characters in *Square One* have no analog in *New Girl*—most notably, the NASCAR driver Dusty Adams.

Therefore, for the foregoing reasons, the Court finds that the characters between the two works are not substantially similar.

**d. Mood and Pace**

The mood of the works is similar in that both have comedic elements. However, *Square One* can be more accurately described as a romantic comedy, while *New Girl* is a comedic, ensemble sitcom. Further, the pace of the works differs as *Square One* is paced as a full-length feature film, and *New Girl* is paced as a television show. While *Square One* follows a clear arc throughout the screenplay, each *New Girl* episode relays a brief interlude in the lives of the main characters and does not follow a clear overarching plot.

Therefore, although both works contain comedic elements, the mood and pace of the works are not substantially similar.

**e. Setting**

*Square One* takes place in Georgia, which has some influence on the work. Much of the dialogue, characters, and scenes relate to the South (i.e., terms of speech such as “y’all,” “Southern

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Initials of Preparer

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

matriarch,” and “Southern gentleman;” character names such as “Laura Lynn” and “Mary Elizabeth;” activities such as mechanical bull riding). In contrast, *New Girl* is set in Los Angeles, and the setting does not appear relevant or important to the plot.

Although both works have scenes in a living room with an L-shaped couch and television, as well as in a bar, these are stock settings that are not protectable. As Defendants point out, many sitcoms feature a living room as the primary setting along with a secondary setting at a restaurant or bar (e.g., *Seinfeld*, *Friends*, *How I Met Your Mother*). Moreover, despite some similarities in setting, the context in which these settings appear is different and of minimal significance to the work itself. For example, in *Square One*, Greer visits a pawn shop to sell her wedding ring once she finalizes her separation from Spencer, while in *New Girl*, Jess visits a pawn shop to purchase a replacement television for her roommates. In addition, as the Court stated in its plot analysis above, the contexts in which the protagonists break-up with Spencer on his front lawn are significantly different and the lawn itself is simply a commonplace setting—it is by no means unique or unusual. Finally, many scenes in *Square One* also take place at Greer’s place of work, the hotel; however, no such analog appears in *New Girl*.

Therefore, while the works share some similar settings, the vast majority of settings are unprotectable, stock settings, and the most important aspect (i.e., a Southern setting) in *Square One* does not appear in *New Girl*.

**f. Themes**

Plaintiffs contend the two works share similar themes: (1) a group of friends relying on each other; (2) a rite of passage/break with the past; (3) the protagonist overcoming awkwardness; (4) the protagonist getting past sexual inexperience; and (5) the protagonist slowly developing a relationship with the pessimist roommate. However, most of these themes only appear in one work or do not exist at all. For example, a break with the past is the primary theme in *Square One*, which is ultimately a story about becoming independent in the wake of a difficult break-up and starting over (i.e., starting from “square one”). Greer leaves her cheating husband and old life to move to a new city, to make new friends, and to begin a new job. This theme is further strengthened by Greer’s regression halfway through the screenplay when she attempts to reconcile with Spencer, but ultimately reaffirms that she should not stay with him. Ultimately, the screenplay ends with Greer having a firmer grasp on her identity and creating a new direction in life. In *New Girl*, however, while a portion of the plot necessarily involves Jess’s separation from Spencer, it serves primarily as a plot device to thrust Jess

\_\_\_\_\_  
Initials of Preparer

\_\_\_\_\_  
PMC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	2:14-cv-00396-SVW-CW	Date	December 30, 2015
Title	<i>Stephanie Counts et al v. Elizabeth Meriwether et al</i>		

into her new roommate situation. Jess does not undergo any transformation or liberation as a result of the break-up. In addition, overcoming awkwardness and getting past sexual inexperience are not themes in either work. Although Greer undergoes a transformation throughout *Square One* into a more confident woman, at the beginning of the screenplay she could not be described as awkward. On the other hand, awkwardness is a defining characteristic of Jess in *New Girl*, but she does not overcome it in any way throughout the first season of the show. And while both characters are sexually inexperienced, getting past that inexperience is not a focus of either work.

The Court does find that both works utilize the theme of friendship. However, while this is a secondary theme in *Square One*, friendship is the primary and perhaps only theme in *New Girl*. In *New Girl*, the theme of friendship is emphasized when Jess's housemates leave the Wild West charity event to rescue Jess at the restaurant where she was stood up, and when they support Jess as she finally stands up to Spencer.

Therefore, as the underlying theme of *Square One* is that of liberation, independence, and breaking from the past, while the underlying theme of *New Girl* is that of friendship, the Court does not find that the two works share substantially similar themes.

**g. Dialogue**

To support a claim of substantial similarity based on dialogue, the plaintiff must demonstrate "extended similarity of dialogue." *Olson*, 855 F.2d at 1450. Ordinary words and phrases are not entitled to copyright protection, nor are "phrases or expressions conveying an idea typically expressed in a limited number of stereotyped fashions." *Narell v. Freeman*, 872 F.2d 907, 911-12 (9th Cir. 1989).

Plaintiffs argue that in both works, the roommates react in a similar way when the protagonist presents herself dressed up. In particular, Plaintiffs point out that in *Square One* the roommates respond with, "Wow! Look at you" and in *New Girl*, the roommates respond with "Wow, you look great!" These ordinary phrases are not a protectable similarity of dialogue.

**IV. Conclusion**

Plaintiffs have not introduced evidence demonstrating a triable issue of fact regarding Defendants' access to *Square One*. Moreover, even assuming arguendo that a triable issue of access

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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Date December 30, 2015

Title *Stephanie Counts et al v. Elizabeth Meriwether et al*

exists, no reasonable jury could conclude that there are substantial similarities in the plot, sequence of events, characters, mood, pace, setting, theme, or dialogue between *Square One* and *New Girl*. For these reasons, the Court GRANTS Defendants' motion for summary judgment.

Defendants shall submit a proposed judgment consistent with this order.

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