

<p style="text-align: center;">FILED CLERK, U.S. DISTRICT COURT</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>Oct. 14, 2014</p> </div> <p style="text-align: center;">CENTRAL DISTRICT OF CALIFORNIA BY: _____ DG _____ DEPUTY</p>
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STEPHANIE COUNTS and SHARI GOLD,

Plaintiffs,

v.

ELIZABETH MERIWETHER, et al.,
Defendants.

CASE NO. 2:14-cv-00396-SVW-CW

ORDER DISMISSING WITHOUT
PREJUDICE PLAINTIFFS' FIRST
AMENDED COMPLAINT

I. INTRODUCTION¹

This is an action for copyright infringement and related claims arising from Defendants' alleged unauthorized and uncompensated use of plaintiffs Stephanie Counts's ("Counts") and Shari Gold's ("Gold") screenplay *Square One* in the television show *New Girl*. On May 12, 2014, Plaintiffs filed their First Amended Complaint ("FAC") against twenty-two defendants: Elizabeth Meriwether and Elizabeth Meriwether Pictures (collectively, "Meriwether"); William Morris Endeavor Entertainment, LLC ("WME"); Peter Chernin, the Chernin Group, LLC, and Chernin Entertainment, LLC (collectively, "Chernin"); Twenty-First Century Fox, Inc. and ten related entities (collectively, "Fox"); Jacob Kasdan ("Kasdan"); Brett Baer ("Baer"); David

¹ Upon review of the parties' briefs, the Court concludes that the Motion is suitable for determination without oral argument. Fed. R. Civ. P. 78(b); Local Rule 7-15.

1 Finkel (“Finkel”); and American Nitwits. (Dkt. 53.) In their FAC, Plaintiffs assert claims for
2 direct copyright infringement, contributory copyright infringement, vicarious copyright
3 infringement, “Equitable Relief—Right of Attribution,” and “Breach of Contract/Quantum
4 Meruit.”

5 Presently before the Court is Defendants’ motion to dismiss Plaintiffs’ First Amended
6 Complaint under Federal Rule of Civil Procedure 12(b)(6). (Dkt. 62.) For the reasons set forth
7 below, the Court GRANTS IN PART and DENIES IN PART Defendants’ motion.

8 **II. FACTUAL BACKGROUND**

9 Counts and Gold are a professional screenwriting team. (FAC ¶ 1.) In 2006, they wrote
10 a television pilot script based on Counts’s personal experiences when she learned her husband
11 was cheating on her and moved into a “three man bachelor pad.” (*Id.*) They titled the pilot
12 “Enter Divorce Rehab” and called their proposed television series *Square One*. (FAC ¶ 37.)

13 Counts and Gold completed the first draft of their pilot in mid-2006. (FAC ¶ 44.) After
14 consulting with producer Holly Harter (“Harter”), they rewrote the pilot into a feature-length
15 screenplay. (FAC ¶ 46.) They finished their rewrite in July 2007. (*Id.*) In 2007 and 2008,
16 Plaintiffs and Harter shopped “all existing versions of the scripts” to numerous agents,
17 productions companies, and talent. (FAC ¶ 47.) In May and June 2008, Harter told Counts that
18 she sent a solicited copy of *Square One* to Adam Venit (“Venit”), a partner at Endeavor (which
19 later merged with the William Morris Agency to become WME). (FAC ¶ 49.) Endeavor later
20 evaluated *Square One*, and gave it a “favorable grade that allowed it to be accessed by all its
21 agents.” (FAC ¶ 53.)

22 In the beginning of 2009, Harter told Counts that she was “trading phone calls with
23 everyone—including Endeavor.” (FAC ¶ 54.) However, those contacts eventually fizzled.
24 (FAC ¶ 55–58.) Plaintiffs thus ended their brief union with Harter and set out to promote *Square*
25 *One* themselves. (FAC ¶ 59–60.)

26 In November 2009, Counts called WME agent David Karp (“Karp”), who had previously
27 offered to see if any of his client directors were interested in *Square One*. (FAC ¶ 58.) Counts
28 scheduled meetings with Karp in February and June 2010, but they fell through due to

1 scheduling conflicts. (FAC ¶ 60.) After June 2010, WME became a cold fish and stopped
2 answering Plaintiffs' communiques. (FAC ¶ 61.)

3 Plaintiffs assert that in April 2010, Chernin hired WME agents (including Venit) to
4 represent him and his companies. (FAC ¶¶ 63, 67.) Chernin is the former President and Chief
5 Operating Officer of News Corporation (Fox's parent company). (FAC ¶ 130.) Plaintiffs allege
6 that when Chernin resigned from News Corporation in 2009, Fox gave him a severance package
7 obligating Fox to purchase Chernin's television shows and films every year for six years. (FAC
8 ¶ 131.) Thus, when Chernin signed with WME he allegedly told WME to provide him with
9 material to develop. (FAC ¶ 65.) Plaintiffs assert that WME therefore gave Chernin *Square*
10 *One*. (FAC ¶ 66.)

11 Plaintiffs allege that Chernin then asked Meriwether (who is also represented by WME)
12 to rewrite the *Square One* scripts for his television project. (FAC ¶¶ 69, 74.) WME agents and
13 Chernin purportedly both gave Meriwether the *Square One* scripts so she could complete her
14 assignment. (FAC ¶ 73.) Meriwether allegedly rewrote the "*Square One* scripts" into "Chicks
15 and Dicks" in a few months in 2010. (FAC ¶ 75.) "Chicks and Dicks" is the pilot episode of the
16 popular series *New Girl*.

17 In early 2011, Kasdan directed and executive produced the pilot episode of "Chicks and
18 Dicks." (FAC ¶ 78.) Fox later purchased the pilot and retitled it *New Girl*. (FAC ¶ 82.) *New*
19 *Girl* premiered on Fox's channel on September 20, 2011. (FAC ¶ 83.) Kasdan, Baer, and Finkel
20 are executive producers on *New Girl*. (FAC ¶¶ 238, 253, 260.) Kasdan also directs some *New*
21 *Girl* episodes. (FAC ¶ 239.) Baer and Finkel are also writers on *New Girl*. (FAC ¶¶ 253, 260.)
22 American Nitwits is a production company that produces *New Girl*. (FAC ¶ 242.) Plaintiffs
23 allege that American Nitwits is "wholly or partly owned" by Fox, Chernin, Meriwether,
24 Kasdan, Finkel, and Baer. (FAC ¶¶ 243–48.)

25 On February 17, 2011, Plaintiffs first heard that their work may have been poached when
26 a friend emailed them a logline and summary of a new show under development, called "Chicks
27 and Dicks." (FAC ¶¶ 62, 76.) In early 2011, before *New Girl* premiered, Plaintiffs retained
28 counsel and informed Defendants that they were infringing on *Square One*. (FAC ¶ 91.)

1 Plaintiffs’ then-counsel informed them that Kasdan and his family were long-time clients of the
2 firm. (FAC ¶ 92 n.9.) Plaintiffs’ counsel gave them a written statement informing them that
3 they would likely be conflicted out of the representation if they were to assert allegations
4 implicating Kasdan. (*Id.*) The firm stated that, based on Plaintiffs’ email, it felt the connection
5 to Kasdan was a bit attenuated. (*Id.*) Nevertheless, the firm stated that if Plaintiffs wanted to
6 pursue a claim against Kasdan then would need to “discuss [the firm’s] further involvement in
7 the matter.” (*Id.*)

8 Plaintiffs assert that their then-counsel negotiated with Fox both before and after *New*
9 *Girl* premiered. (FAC ¶ 92.) In January 2012, Fox made a settlement offer of \$10,000. (FAC ¶
10 97.) Plaintiffs declined Fox’s offer and terminated their relationship with their original counsel.
11 (FAC ¶ 99.) Plaintiffs filed the instant action on January 16, 2014. (Dkt. 1.)

12 III. ANALYSIS

13 A. Legal Standard for Motion to Dismiss Under Rule 12(b)(6)

14 Federal Rule of Civil Procedure 8 requires plaintiffs to “plead a short and plain statement
15 of the elements of his or her claim, identifying the transaction or occurrence giving rise to the
16 claim and the elements fo the prima facie case.” *Flores v. EMC Mortg. Co.*, — F. Supp. 2d —,
17 No. CV F 14–0047 LJO GSA, 2014 WL 641097, at *4 (E.D. Cal. Feb. 18, 2014) (quoting
18 *Bautista v. Los Angeles County*, 216 F.3d 837, 840 (9th Cir. 2000)). A complaint written “prolix
19 in evidentiary detail, yet without simplicity, conciseness and clarity as to whom plaintiffs are
20 suing for what wrongs, fails to perform the essential functions of a complaint.” *Id.* (quoting
21 *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996)).

22 “Each allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d). The pleading
23 must give fair notice of the claim asserted and the grounds on which it rests. *Flores*, 2014 WL
24 641097, at *4 (quoting *Yamaguchi v. United States Dep’t of Air Force*, 109 F.3d 1475, 1481
25 (9th Cir. 1997)). Moreover, the plaintiff must “allege with at least some degree of particularity
26 overt facts which defendant engaged in to support plaintiff’s claim.” *Flores*, 2014 WL 641097,
27 at *4 (citing *Jones v. Comty. Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984).

28 A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the claims

1 stated in the complaint. Fed. R. Civ. Proc. 12(b)(6). To survive a motion to dismiss, a complaint
2 “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is
3 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp.*
4 *v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff
5 pleads factual content that allows the court to draw the reasonable inference that the defendant is
6 liable for the misconduct alleged.” *Id.* A complaint that offers mere “labels and conclusions” or
7 “a formulaic recitation of the elements of a cause of action will not do.” *Id.* (quoting *Twombly*,
8 550 U.S. at 555) (internal quotation marks omitted). “Allegations in the complaint, together with
9 reasonable inferences therefrom, are assumed to be true for purposes of the motion.” *Odom v.*
10 *Microsoft Corp.*, 486 F.3d 541, 545 (9th Cir. 2007).

11 If a court dismisses the complaint, it will grant leave to amend unless futile. *DeSoto v.*
12 *Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

13 **B. Plaintiffs’ Copyright Infringement Claims**

14 Defendants argue that Plaintiffs’ copyright infringement claims should be dismissed
15 under Rule 12(b)(6) because *New Girl* is not substantially similar to *Square One*.

16 1. Legal Standard

17 To state a claim for direct copyright infringement, a plaintiff must prove two elements:
18 “(1) ownership of a valid copyright and (2) copying of constituent elements of the works that are
19 original.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). To state a claim
20 for contributory or vicarious infringement, a plaintiff must prove, *inter alia*, an underlying direct
21 infringement by third parties. *See Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1169
22 (9th Cir. 2007).

23 In the Ninth Circuit, substantial similarity has both an extrinsic and an intrinsic
24 component. *Funky Films, Inc. v. Time Warner Entm’t Co., L.P.*, 462 F.3d 1072, 1077 (9th Cir.
25 2006). The extrinsic test is objective. *Id.* It “focuses on articulable similarities between the
26 plot, themes, dialogue, mood, setting, pace, characters, and sequence of events in the two
27 works.” *Id.* (quoting *Kouf v. Walt Disney Pictures & Television*, 16 F.3d 1042, 1045 (9th
28 Cir.1994)). In applying this test, courts filter out non-protectable elements and look only to

1 whether the protectable elements are substantially similar. *Id.* Substantial similarity may be
2 decided as a matter of law where no reasonable jury could find the works substantially similar.
3 *Id.* at 1076–77.

4 2. Application

5 In the Ninth Circuit, substantial similarity may be determined on a motion to dismiss
6 when both the copyrighted work and the allegedly infringing work are before the court and can
7 be examined and compared. *Christianson v. West Publ'g Co.*, 149 F.3d 202, 203 (9th Cir. 1945).
8 Nevertheless, the Ninth Circuit also recognizes that the extrinsic test often requires expert
9 testimony. *See Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 485 (9th Cir. 2000). In light of
10 the need for expert testimony and the potential need for factfinding regarding such issues as
11 access, the court finds that substantial similarity is more properly addressed on a motion for
12 summary judgment. Accordingly, the Court DECLINES to decide the issue of substantial
13 similarity raised by Defendants' motion to dismiss. However, Defendants may file a motion for
14 summary judgment once Plaintiffs file an amended complaint.

15 Much of the parties' arguments surrounding this issue illustrates a more fundamental
16 problem with Plaintiffs' copyright infringement claims: they are ambiguous. Plaintiffs' direct
17 infringement claim asserts that defendants had access to each copyrighted version of Plaintiffs'
18 script. (FAC ¶ 270.) Plaintiffs' copyright registration for *Square One* includes four
19 versions—including both the television pilot and feature-length script. (FAC ¶ 33). Each of
20 these versions is a separate work which might be infringed by Defendants. Plaintiffs' claim
21 refers alternately to “rewritten scripts for each episode of *New Girl*,” (FAC ¶ 283); “the script
22 *New Girl*,” (FAC ¶ 289); “the *Chicks and Dicks* script,” (FAC ¶ 292), “the Pilot Episode of *New*
23 *Girl*,” (FAC ¶ 293); “production of the *New Girl* script,” (FAC ¶ 294); and “continued direction
24 and production of *New Girl*,” (*Id.*) Elsewhere in the complaint, Plaintiffs allege more clearly
25 that the entire *New Girl* series infringes their *Square One* scripts. (FAC ¶ 89; FAC App'x A.)
26 Moreover, the pilot episode of *New Girl* and its complete first season are each copyrighted
27 separately. (FAC ¶¶ 84, 86.) Plaintiffs further assert that each episode and season of *New Girl* is
28 registered in a similar manner. (FAC ¶ 88.)

1 It is no wonder that Plaintiffs and Defendants disagree about which versions of which
2 works are relevant to Plaintiffs' claim. Plaintiffs' infringement claim references four
3 copyrighted versions of Plaintiffs' script, Meriwether's "Chicks and Dicks" pilot script,
4 Defendants' pilot episode, and Defendants' multiseason television series. It is thus impossible to
5 discern which of Plaintiffs' works was purportedly infringed by which of Defendants' works.
6 Plaintiffs' infringement claim thus fails to put Defendants on adequate notice of the claim
7 asserted and its grounds.

8 Clarity regarding the exact nature of Plaintiffs' allegations is also necessary to guide the
9 Court's inquiry as litigation progresses. Precision is particularly important in this case, given
10 that preliminary drafts are irrelevant to the critical question of substantial similarity, and that
11 there are multiple independently copyrighted works possibly at issue—some of which are
12 preliminary drafts to other copyrighted works. *See, e.g., See v. Durang*, 711 F.2d 141, 142 (9th
13 Cir. 1983) (per curiam) (finding discovery concerning earlier drafts of defendant's play
14 unnecessary because "[c]opying deleted or so disguised as to be unrecognizable is not copying");
15 *White v. Twentieth Century Fox Corp.*, 572 F. App'x 475, 477 (9th Cir. 2014) ("the underlying
16 screenplays are irrelevant because the operative question is whether the films—the
17 allegedly-infringing materials—and White's screenplay are substantially similar"); *Quirk v. Sony*
18 *Pictures Entm't Inc.*, No. C 11-3773 RS, 2013 WL 1345075, at *6 (N.D. Cal. Apr. 2, 2013)
19 ("Preliminary draft scripts of Premium Rush are similarly irrelevant to this motion. Quirk has not
20 pleaded a claim that draft scripts constituted infringing works, even assuming such a claim might
21 theoretically be possible."). For the same reasons, Plaintiffs' contributory and vicarious
22 infringement claims fair no better.

23 For the foregoing reasons, the Court DECLINES to decide the issue of substantial
24 similarity and DISMISSES WITHOUT PREJUDICE Plaintiffs' claims for direct, contributory,
25 and vicarious infringement. Because the Court cannot say that amendment would be futile,
26 Plaintiffs are GRANTED leave to file an amended complaint.

27 **C. Plaintiffs' Claim for Breach of Implied-in-Fact Contract**

28 Plaintiffs' fifth cause of action is for "Breach of Contract/Quantum Meruit." Because

1 Defendants treat this as two separate claims, the Court separately evaluates Defendants’
2 arguments against each.

3 Defendants argue that Plaintiffs’ breach of implied-in-fact contract claim is time-barred.
4 Plaintiffs apparently admit that they filed their breach of implied-in-fact contract claim outside
5 of the limitations period but argue that either equitable tolling or equitable estoppel should
6 prevent their claim from being time barred. *See* (Pl.’s Resp. 22.)

7 1. Legal Standard

8 California law recognizes that an implied-in-fact contract arises when the writer submits
9 material to a producer with the understanding that the writer expects to be paid if the producer
10 uses his concept. *Desny v. Wilder*, 46 Cal.2d 715, 299 P.2d 257 (1956). Such claims are subject
11 to a two-year limitations period. *Benay v. Warner Bros. Entm’t*, 607 F.3d 620, 632-33 (9th Cir.
12 2010) (citing *Blaustein v. Burton*, 9 Cal. App. 3d 161, 185 (Cal. Ct. App. 1970)). California
13 courts generally assume that a breach of implied-in-fact contract claim accrues on “the date on
14 which the work is released to the general public.” *Id.* at 633 (citing 4 Nimmer § 19D.07[D];
15 *Thompson v. Cal. Brewing Co.*, 191 Cal. App. 2d 506, 510 (Cal. Ct. App. 1961)).

16 Equitable tolling suspends the statute of limitations “as necessary to ensure fundamental
17 practicality and fairness.” *Lantzy v. Centex Homes*, 31 Cal. 4th 363, 370 (2003). This doctrine
18 requires a balancing of the injustice to the plaintiff if his claim is time-barred against the effect
19 on the public policy furthered by the statute of limitations. *Id.* To establish that equitable tolling
20 applies, a plaintiff must show: (1) timely notice and a lack of prejudice to defendants, and (2)
21 that she acted reasonably and in good faith. *Addison v. State of California*, 21 Cal. 3d 313, 319
22 (1978).

23 Equitable estoppel prevents a defendant from asserting the statute of limitations as a
24 defense where “his conduct has induced another into forbearing suit within the applicable
25 limitations period.” *See Lantzy*, 31 Cal. 4th at 384. For a defendant to be equitably estopped:
26 “(1) [t]he party to be estopped must know the facts; (2) he must intend that his conduct shall be
27 acted upon, or must so act that the party asserting the estoppel had the right to believe that it was
28 so intended; (3) the party asserting the estopped must be ignorant of the true state of facts; and,

1 (4) he must rely upon the conduct to his injury.” *Ashou v. Liberty Mut. Fire Ins. Co.*, 138 Cal.
2 App. 4th 748, 766-67 (Cal. Ct. App. 2006) (quoting *Spray, Gould & Bowers v. Associated*
3 *Internat. Ins. Co.*, 71 Cal. App. 4th 1260, 1268 (1991)).

4 2. Application

5 In their complaint, Plaintiffs allege that they learned that *New Girl* appropriated their
6 *Stage One* concept on February 21, 2011. (FAC ¶ 77.) The complaint also asserts that *New Girl*
7 premiered on Fox’s channel on September 20, 2011. Accordingly, Plaintiffs’ cause of action
8 accrued on September 20, 2011.² Plaintiffs filed the instant action on January 16, 2014—after
9 the two year limitations period on their implied-in-fact contract claim ran out. This claim is
10 therefore time-barred.

11 Plaintiffs argue that equitable tolling or estoppel should apply to their contract claim
12 because their original attorneys told them that no conflict of interest arose from the attorneys’
13 representation of Kasdan and convinced Plaintiffs that Kasdan should not be named as a
14 defendant. Plaintiffs apparently contend that the limitations period should be tolled until they
15 retained new counsel in February of 2012. However, in their complaint, Plaintiffs admit that
16 counsel notified them of a potential conflict with Kasdan. Moreover, they admit that their
17 original counsel negotiated with Fox on their behalf. Plaintiffs do not contend that the purported
18 conflict caused counsel to refuse to file suit or caused counsel to otherwise prevent Plaintiffs
19 from filing suit. Finally, Plaintiffs retained new counsel in February 2012—well within the two
20 year statutory limitations period. Thus, without reaching the issue of whether Plaintiffs’
21 previous counsel acted unethically or wrongfully, the Court finds that Plaintiffs failed to show
22 that their failure to file the instant suit within the limitations period was reasonable and in good
23 faith.

24
25 ² The Court notes that because the cause of action accrues as of the date that Defendants first
26 exploited Plaintiffs’ idea—whether for the *Square One* pilot or for the entire television
27 series—this accrual date applies to any claim that Plaintiffs might assert based on either the *New*
28 *Girl* pilot or series. See *NBCUniversal Media, LLC v. Superior Court*, 225 Cal. App. 4th 1222,
1230–38 (Cal. Ct. App. 2014) (holding that plaintiffs’ claim that defendants breached implied-in-
fact contract not to use their television show concept without compensation accrued on the date
the offending series premiered).

1 Plaintiffs do not allege that Defendants' conduct caused them not to file this action within
2 the limitation period. Therefore Defendants are not equitably estopped from asserting the statute
3 of limitations.

4 For the foregoing reasons, the Court DISMISSES WITHOUT PREJUDICE Plaintiffs'
5 breach of contract claim. Because the Court cannot say that amendment would be futile,
6 Plaintiffs are GRANTED leave to amend.

7 **D. Plaintiffs' Quantum Meruit Claim**

8 In addition to breach of contract, Plaintiffs' fifth claim also asserts claims for "quantum
9 meruit, or all other equitable relief, if the Court decides no relief under breach of contract is
10 possible." (FAC ¶ 324.) The Court construes this as a claim of an implied-in-law
11 contract—such a claim could sound in quasi-contract unjust enrichment, or quantum meruit. *See*
12 *Firoozye v. Earthlink Network*, 153 F. Supp. 2d 1115, 1126 (N.D. Cal. 2001). Defendants argue
13 that this claim is preempted by the Copyright Act.

14 **1. Legal Standard**

15 The Copyright Act preempts "all legal or equitable rights that are equivalent to any of the
16 exclusive rights within the general scope of copyright as specified by section 106 . . . and [that]
17 come within the subject matter of copyright as specified by sections 102 and 103[.]" 17 U.S.C. §
18 301(a). In the Ninth Circuit, state law claims are preempted by the Act if "(1) the work at issue
19 comes within the subject matter of copyright and (2) the rights granted under state law are
20 equivalent to any of the exclusive rights within the general scope of copyright set forth in the
21 Act." *Selby v. New Line Cinema Corp.*, 96 F. Supp. 2d 1053, 1057 (C.D. Cal. 2000) (internal
22 quotation marks omitted) (quoting *Del Madera Properties v. Rhodes and Gardner, Inc.*, 820
23 F.2d 973, 976 (9th Cir.1987)). A state law claim is not equivalent to the exclusive rights
24 conferred by the Copyright Act if it has an "extra element" which makes the action qualitatively
25 different from one to protect copyright rights. *Id.* (quoting *Del Madera Properties*, 820 F.2d at
26 977).

27 In a claim for breach of implied-in-fact contract, the defendant's promise to pay supplies
28 the extra element. *Firoozye*, 153 F. Supp. 2d at 1126. However, this element is absent in an

1 implied-in-law contract. *Id.* Accordingly, claims for breach of implied-in-law contracts are
2 preempted, while breach of implied-in-fact contracts are not.

3 2. Application

4 At the end of their breach of implied-in-fact contract claim, Plaintiffs tack on a claim for
5 quantum meruit and other equitable relief. Plaintiffs assert such a claim “if the Court decides no
6 relief under breach of contract is possible.” Extrapolating logically, the only way the Court
7 could find that Plaintiffs fail to assert a claim for breach of implied-in-fact contract but are
8 nevertheless entitled to recover on one of their alternative theories is if the Court finds that
9 defendants didn’t promise to compensate Plaintiffs for use of their work. Thus, Plaintiffs
10 implied-in-law contract claim (including for quantum meruit) lacks an “extra element”
11 differentiating it from a claim to protect Copyright rights. Accordingly, it is preempted by the
12 Copyright Act.

13 For the foregoing reasons, the court DISMISSES WITHOUT PREJUDICE Plaintiffs
14 claim for quantum meruit. Plaintiffs are advised that the Court is highly skeptical of their ability
15 to plead a claim for quantum meruit that would survive preemption. Nevertheless, because the
16 Court cannot say that amendment would be futile, Plaintiffs are GRANTED leave to amend their
17 complaint.

18 **E. Plaintiffs’ Right of Attribution Claim**

19 Plaintiffs’ fourth claim is for “Equitable Relief—Right of Attribution.” In this claim
20 Plaintiffs seek an injunction requiring Defendants to credit them as *New Girls*’ creators in the
21 show’s credits, copyright registration, advertisements, news articles, and similar written or visual
22 materials. Defendants argue that this is nothing more than “a listing of equitable remedies
23 disguised as an independent claim for relief.” (Defs.’ Mem. P. & A. 25.)

24 Defendants are correct that Plaintiff’s fourth claim is not based on any right giving rise to
25 an independent claim for relief. The Copyright Act recognizes only a limited right of attribution,
26 applicable only to works of visual art. *See* 17 U.S.C. § 106A. Plaintiffs’ screenplays are not
27 works of visual art. *See* 17 U.S.C. § 101 (defining a work of visual art as “(1) a painting,
28 drawing, print, or sculpture, existing in a single copy [or] in a limited edition . . . [or] (2) a still

1 photographic image produced for exhibition purposes only, existing in a single copy . . . or in a
2 limited edition”). Moreover, while courts formerly allowed authors to enforce a similar right by
3 asserting a false designation of origin claim under § 43(c) of the Lanham Act, the Supreme Court
4 has held that such actions cannot be asserted by the producer of intangible property. *See Dastar*
5 *Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 31–38 (2003). Accordingly, Plaintiffs
6 cannot assert a claim for equitable relief arising from their purported right of attribution. *See*
7 *Lahiri v. Universal Music & Video Distribution Corp.*, No. CV 02-8330 RJK, 2006 WL
8 6030551, at *3–4 (C.D. Cal. Mar. 24, 2006).

9 For the aforementioned reasons, the Court DISMISSES WITHOUT PREJUDICE
10 Plaintiffs claim for equitable relief—right of attribution. Though the Court seriously doubts that
11 Plaintiffs can plead a valid claim based on their right to be credited as *New Girl*’s creators, it
12 cannot say that such a claim is impossible. Thus, because the Court cannot say that amendment
13 would be futile, Plaintiffs are GRANTED leave to amend their complaint.

14 **IV. ORDER**

15 1. For the aforementioned reasons, the Court DECLINES to reach Defendants’ argument
16 regarding substantial similarity.

17
18 2. For the aforementioned reasons, Plaintiffs’ claims for direct, contributory, and
19 vicarious infringement are DISMISSED WITHOUT PREJUDICE under Rule 8. Plaintiffs are
20 GRANTED leave to file an amended complaint that remedies the ambiguities discussed above.

21
22 3. For the aforementioned reasons, Plaintiffs’ other claims for breach of contract,
23 quantum meruit, and equitable relief—right of attribution, are DISMISSED WITHOUT
24 PREJUDICE under Rule 12(b)(6). Plaintiffs are GRANTED leave to amend their complaint.

25 **IT IS SO ORDERED.**

26 Dated: October 15, 2014



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28 _____
STEPHEN V. WILSON
United States District Judge