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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDEN FILM PRODUCTION LLC,) Case No. CV 24-09851 DDP (SKx)
Plaintiff,)
v.) **ORDER GRANTING DEFENDANTS' MOTION**
LOCKJAW LLC, et al.,) **TO DISMISS**
Defendants.) [Dkt. 27]

Presently before the court is a Motion to Dismiss (Dkt. 27) filed by defendants Lions Gate Entertainment, Inc., Showtime Networks, Inc., Beer Christmas, Ltd., Ashley Lyle, and Bart Nickerson (collectively, "Defendants"). Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following Order.

I. Background

In 2015, Plaintiff Eden Film Production LLC ("Plaintiff") registered a motion picture copyright for the feature film "Eden" ("the Movie"). (Complaint at 1.) As described in more detail herein, the Movie is a "survival thriller about a U.S. men's soccer

1 team that crashes on a deserted island after a World Cup match.”¹
2 (Complaint ¶ 22.) As alleged in the Complaint, “the survivors
3 . . . must fight for their lives against the harsh elements,
4 starvation through dwindling resources, and the psychological toll
5 of isolation in the form of growing darkness within themselves.”
6 “Yellowjackets” is a television show written, produced, and
7 distributed by Defendants. As detailed below, the show revolves
8 around a high school girls’ soccer team that crashes in the
9 Canadian wilderness en route to a match.

10 Plaintiff’s Complaint alleges that Yellowjackets is
11 substantially similar to and derivative of the Movie. Accordingly,
12 Plaintiff brings a claim for copyright infringement, pursuant to 17
13 U.S.S. §§ 101 et seq. Defendants now move to dismiss the
14 Complaint.

15 **II. Legal Standard**

16 A complaint will survive a motion to dismiss when it
17 “contain[s] sufficient factual matter, accepted as true, to state a
18 claim to relief that is plausible on its face.” Ashcroft v. Iqbal,
19 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550
20 U.S. 544, 570 (2007)). When considering a Rule 12(b)(6) motion, a
21 court must “accept as true all allegations of material fact and
22 must construe those facts in the light most favorable to the
23 plaintiff.” Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000).
24 Although a complaint need not include “detailed factual
25 allegations,” it must offer “more than an unadorned,
26

27 ¹ This Order contains several “spoilers,” or descriptions of
28 plot points, some of them violent and gruesome, for the Movie and
the television series “Yellowjackets.”

1 the-defendant-unlawfully-harmed-me accusation." Iqbal, 556 U.S. at
2 678. Conclusory allegations or allegations that are no more than a
3 statement of a legal conclusion "are not entitled to the assumption
4 of truth." Id. at 679. In other words, a pleading that merely
5 offers "labels and conclusions," a "formulaic recitation of the
6 elements," or "naked assertions" will not be sufficient to state a
7 claim upon which relief can be granted. Id. at 678 (citations and
8 internal quotation marks omitted).

9 "When there are well-pleaded factual allegations, a court
10 should assume their veracity and then determine whether they
11 plausibly give rise to an entitlement of relief." Iqbal, 556 U.S.
12 at 679. Plaintiffs must allege "plausible grounds to infer" that
13 their claims rise "above the speculative level." Twombly, 550 U.S.
14 at 555-56. "Determining whether a complaint states a plausible
15 claim for relief" is "a context-specific task that requires the
16 reviewing court to draw on its judicial experience and common
17 sense." Iqbal, 556 U.S. at 679.

18 **III. Discussion**

19 A copyright infringement claim must adequately allege "(1)
20 ownership of a valid copyright, and (2) copying of constituent
21 elements of the work that are original." Feist Pubs., Inc. v.
22 Rural Tel. Serv. Co., Inc., 499 U.S. 340, 361 (1991). In the
23 absence of direct copying, a copyright complaint must allege that
24 (1) the infringer had access to the protected work and (2) the
25 works are substantially similar in their protected elements. Funky
26 Films, Inc. v. Time Warner Entm't Co., L.P., 462 F.3d 1072, 1076
27 (9th Cir. 2006); Cavalier v. Random House, Inc., 297 F.3d 815, 822
28 (9th Cir. 2002); Wild v. NBC Universal, Inc., 788 F.Supp.2d 1083,

1 1098 (C.D. Cal. 2011), aff'd 513 F. App'x 640 (9th Cir. 2013).
2 Defendants, without conceding that access has been adequately
3 alleged, here contend only that the Complaint fails to sufficiently
4 allege substantial similarity of protected elements.

5 A. Comparisons at the Pleading Stage

6 As an initial matter, Plaintiff asserts that inquiries into
7 substantial similarity are inappropriate at the motion to dismiss
8 stage, and should instead be reserved for summary judgment. (Opp.
9 at 5.) It is well settled, however, "that when the copyrighted
10 work and the alleged infringement are both before the court,
11 capable of examination and comparison, non-infringement can be
12 determined on a motion to dismiss." Christianson v. W. Pub. Co.,
13 149 F.2d 202, 203 (9th Cir. 1945). Indeed, courts in this district
14 regularly conduct infringement analyses at the pleading stage.
15 See, e.g., Silas v. Home Box Off., Inc., 201 F. Supp. 3d 1158, 1171
16 (C.D. Cal. 2016), aff'd, 713 F. App'x 626 (9th Cir. 2018); Wild,
17 788 F. Supp. 2d at 1098; Campbell v. Walt Disney Co., 718 F. Supp.
18 2d 1108 (N.D. Cal. 2010).

19 That said, substantial similarity analyses are comprised of
20 two parts, only one of which is amenable to resolution on a motion
21 to dismiss. "The 'intrinsic test' is a subjective comparison that
22 focuses on whether the ordinary, reasonable audience would find the
23 works substantially similar in the total concept and feel of the
24 works." Cavalier v. Random House, Inc., 297 F.3d 815, 822 (9th
25 Cir. 2002) (internal quotation marks omitted). Given that
26 subjectivity, the intrinsic test "is the exclusive province of the
27 jury." Funky Films, 462 F.3d at 1077; see also Rentmeester v.
28 Nike, Inc., 883 F.3d 1111, 1118 (9th Cir. 2018), overruled on other

1 grounds by Skidmore as Tr. for Randy Craig Wolfe Tr. v. Led
2 Zeppelin, 952 F.3d 1051 (9th Cir. 2020) ("Only the extrinsic test's
3 application may be decided by the court as a matter of law."). The
4 "extrinsic test," in contrast, "is an objective comparison of
5 specific expressive elements [that] focuses on articulable
6 similarities between the plot, themes, dialogue, mood, setting,
7 pace, characters, and sequence of events in two works." Cavalier
8 297 F.3d at 822 (internal quotation marks omitted); see also Funky
9 Films, 462 F.3d at 1072 ("Extrinsic analysis is objective in
10 nature. It depends not on the responses of the trier of fact, but
11 on specific criteria which can be listed and analyzed.") (internal
12 quotation marks and alteration omitted); Berkic v. Crichton, 761
13 F.2d 1289, 1292 (9th Cir. 1985). Courts can, and do, analyze these
14 objective elements at the motion to dismiss stage. See Silas 201
15 F. Supp. 3d at 1172 (C.D. Cal. 2016); Advanta-STAR Auto. Rsch.
16 Corp. of Am. v. Search Optics, LLC, 672 F. Supp. 3d 1035, 1047
17 (S.D. Cal. 2023); Kevin Barry Fine Art Assocs. v. Ken Gangbar
18 Studio, Inc., 391 F. Supp. 3d 959, 966 (N.D. Cal. 2019); Erickson
19 v. Blake, 839 F. Supp. 2d 1132, 1136 (D. Or. 2012); Capcom Co. v.
20 MKR Grp., Inc., No. C 08-0904 RS, 2008 WL 4661479, at *5 (N.D. Cal.
21 Oct. 20, 2008).

22 B. Extrinsic analysis

23 In conducting extrinsic analyses of specific objective
24 elements, courts must remain mindful that not "every element of the
25 work may be protected. Originality remains the sine qua non of
26 copyright; accordingly, copyright protection may extend only to
27 those components of a work that are original to the author."
28

1 Feist, 499 U.S. at 111. Thus, courts "must take care to inquire
2 only whether the protectible elements, standing alone, are
3 substantially similar," and "filter out and disregard the
4 non-protectible elements." Cavalier, 297 F.3d at 822 (cleaned up).
5 For example, "[f]amiliar stock scenes and themes that are staples
6 of literature are not protected." Id. "Scenes-a-faire, or
7 situations and incidents that flow necessarily or naturally from a
8 basic plot premise," are similarly unprotected. Id.; see also
9 Satava v. Lowry, 323 F.3d 805, 810 (9th Cir. 2003) ("[E]xpressions
10 that are standard, stock, or common to a particular subject matter
11 or medium are not protectable under copyright law."); see also
12 Swirsky v. Carey, 376 F.3d 841, 850 (9th Cir. 2004) ("[W]hen
13 certain commonplace expressions are indispensable and naturally
14 associated with the treatment of a given idea, those expressions
15 are . . . not protected by copyright."). With this in mind, the
16 court turns to the "articulable similarities between the plot,
17 themes, dialogue, mood, setting, pace, characters, and sequence of
18 events in two works."² Cavalier 297 F.3d at 822.

19
20 ² Defendants have not filed a separate Request for Judicial
21 Notice, but have lodged the Movie and seasons 1 and 2 of
22 Yellowjackets as exhibits to the instant Motion to Dismiss. These
23 materials are incorporated into the Complaint by reference. See
24 Fillmore v. Blumhouse Prods., LLC, No. 2:16-CV-04348-AB-SS, 2017 WL
25 4708018, at *2 (C.D. Cal. July 7, 2017), aff'd, 771 F. App'x 756
26 (9th Cir. 2019). Defendants also appear to suggest that the court
27 take judicial notice of certain historical facts, such as the 1972
28 crash of Uruguayan Air Force Flight 571 in the Andes mountains and
subsequent travails of a rugby team traveling on board, as well as
certain other works of fiction, such as, but not limited to, the
1993 film "Alive," which dramatized the tale of the Andes crash
survivors, and the 1954 novel "Lord of the Flies." Beyond
intimating that these requests would be more appropriate at the
summary judgment stage than at the pleading stage, Plaintiff does
not appear to oppose consideration of these and other works, and
indeed, also makes reference to other fictional works. Moreover,
(continued...)

1 1. Plot

2 At the outset, the court notes that a comparison of the two
3 works at issue here is complicated somewhat by their differing
4 formats. While the movie runs approximately 90 minutes, the two
5 seasons of Yellowjackets presently before the court span roughly
6 nineteen hours, spread over an equal number of episodes. This
7 fundamental difference cuts both ways, allowing Defendants to
8 emphasize differences from the Movie that play out over time, while
9 also creating the potential for Plaintiff to amalgamate elements
10 from moments scattered across numerous episodes in an attempt to
11 manufacture similarities. See Gable v. Nat'l Broad. Co., 438 F.
12 App'x 587, 589 (9th Cir. 2011) (unpublished disposition)
13 (minimizing "superficial points of comparison" between screenplay
14 and television series, "gleaned haphazardly from three seasons of"
15 the latter.)

16 a. The Movie

17 The Movie begins with the United States men's national soccer
18 team winning the World Cup. Their flight home crashes into the
19 ocean near a remote Pacific island. Roughly a dozen team members
20 survive, along with a trainer and the head coach's two adult
21 daughters. Team captain Slim is reluctant to lead the group of
22 survivors, and falls ill. Another teammate, Andreas, gradually
23 takes on a position of authority, convincing a majority of the
24 survivors, including Slim, to withhold food and water from injured
25 survivors in an attempt to conserve the group's dwindling supplies.

26
27 ²(...continued)
28 courts in this district have often "taken judicial notice of
elements that are common to a given genre." Silas, 201 F.Supp.3d
at 1170 (collecting cases).

1 Two teammates decide to surreptitiously appropriate the party's
2 lone life raft, and flee the island. The team trainer, despondent
3 over the group's descent into selfish survivalism, commits suicide
4 by jumping off a cliff into the sea. When Andreas' brother is
5 injured by a World War Two-era landmine, Andreas insists that the
6 group continue to withhold succor from the injured, and suffocates
7 his brother to spare him further suffering. The situation comes to
8 a head after a week, when the survivors discover that one of their
9 number has been stealing food. Andreas flies into a murderous
10 rage, and another teammate is killed trying to prevent bloodshed.
11 The survivors split into two factions, with Andreas' group moving
12 to an outlying island and Slim leading the remaining castaways.
13 When Andreas' faction fails to find sustenance, he returns to the
14 main island to steal from Slim's group. Soon after, roughly two
15 weeks after the initial crash, Andreas' faction returns to the main
16 island to attack Slim's contingent. Several survivors are killed,
17 and members of Andreas' group begin to regret their actions and
18 defect. As Slim and Andreas fight on the beach, a rescue
19 helicopter arrives. Andreas slips away into the jungle, and the
20 remaining castaways tell their rescuers that there are no other
21 survivors.

22 b. Yellowjackets

23 Yellowjackets takes place in two different time periods. In
24 the 1990s, a high school girls' soccer team is en route to a match
25 when their airplane crashes in a dense Canadian forest. Several
26 girls, the head coach's two teenage sons, and one adult assistant
27 coach survive. An unpopular team manager (Misty) helps render
28 first aid and, reveling in her newfound importance, destroys the

1 plane's emergency beacon. The survivors find a small airplane and
2 an abandoned cabin stocked with supplies. The girls gradually
3 begin to believe in the supernatural powers of the wilderness, and
4 one of them (Lottie) begins to have mysterious prescient visions.
5 When a group of girls attempts to hike out of the woods, they are
6 attacked by wolves and forced to return to the cabin. Soon after,
7 a devout girl attempts to fly the abandoned plane, but it explodes
8 soon after takeoff. The girls throw a hallucinogenic-fueled
9 bacchanal, and nearly murder one of the boys (Travis), and his
10 younger brother flees and disappears. The girls, led by Lottie,
11 continue to adopt increasingly witchcraft-like practices. One
12 formerly popular member of the group, Jackie, is forced to sleep
13 outside, where she freezes to death. Jackie's best friend, Shauna,
14 who is pregnant by Jackie's boyfriend, talks to Jackie's frozen
15 corpse, begins to hallucinate that Jackie is still alive, and
16 secretly starts to eat parts of Jackie's body. Eventually, the
17 young people all eat Jackie's body, while the horrified assistant
18 coach looks on. Other girls, including Taissa, begin having
19 mystical experiences and visions of their own, and the witchy
20 activities escalate. One girl accidentally falls off of a cliff
21 and dies when threatened by Misty. Shauna gives birth to a
22 stillborn baby, but has hallucinations of the other survivors
23 eating it, and attacks Lottie. The girls' visions intensify, and
24 Travis' younger brother is found hiding nearby. The girls draw
25 cards to see who will be killed for food, but the loser (Natalie)
26 flees. The girls watch as the younger brother drowns trying to
27 help her, and consider him a substitute for Natalie. The girls and
28 Travis ritualistically eat the younger brother's body, and Lottie,

1 who has new misgivings about the girls' actions, anoints Natalie as
2 the new witchy leader. The cabin then burns down, likely at the
3 hands of the assistant coach, who is increasingly disturbed by the
4 teenagers' behavior.

5 Interspersed with the 1990s story are scenes involving some of
6 the same characters, but in the present day. Shauna is married to
7 Jeff, Jackie's former boyfriend and the father of Shauna's
8 stillborn baby and teenage daughter. Natalie struggles with drug
9 addiction, while Taissa is an ambitious politician and Misty has
10 become a sociopathic nurse. The women refuse to talk to outsiders
11 about their experiences in the wilderness, but receive cards
12 depicting a symbol associated with their witchy activities in the
13 woods. Misty and Natalie track down Travis, but find him dead by
14 hanging. Natalie believes he was murdered, and discovers evidence
15 of a witchy ritual. Shauna begins having an affair, which is
16 discovered by her daughter. Taissa's son begins to have disturbing
17 visions, which are revealed to be Taissa herself, as she sleepwalks
18 or has multiple personalities. The women discover that the
19 mysterious cards are from Jeff, who is trying to blackmail them to
20 pay off a debt. Shauna discovers that her lover is trying to
21 uncover her past, and kills him, confiding in Jeff. Misty kidnaps,
22 then kills, a private investigator. As Taissa wins an election,
23 her wife discovers a ghastly, witchy altar underneath the family
24 home, apparently constructed by Taissa's alter ego. Natalie
25 discovers that Lottie accessed Travis' bank accounts before he
26 died, but she is then kidnapped by members of a cult led by Lottie.
27 Misty tries to find Natalie, eventually teaming up with an
28 idiosyncratic new friend. Shauna and Jeff cover up her crime, but

1 their daughter finds out their secret, and others' suspicions of
2 Shauna grow. Natalie and Taissa start to have visions and
3 hallucinations. Lottie tries to help Natalie at the cult's
4 compound, and claims that she had tried to help Travis process his
5 trauma from the woods. Taissa tries to deal with her alter ego and
6 tracks down her estranged former girlfriend from the soccer team.
7 The women all eventually convene at Lottie's compound and confess
8 their secrets to each other. An increasingly unhinged Lottie
9 insists they perform another witchy ritual sacrifice, and the women
10 again draw cards, like they did in the cabin. Chaos ensues, and
11 Natalie is killed by Misty's hand, sacrificing herself to protect
12 someone else and satisfying Lottie, who has been shot by Shauna's
13 daughter.

14 c. Comparison

15 Even a brief perusal of the above summaries makes clear that,
16 as Plaintiff itself acknowledges, the present-day timeline in
17 Yellowjacks bears little resemblance to the plot of the Movie.
18 Plaintiff maintains, however, that "the entire [1990s] 'survival'
19 timeline is copied from Eden." (Opposition at 11:4.) Although
20 Plaintiff points to several specific plot points in support of this
21 contention, this argument is not persuasive.

22 First, Plaintiff mischaracterizes certain events in both
23 works. For example, Plaintiff contends that the Movie "alludes to
24 cannibalism." The conversations highlighted by Plaintiff, however,
25 do no such thing, and instead focus on the characters' debate over
26 whether to withhold food from injured survivors. Indeed, the
27 entire Movie takes place over the course of only two weeks, and
28

1 Slim's faction is able to successfully gather food without ever
2 considering, let alone resorting to, cannibalism.

3 Similarly, Plaintiff likens the assistant coach's revulsion in
4 Yellowjackets, which culminates with him burning down the cabin and
5 fleeing to a cave, as similar to the trainer's suicide in the
6 Movie, both of which Plaintiff characterizes as "escapes." (Opp.
7 at 12:10.) While this term could perhaps apply to both events on
8 some abstract philosophical level, and even putting aside the issue
9 whether such metaphysical questions invoke some common literary
10 trope, these two instances bear little resemblance to each other as
11 plot points,³ as the Yellowjackets coach's active attempt to
12 interfere with the girls' activities, which occurs as a cliffhanger
13 at the end of season two, is the antithesis of the Movie trainer's
14 desperate, mid-story effort to avoid confronting his own potential,
15 and his fellow survivors' increasing, selfishness and savagery.

16 Nor, contrary to Plaintiff's contention, does Yellowjackets
17 include a suicide.⁴ Although one Yellowjackets character, like the
18 Movie trainer, does die by falling off a cliff, her death is
19 accidental, and occurs largely because of Misty's threatening acts
20 rather than of the decedent's own volition. Lastly, the discovery

21
22 ³ "'Plot' is defined as the sequence of events by which the
23 author expresses his theme or idea that is sufficiently concrete to
24 warrant a finding of substantial similarity if it is common in both
works." Kahn v. CJ E & M Am., Inc., No. CV 21-3230-DMG (KSX), 2022
WL 2037495, at *6 (C.D. Cal. Mar. 28, 2022) (quoting Zella, 529 F.
Supp. 2d at 1135) (emphasis added).

25
26 ⁴ Plaintiff does not contend that Travis' hanging in the
27 present day timeline is similar to the trainer's suicide in the
28 Movie, and indeed, Travis' death by hanging is later revealed to
have been accidental. Nor does Plaintiff point to the assistant
coach's contemplation of, but ultimate decision not to commit,
suicide in the 1990s timeline.

1 of evidence of prior inhabitants in both works is not "strikingly
2 similar," as Plaintiff claims. (Opp. at 15.) In Yellowjackets,
3 the survivors find, and all take shelter in, a well-stocked cabin
4 and make use of a functional airplane. In the Movie, survivors
5 encounter a small World War Two-era bunker containing the skeleton
6 of a lone soldier, surrounded by land mines. None of these
7 supposed parallels evinces substantial similarity of the two works.

8 Second, most of the remaining similarities are common scenes-
9 a-faire. Specifically, Plaintiff points to (1) the death of a head
10 coach and survival of his two children, (2) attempts by survivors
11 to escape isolation and contact rescuers, and (3) a division of
12 survivor groups into rival factions. (Opp. at 11-12.) Of these,
13 the first is, at least in part, sufficiently original to be
14 protectable. Other than an inversion of genders, both works
15 involve a surviving pair of teenage or young adult siblings who are
16 children of the deceased head coach, and in both works, at least
17 one of the siblings forms a romantic relationship with another
18 survivor.

19 This similarity alone, however, is insufficient to sustain an
20 infringement claim. "[E]ven where the fact of copying is conceded,
21 no legal consequences will follow from that fact unless the copying
22 is substantial." Newton v. Diamond, 388 F.3d 1189, 1193 (9th Cir.
23 2004); see also Skidmore, 952 F.3d at 1064. ("[T]he hallmark of
24 'unlawful appropriation' is that the works share *substantial*
25 similarities."). There can be no serious dispute that escape
26 attempts by shipwrecked or stranded survivors are prevalent
27 throughout fiction and history, from Odysseus, Robinson Crusoe, and
28

1 Gilligan to Shackleton and the Uruguayan rugby team.⁵ Instances of
2 competition, tribalism, and factionalism in disaster scenarios or
3 in response to resource scarcity are nearly as commonplace, from
4 "The Tempest" to "Survivor" to much of the post-apocalyptic genre,
5 such as the "Mad Max" films or any of a number of zombie stories,
6 to, most archetypically, "Lord of the Flies." Because "[s]uch
7 expressions [are] indispensable and naturally associated with the
8 treatment of a given idea," they are not protected by copyright.
9 Rice v. Fox Broad. Co., 330 F.3d 1170, 1175 (9th Cir. 2003),
10 overruled on other grounds by Skidmore, 952 F.3d 1051.

11 2. Mood and Theme

12 Defendants assert that the Movie is a "straight-forward
13 thriller" with a "somber and brooding" mood that differs from the
14 "darkly comedic" tone of Yellowjackets. (Mot. at 18.) Plaintiff's
15 opposition, without identifying any defining mood in either work,
16 attributes any differences primarily to the works' respective
17 lengths, which afford differing opportunities for character
18 development.⁶ (Opp. at 16.) Even accepting Defendants'
19 characterizations, "somber and brooding" and "darkly comedic" moods
20

21 ⁵ The escape attempts in the works at issue here also differ
22 in their nature and result. In the Movie, the two teammates who
23 steal the raft successfully contact rescuers, who then reach the
24 remaining survivors. In Yellowjackets, the escape attempt by plane
fails when the plane explodes, killing the young survivor-pilot,
and the overland attempt fails when wolves attack and maim the
would-be escapees.

25 ⁶ Plaintiff's Complaint does identify other elements of mood,
26 but in broad terms that are not supported by examples in the
27 Complaint or Plaintiff's opposition. For example, the Complaint
asserts that both works are humorous, with "moments of dark humor
28 and witty dialogue." Plaintiff has provided no example of any such
moment in the Movie, and the court would be hard-pressed to
identify one.

1 are not mutually exclusive, and Yellowjackets reflects both.
2 Indeed, it is difficult to imagine how any serious drama involving
3 a descent into ritualized cannibalism, and its aftereffects, could
4 possibly exclude elements of solemnity and brooding contemplation.
5 This observation, however, highlights the more fundamental problem
6 with Plaintiff's position: brooding introspection related to, as
7 Defendants put it, humans' brutish survival instinct "flows
8 naturally from unprotectable basic plot premises" in the context of
9 survival stories, and is therefore also not protectable. Shame on
10 You Prods., Inc. v. Elizabeth Banks, 120 F. Supp. 3d 1123, 1158
11 (C.D. Cal. 2015), aff'd sub nom. Shame on You Prods., Inc. v.
12 Banks, 690 F. Appx 519 (9th Cir. 2017) (quoting Rice, 330 F.3d 1170
13 at 1175 (9th Cir. 2003); see also Zella, 529 F. Supp. 2d at 1136
14 (finding upbeat mood a scene-a-faire in the context of a cooking
15 show, because "it is difficult to imagine a somber show of this
16 nature.").

17 The same is true of the works' themes. Although both works
18 include an examination of the darkness and potential for violence
19 within all people, such themes are common tropes in the survival
20 genre. Moreover, as Defendants highlight, and Plaintiffs do not
21 address, Yellowjackets also focuses on other themes, such as the
22 nature of female friendships at various stages of life and the
23 particular challenges of mid-adulthood, especially in relation to
24 past trauma. The protectable elements of the works' mood and
25 themes are not, therefore, substantially similar.

26 3. Characters

27 Plaintiff's Complaint lists several characters in each work,
28 along with their allegedly similar attributes. (Compl. ¶¶ 25-26.)

1 These descriptions, however, are either general, inaccurate, or
2 both. Both Jackie and Slim, for example, are described as
3 "talented soccer player[s]" who are also team captains. As an
4 initial matter, virtually every soccer team has a team captain, and
5 presumably selects one of the more talented players to be captain.
6 Beyond that high-level similarity, it is difficult to see what
7 Slim, an adult, male, Black, elite international athlete who serves
8 as a moral authority and selfless leader to a band of survivors,
9 has in common with Jackie, a teenage, white, whiny, self-absorbed
10 girl who, though formerly popular, is excluded, and eventually
11 eaten, by her peers.

12 Although Plaintiff describes both Yellowjackets assistant
13 coach Ben and Movie head coach Defoe [sic] as "providing guidance
14 and support to the survivors," the former is largely sidelined as a
15 result of a grievous injury and fundamentally opposed to the girls'
16 actions, while the latter does not even survive the initial plane
17 crash. The Complaint describes both Misty and the trainer in the
18 Movie as "nurse-like," apparently because both render first aid to
19 some extent, without any acknowledgment that Misty, an unpopular,
20 sociopathic white teenage girl, threatens multiple people, is
21 responsible for a teammate's death, and actively works to prevent
22 fellow survivors' rescue, while the trainer in the Movie, an
23 empathetic adult Asian man, grows so despondent at the thought of
24 depriving fellow survivors of aid that he kills himself to avoid
25 having to face that moral dilemma.

26 Lastly, although Plaintiff describes both Lottie and Andreas
27 as a "mysterious, complex, and troubled character who struggles
28 with demons," these descriptors are true, if at all, at only a high

1 level. Although there is little explanation for Andreas'
2 increasing savageness, neither is there any mystery to his
3 character, and his only "demons" are the figurative ones presumably
4 underpinning anyone's violent acts. Lottie, in contrast, has
5 prescient visions and power over nature (including a grizzly bear
6 that submissively approaches Lottie and allows her to kill it with
7 a knife), develops and encourages dark ritual practices, including
8 human sacrifice and cannibalism, and is eventually committed to a
9 psychiatric facility. Contrary to Plaintiff's argument, these
10 differences between character pairs are not simply a matter of the
11 Movie's characters being "less defined" than their supposed
12 Yellowjackets counterparts as a result of the Movie's insufficient
13 "time to devote to character development." The characters, rather,
14 are fundamentally different.

15 4. Setting and Pace

16 As is evident from the above discussion, the setting and pace
17 of the two works differ greatly, as neither New Jersey nor the
18 boreal Canadian wilderness bear any resemblance to an uninhabitable
19 tropical island. Moreover, the "desolate area" setting highlighted
20 by Plaintiff is a common element of survival stories, including
21 historical events such as the travails of the Uruguayan rugby team
22 in the Andes or the Donner Party in the Sierra Nevada. As for
23 pacing, Plaintiff glosses over the fact that Yellowjackets takes
24 place in two distinct timelines separated by at least twenty years.
25 Although Plaintiff attempts to focus only on Yellowjackets' 1990s
26 "survival timeline," even that story unfolds over the course of
27 nearly two years, while also including flashbacks to pre-crash
28 events. The Movie, in contrast, is told, with one exception,

1 completely linearly, and takes place entirely over the course of
2 only two weeks.⁷ The supposed balance of “slower, character-driven
3 moments with more intense, plot-driven sequences” (Compl. ¶ 30)
4 allegedly present in both works is a generic element not only of
5 the survival genre, but of nearly every work of fiction, and is not
6 protectable. There is no substantial similarity of any protectable
7 element of the works’ setting or pace.

8 **IV. Conclusion**

9 For the reasons stated above, Plaintiff has failed to
10 adequately allege that the works at issue here are substantially
11 similar. Accordingly, Defendants’ Motion to Dismiss is GRANTED.
12 Although the court would typically grant a plaintiff leave to amend
13 a dismissed original complaint, the deficiencies in Plaintiff’s
14 copyright claim here are not an artifact of any pleading
15 deficiency, but rather stem from the fundamental characteristics of
16 the works themselves. Any amendment would, therefore, be futile.
17 Accordingly, Plaintiff’s Complaint is DISMISSED, with prejudice.
18 See Rentmeester, 883 F.3d at 1125.

19 IT IS SO ORDERED.

20 Dated: April 25, 2025


DEAN D. PREGERSON
United States District Judge

27 ⁷ The early moments of the Movie include a few seconds of Slim
28 running through the jungle, before then jumping backward in time
and proceeding linearly.