

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Nicole Gilbert-Daniels, Petitioner,

v.

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

On Application for Extension of Time to File a Petition for a Writ of Certiorari
to the United States Court of Appeals for the Ninth Circuit

PRO SE APPLICATION TO JUSTICE ELENA KAGAN TO EXTEND TIME
TO FILE PETITION FOR A WRIT OF CERTIORARI

Dr. Nicole Gilbert-Daniels h.c.

Pro Se Petitioner

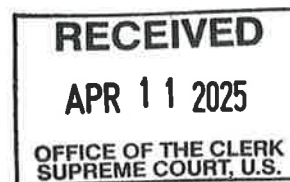
2392 Barrington Trace Circle

Atlanta, GA 30331

678-637-6398

Niccigilbert@gmail.com

Dated: April 1, 2025



To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to Supreme Court Rule 13.5, Petitioner Dr. Nicole Gilbert-Daniels respectfully requests a sixty (60) day extension of time, to and including June 22, 2025, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Ninth Circuit entered judgment on December 16, 2024, and denied a timely petition for rehearing en banc on January 22, 2025. Absent an extension, the petition is due on April 22, 2025. This application is timely under Rule 13.5.

Petitioner proceeds pro se and has pursued her legal rights diligently and in good faith. However, she was a primary caregiver to her sister, who battled terminal brain cancer for 18 months during the course of this litigation. On March 23, 2025, just 30 days before the current petition deadline, Petitioner's sister passed away. The burden of round-the-clock care, followed by the emotional and logistical impact of her sister's passing, constitutes good cause for an extension.

Courts have consistently held that serious illness or the death of a close family member constitutes good cause under Supreme Court Rule 13.5.

See, e.g., *United States v. Ratigan*, 351 F.3d 957, 965 (9th Cir. 2003); *Maples v. Thomas*, 565 U.S. 266, 281 n.8 (2012).

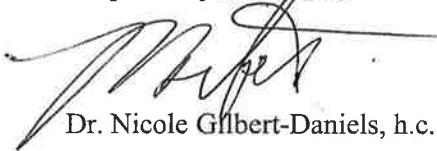
Additionally, Petitioner seeks this extension to retain and consult qualified Supreme Court counsel to assist in the preparation of the petition. Courts have recognized that time needed to obtain new counsel, particularly in complex cases, may support an extension. See *Lawrence v. Florida*, 549 U.S. 327, 336 (2007).

The legal issues at stake include conflicting circuit interpretations on substantial similarity in copyright law. Petitioner intends to present legal questions concerning the Ninth Circuit's summary judgment standard for substantial similarity. The lower court's application of the 'striking similarity' standard contradicts precedent such as *Metcalf v. Bochco*, 294 F.3d 1069 (9th Cir. 2002), and conflicts with the 'total concept and feel' approach favored by other circuits. This Court's review would help resolve a well-developed split among the circuits and clarify important doctrinal questions affecting copyright law.

Granting this extension will not prejudice Respondents. By contrast, denial of the extension would unjustly penalize Petitioner for circumstances beyond her control and hinder the Court's ability to consider a fully developed petition raising issues of national legal significance.

Accordingly, Petitioner respectfully requests that the deadline to file her petition for a writ of certiorari be extended sixty (60) days, to and including June 22, 2025.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nicole Gilbert-Daniels', with a long horizontal flourish extending to the right.

Dr. Nicole Gilbert-Daniels, h.c.

Pro Se Petitioner

2392 Barrington Trace Circle

Atlanta, GA 30331

(678) 637-6398

niccigilbert@gmail.com

Dated: April 1, 2025

PROOF OF SERVICE

I, Nicole Gilbert-Daniels, certify that I have this day served the accompanying Application for Extension of Time to File a Petition for a Writ of Certiorari on all parties required to be served, in compliance with Supreme Court Rule 29.

All Respondents have consented in writing to electronic service. Accordingly, on April 8, 2025, I served the Application by emailing a PDF copy to counsel of record for Respondents:

David A. Halberstadter, Esq.

Katten Muchin Rosenman LLP

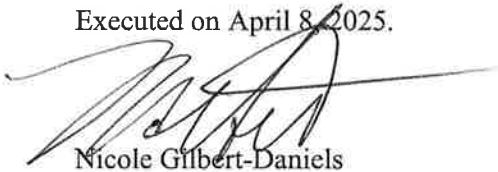
2029 Century Park East, Suite 2600

Los Angeles, CA 90067

Email: david.halberstadter@katten.com

I declare under penalty of perjury that the foregoing is true and correct under Supreme Court Rule 29.5(c).

Executed on April 8, 2025.

A handwritten signature in black ink, appearing to read 'Nicole Gilbert-Daniels', is written over the text 'Executed on April 8, 2025.'.

Nicole Gilbert-Daniels

Pro Se Petitioner

Appendix A

Memorandum Opinion of the United States Court of Appeals for the Ninth Circuit, filed December 16, 2024,
affirming the district court's judgment. (DktEntry: 45.1, Case No. 24-153)

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 16 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NICOLE GILBERT-DANIELS,

Plaintiff - Appellant,

v.

LIONS GATE ENTERTAINMENT,
INC.; STARZ ENTERTAINMENT,
LLC; CHERNIN ENTERTAINMENT,
LLC; KATORI HALL; LIZ
GARCIA; PATRIK IAN POLK,

Defendants - Appellees.

No. 24-153

D.C. No.

2:23-cv-02147-SVW-AGR

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted December 5, 2024**
Pasadena, California

Before: GRABER, SANCHEZ, and H.A. THOMAS, Circuit Judges.

Nicole Gilbert-Daniels appeals the summary judgment entered in favor of

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Lions Gate Entertainment, Inc., et al. (“Defendants”) in this copyright infringement action under the Copyright Act of 1976, alleging that Defendants’ television show *P-Valley* infringed on Gilbert-Daniels’ works entitled *Soul Kittens Cabaret* (“*SKC*”). *SKC* consists of three copyrighted works: the script of a 2006 musical stage play, the script of a 2010 musical stage play, and a 2014 motion picture of the stage performance. *P-Valley* premiered on Starz in 2020. On appeal, Gilbert-Daniels argues that the district court (1) abused its discretion in striking the expert report and declaration of Robert Aft, and (2) erred in its analysis of substantial similarity. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

1. We review for abuse of discretion the district court’s decision to strike expert testimony, *see Pyramid Techs., Inc. v. Hartford Cas. Ins. Co.*, 752 F.3d 807, 813 (9th Cir. 2014), and afford a district court’s evidentiary rulings a “high degree of deference,” *United States v. Chang*, 207 F.3d 1169, 1172 (9th Cir. 2000). The district court did not abuse its discretion in striking Aft’s expert report and declaration. Aft’s expert report and declaration merely restate many of the “same generic similarities in expressive content” that Gilbert-Daniels had already presented. *Rice v. Fox Broad. Co.*, 330 F.3d 1170, 1180 (9th Cir. 2003), *overruled on other grounds by Skidmore v. Led Zeppelin*, 952 F.3d 1051, 1069 (9th Cir. 2020) (en banc). Even if we were to consider Aft’s expert report and declaration, the outcome of our analysis of substantial similarity would not change.

2. We review de novo the district court's grant of summary judgment. *Swirsky v. Carey*, 376 F.3d 841, 844 (9th Cir. 2004). To establish copyright infringement, Gilbert-Daniels must show that (1) Defendants had access to her works,¹ and (2) *SKC* and *P-Valley* are substantially similar in protected expression. *See Rice*, 330 F.3d at 1174 (stating standard). Because "no reasonable juror could find substantial similarity of ideas and expression" between *SKC* and *P-Valley*, the district court did not err in granting summary judgment to Defendants. *Funky Films, Inc. v. Time Warner Ent. Co.*, 462 F.3d 1072, 1076 (9th Cir. 2006) (citation omitted), *overruled on other grounds by Skidmore*, 952 F.3d at 1069.

In determining whether two works are substantially similar, "we employ a two-part analysis: an objective extrinsic test and a subjective intrinsic test." *Swirsky*, 376 F.3d at 845. For purposes of summary judgment, "only the extrinsic test is important." *Id.* Under the extrinsic test, we filter out unprotectable elements and then compare remaining "articulable similarities between the plot, themes, dialogue, mood, setting, pace, characters, and sequence of events." *Rice*, 330 F.3d at 1174 (citation omitted).

Many of the purported similarities between the works are based on unprotectable elements such as generic plot devices, *see Funky Films*, 462 F.3d at

¹ Because Gilbert-Daniels fails to raise a genuine issue of material fact regarding substantial similarity, we need not address the element of access. *See Skidmore*, 952 F.3d at 1064.

1081, and *Berkic v. Crichton*, 761 F.2d 1289, 1293 (9th Cir. 1985); familiar stock scenes and themes, see *Cavalier v. Random House, Inc.*, 297 F.3d 815, 823 (9th Cir. 2002), and *Berkic*, 761 F.2d at 1293–94; or scènes à faire that “flow naturally” from the basic premise of dancers or performers at a cabaret or exotic dancing venue, *Rice*, 330 F.3d at 1177 (quoting *Metcalf v. Bochco*, 294 F.3d 1069, 1074 (9th Cir. 2002)).

As the district court aptly noted, there are abundant dissimilarities in the respective works’ plots, themes, dialogue, moods, paces, characters, and settings. What remains after filtering out the unprotectable elements consists of “random similarities scattered throughout the works,” about which we are “particularly cautious.” *Litchfield v. Spielberg*, 736 F.2d 1352, 1356 (9th Cir. 1984). Caution is especially warranted here, as several of Gilbert-Daniels’ proffered comparisons reference materials that are not copyrighted, mischaracterize the works, or fail to cite directly to the materials at issue. Accordingly, we conclude that no reasonable jury could find substantial similarity between the protected aspects of *SKC* and *P-Valley*.

Our analysis does not change under *Metcalf* because there is no “striking” similarity between the two works’ sequence and arrangement of unprotectable elements as compared to those at issue in *Metcalf*. 294 F.3d at 1073–74.

AFFIRMED.

Appendix B

Order of the United States Court of Appeals for the Ninth Circuit denying panel rehearing and rehearing en banc, dated January 22, 2025. (DktEntry: 47.1, Case No. 24-153)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 22 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NICOLE GILBERT-DANIELS,

Plaintiff - Appellant,

v.

LIONS GATE ENTERTAINMENT, INC.;
et al.,

Defendants - Appellees.

No. 24-153

D.C. No.

2:23-cv-02147-SVW-AGR

Central District of California,
Los Angeles

ORDER

Before: GRABER, SANCHEZ, and H.A. THOMAS, Circuit Judges.

Judge Sanchez and Judge Thomas vote to deny the petition for rehearing en banc, and Judge Graber so recommends. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on it. Fed. R. App. P. 40. The petition for rehearing en banc, Dkt. 46, is therefore DENIED.