

No.

In The
Supreme Court of the United States

Dr. Nicole Gilbert-Daniels, h.c.,
Petitioner,

v.

Lions Gate Entertainment, Inc., et al.,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- 1. Substantial Similarity and Summary Judgment:** Does the Ninth Circuit's application of the extrinsic test and its requirement of striking similarity conflict with other circuits or Supreme Court precedent, and did the lower courts err in granting summary judgment by finding no substantial similarity as a matter of law.
- 2. Expert Evidence in Copyright Infringement:** Whether the Ninth Circuit erred in affirming the exclusion of Petitioner's expert report and declaration offered to highlight substantial similarities between the works at issue, thus depriving Petitioner of critical specialized analysis and raising due process concerns in the adjudication of complex copyright claims.

PARTIES TO THE PROCEEDING

Petitioner: Dr Nicole Gilbert-Daniels h.c. was the Plaintiff in the district court action and Appellant in the Ninth Circuit. She is the pro se Petitioner before this Court.

Respondents: Lions Gate Entertainment, Inc.; Starz Entertainment, LLC; Chernin Entertainment, LLC; Katori Hall; Liz Garcia; and Patrik Ian Polk were the Defendants in the district court and Appellees in the Ninth Circuit. These parties are the Respondents herein. No other parties participated in the proceedings below. There are no corporate petitioners requiring a Rule 29.6 statement.

RELATED PROCEEDINGS

Nicole Gilbert-Daniels v. Lions Gate Entertainment Corp. et al., United States District Court for the Central District of California, No. 2:21-cv-01471-SVW-SK. Summary Judgment entered December 07, 2023.

Nicole Gilbert-Daniels v. Lions Gate Entertainment Corp. et al., United States District Court for the Central District of California, No. 2:21-cv-01471-SVW-SK. Attorney Fees Judgement July 09, 2024

Nicole Gilbert-Daniels v. Lions Gate Entertainment Corp. et al., United States Court of Appeals for the Ninth Circuit, No. 22-55733. Judgment entered December 16, 2024

Nicole Gilbert-Daniels v. Lions Gate Entertainment, Inc., et al. United States Court of Appeals for the Ninth Circuit, No. 24-153. Petition for rehearing en banc denied January 22, 2025.

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PETITION FOR WRIT OF CERTIORARI

This case raises urgent constitutional and doctrinal concerns about using expert testimony, the proper limits of judicial discretion at summary judgment, and the fundamental right to a jury trial in complex copyright disputes. The Ninth Circuit affirmed the district court's exclusion of Petitioner's expert report and granted summary judgment to Respondent, effectively terminating the case without allowing a jury to evaluate critical evidence of substantial similarity between the parties' works. In so doing, the lower courts disregarded the standards articulated in *Daubert* and this Court's ruling in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), which cautioned:

"The nonmovant's evidence is to be believed, and all justifiable inferences are to be drawn in his favor. Credibility determinations, weighing the evidence, and drawing legitimate inferences from the facts are jury functions, not those of a judge."

Despite offering a professional, independently conducted analysis based on established industry methodologies, the Petitioner's expert was dismissed as merely "parroting" the plaintiff. This exclusion ignored the reality that experts often corroborate a plaintiff's claims precisely because they analyze the same creative material through a trained lens.

As the Ninth Circuit itself recognized in *Zindel v. Fox Searchlight Pictures, Inc.*, 815 F. App'x 158, 160 (9th Cir. 2020), "*Additional evidence, including expert testimony, would aid in the objective literary analysis*

needed to determine the extent and qualitative importance of the similarities...particularly the plausibly alleged shared plot sequence." Indeed, as Judge Kim McLane Wardlaw remarked during oral argument in *Zindel*:

"I think it's kind of hubris for a district court judge to think they have enough knowledge and basis in film and theory things people go to school for at USC, UCLA to learn all about, that they can decide this on just a dismissal stage except in rare cases where it's just obviously so frivolous." Oral Argument, *Zindel v. Fox Searchlight*, No. 18-56087 (9th Cir. 2019)

The exclusion of this expert testimony gutted the Petitioner's case and denied her the opportunity to have disputed facts evaluated by a jury. Compounding this error, the panel applied the Ninth Circuit's rigid "extrinsic test," filtering out protectable elements and requiring a "striking similarity" in the arrangement of those that remained a standard that diverges sharply from more flexible, jury-centric approaches followed in other circuits. This fractured and inconsistent landscape of copyright adjudication requires this Court's intervention. Certiorari is necessary to resolve the conflict, reaffirm the jury's constitutional role in weighing expert testimony and factual disputes, and restore due process protections to under-resourced creators seeking justice under the Copyright Act of 1976.

OPINIONS BELOW

The unpublished memorandum opinion of the U.S.

Court of Appeals for the Ninth Circuit, filed December 16, 2024, is included in Appendix A. (Nicole Gilbert-Daniels v. Lions Gate Entm't, Inc., et al., No. 24-153 (9th Cir. 2024).

The Ninth Circuit's order denying rehearing and rehearing en banc, dated January 22, 2025, is included in Appendix B and is unreported.

The order of the U.S. District Court for the Central District of California (Hon. Stephen V. Wilson) granting summary judgment to Respondents, dated December 7, 2023, is included in Appendix C.

The order of the U.S. District Court for the Central District of California (Hon. Stephen V. Wilson) granting Defendant attorney fees is included in Appendix D.

JURISDICTION

The Ninth Circuit entered its judgment on December 16, 2024. Petitioner's timely petition for panel rehearing and rehearing en banc was denied on January 22, 2025 (App. B). This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the judgment of the court of appeals.

Petitioner files this petition within 90 days of the Ninth Circuit's denial of rehearing in accordance with Supreme Court Rules 13.1 and 13.3.

STATUTORY AND CONSTITUTIONAL PROVISIONS

U.S. Const. amend. V (Due Process Clause). "No person shall be ... deprived of life, liberty, or property, without due process of law."

U.S. Constitution, Article I, Section 8, Clause 8:
"The Congress shall have Power... *To promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries*"
(This clause, often called the Intellectual Property Clause, underlies the Copyright Act and the protection of original expressive works.)

17 U.S.C. § 102. Subject matter of copyright: In general.

(a) Copyright Protection—Copyright protection subsists, by this title, in original works of authorship fixed in any tangible medium of expression... including literary 4 works, musical works, dramatic works, motion pictures, and other audiovisual works.

(b) Ideas Not Protected—In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which is described, explained, illustrated, or

embodied in such work.

Fed. R. Evid. 702. Testimony by Expert Witnesses. (In relevant part)

A witness who is qualified as an expert... may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; ... (d) the expert has reliably applied the principles and methods to the facts of the case.

STATEMENT OF THE CASE

A. Factual Background

Petitioner Dr. Nicole Gilbert-Daniels, h.c., is a playwright, producer, and recording artist. She created an original musical stage play and related works titled *Soul Kittens Cabaret* ("SKC"). *Soul Kittens Cabaret* consists of two-stage play scripts (written in 2006 and 2010) and a filmed stage performance released online and on DVD in 2011. These works center on an African American cabaret nightclub called "Soul Kittens Cabaret" in Detroit, Michigan, featuring a troupe of female performers and the interpersonal and business challenges they face. SKC's storylines incorporate themes of sisterhood, struggle, personal redemption, and faith, presented in a stage play format with periodic song-and-dance numbers. For example, in SKC, the club owner, Tata Burlesque, a gay/gender-

fluid man who inherited the club from his late partner, struggles to keep the venue afloat in the face of a takeover attempt by his partner's son. This homophobic antagonist harbors ill will toward Tata and plots to seize the club for a casino development. Throughout SKC, the characters must adhere to specific "commandments" (rules of the club) to retain their stake in the business, and the antagonist attempts to trick them into violations that would forfeit ownership. The tone of Petitioner's work blends entertainment with moral lessons, often evaluating its characters through a lens of challenges and redemption.

Respondents are companies and individuals involved in creating the television series *P-Valley*, a dramatic series that premiered on the Starz network in 2020. *P-Valley* is set in a fictional town in Mississippi, at a strip club called "The Pynk." The club in *P-Valley* is owned by a character, Uncle Clifford, a gender-fluid person who inherited the establishment from a family member (in the show, Clifford's grandmother). The series follows the dancers and staff of The Pynk as they navigate personal struggles, crime, and community pressures. The central conflict in the first season of *P-Valley* involves efforts by an outside party (a local homophobic mayor and developers) to purchase or foreclose on the club's property for a casino development. At the same time, Uncle Clifford fights to save the club. *P-Valley* has a gritty, contemporary tone, emphasizing the harsh realities of its characters' lives: poverty, abuse, corruption, and survival-spiritual and religious themes come up in *P Valley* with the character Patrice Woodbine, the overly

religious mother of one of the lead dancers. The series is presented in episodes (an ensemble drama format), Petitioner's two-hour musical stage production is performed in a live theatre and did not have the large development budget of *P-Valley*, but the central story has the same beginning, middle, and end.

Petitioner alleges that *P-Valley* is substantially based on or derived from *Soul Kittens Cabaret*. She contends that the creators of *P-Valley* had access to her work (Petitioner left copies of her stage play and her derivative work, which was a dramatic spin-off, with Lionsgate executives when she pitched it to them as a drama series in 2013. Petitioner's stage play has been publicly performed and distributed in SKC since 2007), and numerous specific elements of *P-Valley*, its characters, settings, plotlines, and themes are strikingly similar to those in SKC. For example, both works feature a nightclub primarily featuring black female exotic dancers. This LGBTQ club owner inherited the venue from a loved one, a homophobic antagonistic figure attempting to take over the club for a casino project, supporting characters such as an older mentor figure among the dancers, and a romantic subplot involving a club bouncer/protector and a dancer; very religious parents who disapprove of daughter's profession and the overarching storyline of the owner and performers banding together to save their club from closure.

Petitioner asserts that these and other similarities exceed mere coincidence or generic concepts, especially given the uncommon overlap of an inheritance storyline and an LGBT club-owner protagonist in a

cabaret setting. She maintains that *P-Valley* appropriated the “unique combination and arrangement” of these elements, making *Soul Kittens Cabaret* an original, protected work. Petitioner alleges that P-Valley unlawfully copied protectable expression from her Soul Kittens Cabaret, which works in a way that goes beyond generic tropes, amounting to appropriating her creative expression.

B. Procedural History

On January 12, 2022, Petitioner (through counsel at that time) filed a copyright infringement action against Respondent. The suit was initially filed in the Northern District of Georgia. Still, it was later transferred to the Central District of California (Case No.2:23-cv-02147- SVW-AGR) for the convenience of parties and witnesses, as P-Valley and the Respondents had strong connections to California. Upon transfer, Respondents were ordered by the district court to file a motion for summary judgment seeking dismissal of the copyright claims on the merits.

District Court’s Decision: In the Central District of California, Respondents moved for summary judgment, arguing that P-Valley is not substantially similar to SKC as a matter of law. Respondents also moved to strike the expert report and declaration submitted by Petitioner’s expert, Mr. Robert Aft, which compared the two works. The district court (Hon. Stephen V. Wilson) held a hearing on September 18, 2023, concerning the expert evidence and other pre-trial issues. After that hearing, the court granted the

Respondents' motion to exclude Petitioner's expert report and declaration. The court determined that the expert's analysis did not materially aid the court beyond the comparisons Petitioner herself had made, characterizing the report as merely reiterating "generic similarities" between the works. With the expert evidence excluded, the court evaluated substantial similarity in summary judgment.

On December 7, 2023, the district court issued an order granting summary judgment in favor of Respondents and dismissing Petitioner's copyright infringement claim.

In a detailed memorandum, the court applied the Ninth Circuit's two-part test for substantial similarity: the "extrinsic test" (an objective comparison of specific expressive elements, filtering out unprotectable content) and the "intrinsic test" (a subjective comparison of the works' overall concept and feel). The court concluded that, after filtering out elements it deemed unprotectable (such as the general idea of a story set in a strip club environment, stock characters, and commonplace scenarios), the remaining similarities between SKC and PValley were insufficient for any reasonable jury to find substantial similarity in protected expression. The court's order noted numerous differences between the works: for instance, the club owner character in SKC (Tata) is a gay man motivated by preserving his deceased lover's legacy, whereas P-Valley's owner (Uncle Clifford) is a nonbinary person facing financial struggles, preserving his grandmother's legacy. The district court also pointed out that specific plot devices in P-Valley (such

as a looming casino development and political corruption) either did not appear in SKC or were only mentioned a few times and were superficially similar to Petitioner's story elements. In sum, the district judge held that Petitioner failed the extrinsic test because the overlap between the works related primarily to scènes à faire (elements that flow naturally from a setting or genre) and other unprotectable ideas, and thus no triable issue existed on substantial similarity. Given that conclusion, the court did not conduct an intrinsic test analysis for a jury and entered judgment for Respondents.

Ninth Circuit Appeal: Petitioner timely appealed to the U.S. Court of Appeals for the Ninth Circuit (Appeal No. 24-4936). On appeal, Petitioner argued (1) that the district court abused its discretion in excluding the expert report of Mr. Aft, which Petitioner viewed as crucial evidence explaining the similarities between the works, and (2) that the court erred in granting summary judgment because substantial similarity should have been a question for the jury, or at least because the court misapplied the legal standard by filtering out too much and overlooking the patterned similarities in sequence and arrangement of events between SKC and P-Valley. The petitioner emphasized that the expert's analysis of 57 specific comparisons between the works, which, taken together, demonstrate a unique overlap not explainable by mere coincidence or generic tropes.

A video of 57 side-by-side comparisons is available here <https://vimeo.com/830684100?share=copy>

The Ninth Circuit panel (Judges Susan P. Graber, Gabriel P. Sanchez, and Holly A. Thomas) unanimously affirmed the district court in an unpublished memorandum opinion issued on December 16, 2024 (A recording of the Ninth Circuit's proceedings, including any available audio of the submission, is available on the court's website. A video of the case proceedings has been made available on the Ninth Circuit YouTube channel.)

The Ninth Circuit first addressed excluding Petitioner's expert evidence in its memorandum disposition. The panel held that the district court did not abuse its discretion in striking Mr. Aft's specialist report and declaration. Citing Ninth Circuit precedent, the panel noted that a trial judge's evidentiary rulings are afforded a "high degree of deference." The panel agreed that Petitioner's expert restated the same list of alleged similarities that Petitioner had already identified, including many similarities that were at a high level of generality or involved unprotectable elements. The Ninth Circuit cited *Rice v. Fox Broad. Co.*, 330 F.3d 1170, 1180 (9th Cir. 2003), for the proposition that expert testimony highlighting "generic similarities in expressive content" does not alter the analysis. The panel further commented that even if it were to consider the expert's report in full, it "would not change the outcome" of the substantial similarity determination under the law.

Turning to the merits of substantial similarity, the Ninth Circuit reviewed the summary judgment de novo (citing *Swirsky v. Carey*, 376 F.3d 841, 844 (9th Cir. 2004)). The panel reiterated the governing

standard: to prove copyright infringement, a plaintiff must show (1) ownership of a valid copyright and access by the defendant to the work and (2) substantial similarity between the defendant's work and protected expression in the plaintiff's work. For the similarity prong in literary and dramatic works, the Ninth Circuit employs the extrinsic and intrinsic tests. Still, "only the extrinsic test is important" for summary judgment purposes" (quoting *Swirsky*, 376 F.3d at 845). The panel proceeded to "filter out" the unprotectable elements of SKC, such as general ideas, stock themes, and scènes à faire that naturally follow from the premise of performers in a cabaret/strip club setting. After filtering, the panel compared the remaining elements of SKC and P-Valley.

The Ninth Circuit agreed with the district court that copyright does not protect many purported similarities. For example, the idea of a story about performers at a nightclub or strip club is a basic premise and not protectable. Common character types (such as an ingénue newcomer, a club owner, a rival, or a villain with financial motives) and settings (a neon-lit club with a stage) were considered standard fare in this genre. The panel observed, as the district court did, substantial dissimilarities in the specific expression of characters and plot: SKC's owner, Tata, faces a homophobic antagonist aiming to take over his cabaret by exploiting "moral clause" commandments, whereas P-Valley's Uncle Clifford faces a very different homophobic antagonist (a local politician) whose motivations are profit and power, with the threat coming in the form of foreclosure and casino development deals. The Ninth Circuit noted some

similarities Petitioner asserted were either mischaracterizations or drawn from elements outside the core works (for instance, comparisons that cited materials left with Lionsgate or themes not directly present in the copyrighted scripts themselves). In the end, the panel concluded that whatever random similarities could be found “scattered throughout the works” were not enough — quoting *Litchfield v. Spielberg*, 736 F.2d 1352, 1356 (9th Cir. 1984) warned that courts must be “particularly cautious” about inferring copying from random similarities.

The panel also addressed Petitioner’s argument regarding the combination of elements: it acknowledged *Metcalf v. Bochco*, 294 F.3d 1069 (9th Cir. 2002), allowing a unique selection and arrangement of otherwise common elements to be protectable. However, the panel held that Petitioner had not demonstrated the “striking similarity” in sequence and arrangement in *Metcalf*. It found that the order and structure of events in P-Valley and SKC were not closely aligned in a protectable way, aside from broad, abstract parallels. Accordingly, on December 16, 2024, the Ninth Circuit affirmed the grant of summary judgment to Respondents. Petitioner’s request for rehearing and for rehearing en banc was subsequently denied on January 22, 2025 (App. B). Having exhausted her appeals in the lower courts, Petitioner Nicole Gilbert-Daniels now respectfully petitions this Court for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

The petition for a writ of certiorari should be granted

for three independent reasons. First, the lower court’s exclusion of Petitioner’s expert evidence presents an essential question about the role of expert testimony in copyright cases. It implicates fundamental fairness in the adjudication of complex creative works. Second, the Ninth Circuit’s decision deepens uncertainty and potential conflict among the circuits regarding the standard for substantial similarity, mainly how combinations of unprotectable elements are treated at summary judgment warranting this Court’s guidance. Third, the issues raised are of broad significance to authors and the entertainment industry, and this case is an excellent vehicle for clarifying the extent of copyright protection for creative expression in stories and the proper procedures to ensure a fair evaluation of infringement claims.

I. Excluding Petitioner’s Expert Testimony Presents a Serious Issue of Due Process and Fairness

The exclusion of Petitioner’s expert report affirmed by the Ninth Circuit raises a serious due process concern and undermines the proper role of expert analysis in copyright litigation. Expert testimony is often critical in helping juries evaluate nuanced similarities between complex works, especially in cases involving detailed artistic comparisons. By striking this expert analysis, the courts below denied Petitioner a fair opportunity to present her case and improperly assumed the jury’s fact-finding role. As Judge Paez cautioned in *Hanagami*, “*Summary judgment is not the appropriate stage to resolve questions of creativity and originality*,” and as Judge Kozinski noted,

“Determining whether a defendant appropriated protectable expression is a function reserved for the jury.” This case offers a significant opportunity for the Court to clarify the standards governing expert admissibility, protectable expression, and judicial discretion in copyright cases.

A. Expert analysis is often vital in substantial similarity determinations.

Under *Fed. R. Evid. 702*, expert testimony is admissible when it helps the trier of fact understand the evidence or determine a fact in an issue of principle. This is especially critical in copyright cases involving complex literary or cinematic works. The Ninth Circuit has consistently recognized in cases like *Swirsky v. Carey* and *Zindel v. Fox Searchlight* that expert analysis is not only admissible but often essential in applying the “extrinsic test” for substantial similarity, particularly to filter out unprotectable elements and focus on original expression.

Petitioner’s expert, Robert Aft, evaluated 57 specific plot, character, structure, and theme parallels between *Soul Kittens Cabaret* and *P-Valley* comparisons that would be difficult for a lay observer to identify or assess without expert guidance. By striking this testimony, the lower courts not only departed from Rule 702 and binding Ninth Circuit precedent but also deprived Petitioner of the necessary interpretive framework to present her case and respond to any defense expert, leaving the factfinder to evaluate

technical, creative elements without the benefit of expert context.

B. The exclusion of Petitioner's expert was an abuse of discretion under the circumstances.

While trial courts have discretion in evidentiary rulings, that discretion is not boundless, significantly when its exercise may encroach on a litigant's ability to substantiate her claims. Here, the district court struck the expert report on the view that it "merely restated" similarities the Petitioner alleged. But Petitioner respectfully submits that this reasoning conflates the report's content with its purpose. Mr. Aft's report did far more than list similarities; it provided context, explaining why those similarities were not trivial or random, and it addressed the critical question of whether the shared elements were protectable expressions or unprotectable ideas. For instance, the expert opined on how the sequence of character introductions and plot twists in SKC, and P-Valley follow an almost parallel structure (e.g., the newcomer's arrival, the inherited club backstory, the looming external casino threat, the climactic resolution involving the club's fate). These insights directly counter the defense's contention that any overlap was due only to generic tropes.

By striking the report, the court prevented this explanation from being part of the record. Notably, there was no claim that Mr. Aft was unqualified or that his methodology was unsound. The exclusion was not based on *Daubert* or a similar reliability challenge;

it was excluded essentially for perceived redundancy or irrelevance. This is precisely where Petitioner believes the court abused its discretion. Given that substantial similarity in this case involved dozens of comparisons, an expert's synthesis could help demonstrate the cumulative effect of those similarities. Dismissing the expert's contribution as having "the same generic similarities," Petitioner alleged ignores that an expert might lend credibility and clarity to those allegations. If an expert independently finds the same overlap, that corroboration should bolster, not weaken, the case for similarity (especially if the expert can tie those overlaps to protectable elements). The decision to exclude crucial evidence implicates due process at a fundamental level. The petitioner invested significant resources to obtain expert analysis (now as a pro se litigant, no less indicating how vital she viewed this evidence). To have it entirely disregarded curtailed her opportunity to make her case. This Court should grant certiorari to consider whether the lower courts applied too restrictive a view of expert evidence in copyright cases, potentially conflicting with Rule 702 and with practices in other circuits.

II. Conflicts Among Circuits and Improper Use of Summary Judgement.

The second question concerning the proper standard for substantial similarity and its application at summary judgment warrants this Court's review due to conflicting approaches among the circuits. While all courts exclude unprotectable elements like ideas and stock themes, methodology differs significantly. The Second Circuit emphasizes a holistic "total concept and

feel” analysis, often deferring close cases to the jury. The Ninth Circuit, by contrast, applies a dual-test framework: an extrinsic test (objective, filtered) assessed at summary judgment and an intrinsic test (subjective, jury-based) reserved for trial. Yet in practice, Ninth Circuit courts frequently dismiss claims at the extrinsic stage by filtering out components individually, even when the combined effect might present an original expression. Other circuits, such as the Seventh and Eleventh, apply side-by-side comparisons with more flexibility in assessing whether a combination of unprotectable elements may still create an overall impression of copying. This fragmented legal landscape means a work might survive summary judgment in one jurisdiction but not another. In Petitioner’s case, dozens of sequences, theme, and character similarities were dismissed as unprotectable tropes without considering their cumulative impact on a jury question in other circuits. Clarification is needed to prevent inconsistent outcomes and ensure that summary judgment is not misused to short-circuit legitimate claims in close or complex infringement cases.

A. The Decision Below Illustrates Over-Filtering and Misapplication of The Combination Doctrine

Even under Ninth Circuit precedent, the panel misapplied the substantial similarity standard by overfiltering and ignoring the protectability of the selection and arrangement of elements, as recognized in *Metcalf v. Bochco*. There, the court found infringement not in isolated components but in the

shared sequence and relationship of events, an approach Petitioner mirrors here. Both *SKC* and *P-Valley* feature a young woman with a red suitcase arriving by bus, a gay or nonbinary club owner battling a homophobic rival tied to the club's past, a plot to take over the club for a casino, stage performances as character exposition, and a climax centered on saving the club. While each element alone may be generic, their combined appearance in similar narrative order reflects creative authorship. Yet the lower courts dissected these details microscopically, dismissing differences like "gay vs. nonbinary" and failed to consider whether the overall progression would strike an ordinary observer as substantially similar. Other circuits, such as the Eleventh, weigh the cumulative impact and allow such close calls to reach a jury. This Court's review is needed to confirm that originality can lie in the arrangement of common elements, as *Feist* affirmed. That summary judgment is improper when reasonable jurors could differ on whether the overall expression has been unlawfully appropriated.

B. Ensuring Proper Balance at Summary Judgment in Copyright Cases

Review is also warranted to address a broader procedural concern: the balance between filtering out unprotectable content and preserving genuine issues of fact for the jury. While an important tool to dispose of meritless claims, summary judgment must be applied carefully in copyright cases. This Court has cautioned that judges should not invade the jury's function in determining how an ordinary observer

would view two works, notably when the works embody creativity and storytelling that can evoke differing impressions. There is a tension between the understandable judicial impulse to weed out claims based on thin similarities or public-domain elements and the right of a plaintiff to have a jury decide whether a defendant took the heart of her work.

In the present case, Petitioner respectfully maintains that the lower courts went too far regarding filtering and skepticism, effectively resolving factual inferences against her. Granting certiorari would allow this Court to examine and set standards for appropriate summary judgment in close copyright cases. For example, the Court could clarify that if a plaintiff presents a substantial collection of similarities, especially in a similar sequence, courts should be cautious before declaring those similarities nonactionable as a matter of law. This would align with the notion that, at some point, quantity and quality of similarities become a factual question of impression and emphasis, which is what juries are for. The substantial similarity issue here is not a one-off, fact-bound dispute. It implicates a recurring question in copyright litigation: in the protection afforded by copyright and because the case offers an ideal vehicle to address these broader concerns.

C. Protecting Original Storytelling in The Entertainment Industry

Both Petitioner's *Soul Kittens Cabaret* and Respondents' *P-Valley* explore the experiences of Black women and LGBTQ+ individuals in the context of

nightclubs and performance art. These narratives contribute to cultural conversations and have unique creative elements. Petitioner is a relatively small, independent artist (also known for her work in the R&B group Brownstone under the name Nicci Gilbert) who poured her life experiences and creativity into SKC. P-Valley is a big-budget television series backed by at least a 100-million-dollar investment from a major entertainment company. The case thus highlights a classic dynamic: an individual creator versus a powerful industry player. The legal standards in copyright law mustn't be stacked so high against the individual that potentially meritorious claims are dismissed without a full airing.

If indeed P-Valley appropriated core expressive elements from Petitioner's work without credit or compensation, failing to address that harm could discourage authors from sharing their works or scripts out of fear that large studios can take the "essence" of their creations with impunity. On the other hand, if P-Valley was independently created or only drew on truly generic concepts, that can be vindicated through proper fact-finding. The concern here is that the current doctrine, as applied, might allow clever copying of unprotected "ideas" but produce a similar aggregate creation. By intervening, this Court can reinforce that copyright does protect the original combination and arrangement of ideas into expressive form, thus safeguarding the interests of writers and creators whose works might otherwise serve as uncompensated "inspiration" for profitable derivatives. This case also touches on the role of diverse stories in entertainment. The petitioner's work and the

Respondents' show both center on communities and perspectives historically underrepresented in mainstream media. Ensuring robust copyright protections encourages authors from all backgrounds to tell their stories, knowing that the law will protect them from misappropriation. The Court's guidance can thus have implications for innovation and diversity in creative content.

D. The Need for Clarity to Avoid Inconsistent Justice

The fact that Petitioner's claim was rejected at summary judgment while another factfinder might have viewed it differently (and indeed, while members of the public have noticed the similarities and debated them) indicates a need for clarity in legal standards. From the public's and practitioners' standpoint, the rules for what counts as infringement of a story or script are somewhat opaque and vary by jurisdiction. This lack of clarity can lead to forum shopping and uncertainty. By resolving the questions presented, the Court can provide a uniform rule or at least clear parameters: for example, what threshold of similarity is needed to reach a jury and how courts should treat expert evidence in making that determination.

Moreover, the appearance of fairness in the judicial process is at stake. The petitioner, proceeding pro se after trial, fought hard to bring her case this far. The perception that her evidence was summarily dismissed (expert thrown out; case decided without a jury), and she is now ordered to pay the Respondents a 7-figure settlement that could erode trust in the system's

ability to handle David-versus-Goliath battles reasonably. Supreme Court review would show that even pro se and independent creators' grievances are heard at the highest level, reinforcing confidence in the rule of law.

VEHICLE STATEMENT

This case is an ideal vehicle for resolving pressing legal questions at the intersection of copyright law, expert testimony, and due process. The Ninth Circuit squarely decided the issues, the record is complete, and no procedural barriers exist. The core questions are legal—whether the lower courts erred in striking expert testimony and granting summary judgment in a complex infringement case where substantial similarity turned on the selection and arrangement of elements. The decision below deepens a growing circuit split and risks sidelining juries in close, fact-intensive cases. Without clarification, courts may continue applying inconsistent standards that deny under-resourced creators a fair opportunity to be heard. Granting certiorari would restore balance, affirm the jury's constitutional role, and ensure copyright law protects original expression without punishing creative overlap.

CONCLUSION

For the foregoing reasons, Petitioner Dr. Nicole Gilbert- Daniels, h.c. Respectfully prays that the petition for a writ of certiorari be granted.

Respectfully submitted,

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