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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LARRY S. JOHNSON and BLAKE	)	CASE NO. CV 16-7761-R
KELLER,	)	
	)	ORDER GRANTING DEFENDANTS'
Plaintiffs,	)	MOTION FOR JUDGMENT ON THE
	)	PLEADINGS
v.	)	
	)	
DAVID KNOLLER, et al.,	)	
	)	
Defendants.	)	

Before the Court is Defendants' Motion for Judgment on the Pleadings, which was filed on July 24, 2017. (Dkt. No. 75). Having been thoroughly briefed by both parties, this matter was taken under submission on August 16, 2017.

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

1 “fair notice of what the...claim is and the grounds upon which it rests.” *Bell Atlantic Corp. v.*  
2 *Twombly*, 550 U.S. 544, 570 (2007). On a Rule 12(c) motion, “the allegations of the non-moving  
3 party must be accepted as true,” and judgment on the pleadings is proper only when “the moving  
4 party clearly establishes on the face of the pleadings that no material issue of fact remains....” *Hal*  
5 *Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1989). Courts  
6 may also consider materials submitted with the complaint and documents the complaint relies on.  
7 *Spy Optic, Inc. v. Alibaba.com, Inc.*, 163 F. Supp. 3d 755, 764 (C.D. Cal. 2015).

8 Rule 12(c) motions are proper “[a]fter the pleadings are closed—but early enough not to  
9 delay trial.” Plaintiffs filed their First Amended Complaint (“FAC”) on June 22, 2017.  
10 Defendants filed their Answer on July 6, 2017, and their Motion for Judgment on the Pleadings on  
11 July 24, 2017. Trial is set for October 31, 2017. Therefore, Defendants filed their Motion for  
12 Judgment on the Pleadings less than three weeks after filing their Answer and over three months  
13 before trial. Defendants’ Motion for Judgment on the Pleadings is procedurally sound.

14 Plaintiffs allege three claims: (1) copyright infringement, (2) fraud, and (3) breach of  
15 contract. As to the copyright claim, Plaintiffs assert that Defendants infringed on Plaintiff  
16 Johnson’s copyright in his novels, *Tribulation of a Ghetto Kid* and *Tribulation of a Ghetto Kid:*  
17 *Part II* (“*Tribulation*”), in violation of the Copyright Act, by adapting protected elements of the  
18 novels into the television series, *Power*.

19 On a motion for judgment on the pleadings, a court may compare two works to determine  
20 copyright infringement. *See Zella v. E.W. Scripps Co.*, 529 F. Supp. 2d 1124, 1130 (C.D. Cal.  
21 2007). “To establish infringement, two elements must be proven: (1) ownership of a valid  
22 copyright, and (2) copying of constituent elements of the work that are original.” *Feist Publ’ns,*  
23 *Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). Copying is established by proof that (1) the  
24 defendant had access to the work and (2) the works are substantially similar in their protected  
25 elements. *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822 (9th Cir. 2002). Here, Plaintiff  
26 Johnson’s copyright ownership is not disputed—thus, two issues remain: (1) whether Defendants  
27 had access to *Tribulation*, and (2) whether *Tribulation* and *Power* are substantially similar.

28 To prove access, a plaintiff must show beyond “mere speculation” that there was more

1 than a “bare possibility” the defendant viewed the plaintiff’s work. *Three Boys Music Corp. v.*  
2 *Bolton*, 212 F.3d 477, 482 (9th Cir. 2000). The plaintiff must establish that (1) the defendant had  
3 access to the work by a chain of events, or (2) the work was widely disseminated. *Art Attacks Ink,*  
4 *LLC v. MGA Entm’t Inc.*, 581 F.3d 1138, 1143 (9th Cir. 2009). Chain of events is shown where  
5 the plaintiff gave his work to an intermediary who could have passed the work to the creator of the  
6 allegedly infringing work. *Loomis v. Cornish*, No. CV 12–5525 RSWL, 2013 WL 6044349, at \*4  
7 (C.D. Cal. Nov. 13, 2013). The plaintiff must show a “sufficient nexus between the [intermediary]  
8 and the creator.” *Gable v. Nat’l Broad. Co.*, 727 F. Supp. 2d 815, 826 (C.D. Cal. 2010).

9 Here, Plaintiffs have not met their pleading burden of showing more than a bare possibility  
10 that Defendants had access to *Tribulation*. In relevant part, the FAC alleges only the following:  
11 Defendant Turner was Plaintiff Johnson’s agent; Defendant Turner was working for Defendant  
12 Jackson’s book company at the time; the book company developed material similar to *Tribulation*;  
13 on information and belief, Defendant Turner gave a copy of *Tribulation* to Defendant Jackson; on  
14 information and belief, Defendant Jackson, one of several executive producers on *Power*, shared  
15 *Tribulation* with the other producers approximately ten years later. The FAC fails to allege facts  
16 sufficient to demonstrate chain of events. Plaintiffs’ bare allegations that Defendant Turner gave  
17 Defendant Jackson a copy of *Tribulation* who then shared the work with co-producers ten years  
18 later are merely speculative. Accordingly, Plaintiffs have not shown a sufficient nexus between  
19 Defendant Turner and any other Defendant. Moreover, Plaintiffs do not allege that *Tribulation*  
20 was widely disseminated. Therefore, Plaintiffs have not met their burden of showing access.

21 In determining whether works are substantially similar, courts compare the “concrete  
22 elements that make up the total sequence of events and the relationships between the major  
23 characters.” *Funky Films, Inc. v. Time Warner Entm’t Co.*, 462 F.3d 1072, 1077 (9th Cir. 2006)  
24 (citation omitted). This objective test focuses on the articulable similarities of specific expressive  
25 elements, such as plot, themes, dialogue, mood, setting, pace, characters, and sequence of events.  
26 *Benay v. Warner Bros. Entm’t, Inc.*, 607 F. 3d 620, 624 (9th Cir. 2010). “Protectable expression  
27 includes the specific details of an author’s rendering of ideas.” *Funky Films*, 462 F.3d at 1077.  
28 However, “*scenes a faire*, which flow naturally from generic plot-lines, are not protectable.” *Id.*

1 Plaintiffs assert that the plots of *Tribulation* and *Power* are substantially similar. This  
2 Court disagrees. While both works share some general similarities such as a drug dealer from the  
3 inner city transitioning into legitimate business, they tell materially different stories. *Tribulation*  
4 chronicles the lives of multiple protagonists after three murders following a gambling dispute. It  
5 tells the story of dueling characters that plan revenge and follows a teenager struggling to cope  
6 with the murder of his mother. *Power*, in contrast, follows the story of a Manhattan drug kingpin,  
7 Ghost, who hopes to become a legitimate nightclub owner but encounters difficulty escaping the  
8 drug trade. It does not tell the story of revenge. The similarities identified by Plaintiffs merely  
9 arise from the works' general shared premise and are not protected by copyright law. *Tribulation*  
10 also exhibits a more somber mood throughout and entirely different vernacular.

11 The characters in the works also share no significant similarities under copyright law.  
12 Only characters who are "especially distinctive" receive copyright protection. *See Olson v. Nat'l*  
13 *Broad. Co., Inc.*, 855 F.2d 1446, 1452 (9th Cir. 1988). Here, Prince in *Tribulation* and Ghost in  
14 *Power* share no protectable similarities. Plaintiffs allege that both are smart, wear the same  
15 hairstyle and goatee, and desire to leave the drug trade. Beyond these non-distinctive similarities,  
16 the characters are nothing alike. Prince, a supporting character, has retired from the drug trade, is  
17 loyal to his friends, and is deeply in love with his girlfriend. Ghost, the central protagonist in  
18 *Power*, still controls his drug empire and pursues an extramarital affair. He neglects his family  
19 and friends to pursue his own goals. Plaintiffs also fail to show that any other characters share  
20 similarities under copyright law. Plaintiffs allege that "Angie" appears in both works, yet the  
21 characters share no similarities besides beauty. Plaintiffs allege that both works feature a Miami  
22 drug supplier named "Pedro." In fact, the drug supplier in *Power* is Felipe Lobos, the charismatic  
23 target of a federal investigation. In *Tribulation*, Pedro appears once in a flashback. No other  
24 characters bear resemblance. Thus, Plaintiffs have not shown the works are substantially similar.

25 Because Plaintiffs have not alleged facts sufficient to support access, and the works are not  
26 substantially similar as a matter of law, Plaintiffs' copyright infringement claim is baseless. This  
27 Court declines to exercise supplemental jurisdiction over the state law claims. Therefore, this case  
28 cannot be sustained against any of the Defendants, including Defendant Turner.

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**IT IS HEREBY ORDERED** that Defendants' Motion for Judgment on the Pleadings is GRANTED. (Dkt. No. 75).

**IT IS HEREBY FURTHER ORDERED** that Plaintiffs' Motion to Continue the Trial Date is DENIED. (Dkt. No. 69).

**IT IS HEREBY FURTHER ORDERED** that Plaintiffs' Application for Order for Service by Publication on Defendant Turner is DENIED. (Dkt. No. 72).

Dated: September 18, 2017.



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MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE