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 The Walt Disney Company, et al.
 9

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 ESPLANADE PRODUCTIONS, INC., a
 13 Delaware corporation,

14 Plaintiff,

15 v.

16 THE WALT DISNEY COMPANY, a
 Delaware corporation; DISNEY
 17 ENTERPRISES, INC., a Delaware
 corporation; WALT DISNEY PICTURES,
 18 a California corporation; ABC, INC., a
 New York corporation; BUENA VISTA
 19 HOME ENTERTAINMENT, INC., a
 California corporation; DISNEY
 20 CONSUMER PRODUCTS, INC., a
 California corporation; DISNEY
 21 CONSUMER PRODUCTS AND
 INTERACTIVE MEDIA, INC., a
 22 California corporation; DISNEY BOOK
 GROUP, LLC, a Delaware limited liability
 23 company; BUENA VISTA BOOKS, INC.,
 a California corporation; DISNEY
 24 INTERACTIVE STUDIOS, INC., a
 California corporation; DISNEY STORE
 25 USA, LLC, a Delaware limited liability
 company; DISNEY SHOPPING, INC., a
 26 Delaware corporation; and DOES 1
 through 10, inclusive,
 27

28 Defendants.

Case No. 2:17-cv-02185-MWF-JC

**DEFENDANTS' NOTICE OF
 MOTION AND MOTION TO
 DISMISS PLAINTIFF'S FIRST
 AMENDED COMPLAINT**

Hearing Date: October 2, 2017
Hearing Time: 10:00 a.m.
Place: Courtroom 5A
Judge: Hon. Michael W. Fitzgerald

Action Filing Date: March 21, 2017

1 TO PLAINTIFF ESPLANADE PRODUCTIONS, INC. AND ITS
2 COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on October 2, 2017, at 10:00 a.m., or as soon
4 thereafter as the matter may be heard, in Courtroom 5A of this Court, located at 350
5 West First Street, Los Angeles, California 90012, defendants The Walt Disney
6 Company, Disney Enterprises, Inc., Walt Disney Pictures, ABC, Inc., Buena Vista
7 Home Entertainment, Inc., Disney Consumer Products, Inc., Disney Consumer
8 Products and Interactive Media, Inc., Disney Book Group, LLC, Buena Vista
9 Books, Inc., Disney Interactive Studios, Inc., Disney Store USA, LLC, and Disney
10 Shopping, Inc. (collectively, “Defendants”) will and hereby do move pursuant to
11 Federal Rule of Civil Procedure 12(b)(6) for an order dismissing with prejudice
12 plaintiff Esplanade Productions, Inc.’s (“Plaintiff”) First Amended Complaint on
13 the ground that it fails to state any claim upon which relief can be granted.

14 This Motion is made following the conference of counsel pursuant to Central
15 District Local Rule 7-3, which took place on August 21, 2017. Declaration of
16 Craig P. Bloom (“Bloom Decl.”) ¶ 2. This Motion is based on the files, records,
17 and proceedings in this action, this Notice, the following Memorandum of Points
18 and Authorities, the concurrently filed Declaration of Craig P. Bloom, the reply
19 memorandum that Defendants intend to file, the arguments of counsel, and such
20 other matters as may be presented at the hearing on this Motion or prior to the
21 Court’s decision.

22
23 Dated: August 28, 2017

O’MELVENY & MYERS LLP

By: /s/ Daniel M. Petrocelli

Daniel M. Petrocelli

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25
26 Attorneys for Defendants
The Walt Disney Company, et al.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. BACKGROUND.....2

II. PLAINTIFF FAILS TO STATE A COPYRIGHT CLAIM.....5

 A. The Plots And Sequences Are Not Substantially Similar.....6

 B. The Themes Are Not Substantially Similar.....10

 C. The Character Designs Are Not Substantially Similar.....11

 D. The Character Traits Are Not Substantially Similar.....15

 E. The Dialogue And Titles Are Not Substantially Similar.....20

 F. The Settings Are Not Substantially Similar.....22

 G. The Mood And Pace Are Not Substantially Similar.....23

 H. The Combinations Of Elements Are Not Substantially Similar.....23

III. PLAINTIFF’S DERIVATIVE STATE-LAW CLAIMS ALSO FAIL AS A MATTER OF LAW AND SHOULD BE DISMISSED.....24

IV. CONCLUSION.....25

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

Acri v. Varian Assocs., Inc.,
114 F.3d 999 (9th Cir. 1997).....25

Alexander v. Murdoch,
2011 WL 2802899 (S.D.N.Y. May 27, 2011)..... 14, 19

Aliotti v. R. Dakin & Co.,
831 F.2d 898 (9th Cir. 1987)..... 25

Basile v. Warner Bros. Entm’t, Inc.,
2016 WL 5867432 (C.D. Cal. Jan. 4, 2016)..... 7, 10

Benay v. Warner Bros. Entm’t, Inc.,
607 F.3d 620 (9th Cir. 2010)..... 10, 24

Benjamin v. Walt Disney Co.,
2007 WL 1655783 (C.D. Cal. June 5, 2007)..... 8, 15

Bethea v. Burnett,
2005 WL 1720631 (C.D. Cal. June 28, 2005)..... 24

Buggs v. Dreamworks, Inc.,
2010 WL 5790251 (C.D. Cal. Dec. 28, 2010) 6

Campbell v. Walt Disney Co.,
718 F. Supp. 2d 1108 (N.D. Cal. 2010)..... 7, 10, 11

Cavalier v. Random House, Inc.,
297 F.3d 815 (9th Cir. 2002)..... 5, 10, 22

Cory Van Rijn, Inc. v. Cal. Raisin Advisory Bd.,
697 F. Supp. 1136 (E.D. Cal. 1987)..... 20

DC Comics v. Towle,
802 F.3d 1012 (9th Cir. 2015)..... 15

Funky Films, Inc. v. Time Warner Entm’t Co.,
462 F.3d 1072 (9th Cir. 2006)..... 5, 10

Gable v. NBC,
727 F. Supp. 2d 815 (C.D. Cal. 2010)..... 24

Gallagher v. Lions Gate Entm’t Inc.,
2015 WL 12481504 (C.D. Cal. Sept. 11, 2015).....*passim*

Kouf v. Walt Disney Pictures,
16 F.3d 1042 (9th Cir. 1994) 6

**TABLE OF AUTHORITIES
(continued)**

	Page
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**TABLE OF AUTHORITIES
(continued)**

Page

STATUTES

17 U.S.C. § 301.....	25
17 U.S.C. § 505.....	25

RULES AND REGULATIONS

37 C.F.R. § 202.1(a)	21
----------------------------	----

OTHER AUTHORITIES

Nimmer on Copyright.....	5, 25
D. Aronoff, <i>Exploding the Inverse Ratio Rule</i> , 56 J. COPYRIGHT SOC’Y OF THE U.S.A. 125 (2008)	5

1 This Court previously dismissed Plaintiff’s initial complaint and concluded
2 that by choosing not to attach the allegedly infringed *Looney* materials, Plaintiff
3 “actively obfuscate[d] the details of the infringement.” Doc. 24 (“Order”) at 2. As
4 the Court observed, Plaintiff’s failure to attach the *Looney* materials to its initial
5 complaint, or to include any clear summary of them, indicated that doing so “would
6 have been detrimental to its claims.” *Id.* at 19. Now that the *Looney* materials have
7 finally emerged with Plaintiff’s amended complaint, the Court’s observations are
8 confirmed: the additional descriptions and context provided by those materials
9 show *Looney* and *Zootopia* bear no similarity, let alone the substantial similarity
10 required to state a claim for copyright infringement. Every finding and holding in
11 the Court’s existing prior 20-page opinion and order should be conclusively
12 affirmed.

13 The *Looney* materials describe a raunchy live-action movie about a “looney”
14 animator named Zeke who develops an animated TV show based on people from
15 his childhood and on “warring aspects of his personality,” depicted as high school-
16 age animals in a zoo run by humans. Doc. 27 (“FAC”) Ex. 1. When fame goes to
17 his head, Zeke becomes an egomaniacal tyrant, is kicked off the show, loses his
18 money, fame, and starlet girlfriend, and is committed to an insane asylum, where he
19 struggles to regain his sanity and win the love of his childhood friend. *Id.* Neither
20 the central *Looney* plot nor its animated story-within-a-story are remotely similar to
21 *Zootopia*.

22 This conclusion is not obscured by the 143 additional pages of allegations,
23 comparison charts, and tracing studies included in the amended complaint. Plaintiff
24 still cannot overcome the fundamental deficiencies in its initial complaint or make a
25 “clear, direct comparison” between *Looney* and *Zootopia*. Order at 19. Instead,
26 Plaintiff again tries to “deliberate[ly] obfuscat[e]” the relevant facts by openly
27 ignoring the majority of the *Looney* materials, rehashing the same vague, generic
28 comparisons the Court already rejected, and mischaracterizing both works to make

1 them appear similar. *Id.* Such pleading artifices are futile, because “the works
2 themselves supersede and control contrary descriptions.” *Peter F. Gaito*
3 *Architecture, LLC v. Simone Dev. Corp.*, 602 F.3d 57, 64 (2d Cir. 2010); *accord*
4 *Roth v. Garcia Marquez*, 942 F.2d 617, 625 n.1 (9th Cir. 1991).¹ Plaintiff’s verbal
5 smokescreen cannot hide the plain truth: the works on their face are different in
6 every material aspect, and no “direct comparisons” can be drawn. The Court
7 should dismiss the amended complaint in its entirety and with prejudice.²

8 I. BACKGROUND

9 *Zootopia*. In March 2016, Defendants released *Zootopia*, which went on to
10 gross over a billion dollars at box offices worldwide and win an Academy Award.
11 Although the Court is already familiar with the *Zootopia* story and characters, *see*
12 Doc. 12 at 3-5, for the Court’s convenience Defendants include a brief summary
13 below to facilitate a side-by-side comparison to *Looney*.

14 *Zootopia* opens in Bunnyburrow, a carrot-farming suburb where Judy Hopps
15 is performing in a play about the evolution of animals. Judy reveals her dream to
16 make the world a better place by becoming a police officer, which she later realizes
17 by moving to Zootopia and becoming its sole rabbit officer. On her first day, Chief
18 Bogo, a buffalo, assigns Judy to parking duty instead of a plum missing-animals
19 case. She is disappointed, but determined to prove herself. FAC Ex. 2 at 00:01-16.

20 During her lunch break, Judy encounters Nick Wilde, a con-artist fox, trying
21 to buy a popsicle at an ice cream shop for elephants. When Nick is refused service,
22 Judy intervenes and pays for the giant popsicle, but later sees him melting it down
23 to make smaller popsicles for resale. Judy has been scammed. *Id.* at 00:18-23.

24 ¹ Unless otherwise specified, all internal citations and quotations are omitted.

25 ² Although the amended complaint attaches a “collection” of materials submitted to
26 the U.S. Copyright Office in February 2017—one year after *Zootopia*’s release—it
27 fails to disclose which, if any, of these materials were actually shown to Defendants
28 in either 2000 or 2009. FAC ¶ 34. Plaintiff’s counsel represented during a meet-
and-confer that all of the 2017 materials were shown to Defendants, Bloom Decl.
¶ 4, but that is not averred on the face of the amended complaint.

1 Back at police headquarters, Judy pushes her way onto the missing-animals
2 case, and Chief Bogo gives her a 48-hour deadline to solve the case or resign. Judy
3 enlists Nick to help against his will. The pair find a panther named Manchas who
4 was inexplicably attacked by one of the missing animals, Mr. Otterton, and tells
5 them the animals' disappearance has something to do with "night howlers." Before
6 he can explain, he turns on them and attacks. Judy saves Nick and apprehends
7 Manchas, but by the time Chief Bogo arrives, he has disappeared. *Id.* at 00:30-56.

8 Judy and Nick visit Assistant Mayor Bellwether, a sheep, who gives them
9 surveillance footage showing a pack of wolves taking Manchas to a remote asylum.
10 Judy deduces that the wolves are the "night howlers." Judy and Nick sneak into the
11 asylum, discover the missing animals, and learn that Mayor Lionheart, a lion, was
12 involved in their abductions. He is arrested, the missing animals are freed, and
13 Judy becomes a hero. At a press conference, she observes that the missing animals
14 were all predators, inadvertently suggesting they are naturally inclined to turn
15 savage. Nick, himself a predator, is offended, and Judy's comments spread fear
16 across Zootopia. Although Chief Bogo implores her to stay, Judy resigns and
17 returns to Bunnyburrow. Back home, she learns that the pollen from a flower
18 nicknamed "night howler" can cause animals to act savagely. She races back to
19 Zootopia, where she and Nick reconcile and team up again. *Id.* at 01:01-01:21.

20 The pair discover a lab where sheep are using "night howlers" to create a
21 blue serum that turns animals savage. They learn that Bellwether, who has now
22 become mayor, is the mastermind behind a scheme to gain political power by
23 making the mostly "prey" population fear a minority of predators. A chase ensues,
24 Nick and Judy manage to escape unharmed, and Bellwether is arrested. Zootopia
25 begins to heal, with prey and predator working together again. In the penultimate
26 scene, Judy delivers a speech to Zootopia's new police cadets, including Nick,
27 encouraging them to "try to make the world a better place." *Id.* at 01:23-01:34.

28

1 *Looney*. Plaintiff’s CEO, Gary Goldman, wrote a synopsis and treatment for
2 a live-action movie entitled *Looney*. FAC ¶ 33. He also wrote descriptions of
3 animated characters and hired a cartoonist to draw them. *Id.* ¶¶ 31-32. Goldman
4 allegedly showed certain *Looney* materials to Defendants in 2000 and 2009. *Id.*
5 ¶¶ 36-43. On February 10, 2017, Plaintiff registered a “collection” of materials
6 with the U.S. Copyright Office. *Id.* ¶ 34; *id.* Ex. 1. Plaintiff’s amended complaint
7 is unclear as to which of these materials were shown to Defendants—for example,
8 it alleges that one “Synopsis” was given to Defendants, but the 2017 “collection”
9 includes three. *Id.* ¶ 33; *id.* Ex. 1 at 24-27. For purposes of this Motion,
10 Defendants assume the representation of Plaintiff’s counsel, *supra* n. 1, is true.

11 *Looney* is about Zeke, a “brilliant but unstable” animator imagined as Jim
12 Carrey. *Id.* Ex. 1 at 16, 26. Zeke moves to Los Angeles and develops a hit TV
13 show entitled “Zootopia.” *Id.* at 16-17. The show, which has “the zaniness and
14 energy level of Looney Tunes,” features adolescent animals who live in a zoo and
15 their zookeeper. *Id.* The animals represent people from Zeke’s childhood and
16 competing aspects of his personality. The show’s success causes Zeke to become
17 an “egomaniac” and “tyrant.” *Id.* He marries and divorces a series of starlets and
18 models, lives in a giant mansion, and drives a Ferrari. *Id.* He belittles his
19 colleagues, blows off his mother’s calls, and embarrasses Oog, his childhood bully.
20 *Id.* at 17-18. The only person who can stand up to Zeke is Robin, his friend and co-
21 worker. *Id.* at 18.

22 Zeke’s success comes to an abrupt end after he refuses to endorse a lucrative
23 product and mocks his boss on a talk show. *Id.* at 19. Zeke is fired, dragged out of
24 the studio by security, and replaced by another animator. *Id.* Without a creative
25 outlet to direct the characters in his head, Zeke becomes haunted by them. *Id.* at
26 20-21. He loses his fame, fortune, and girlfriend, and is arrested for breaking into a
27 neighbor’s home. *Id.* Zeke, broke and homeless, moves back in with his parents in
28 Topeka, Kansas. *Id.* He realizes that his one true love is Robin, but it is too late—

1 she is engaged to Oog. *Id.* at 22. Dejected and driven mad by his cartoon creations,
2 Zeke is committed to an insane asylum—a literal “looney bin.” *Id.* at 22, 26.

3 Zeke must master and integrate his cartoon creations back into his
4 personality. *Id.* He succeeds, and returns to the studio to help his replacement
5 finish a special Valentine’s Day episode, which he dubs with Robin’s voice. *Id.* at
6 22. In the final scene, Robin leaves Oog at the altar and kisses Zeke. *Id.* at 23.

7 II. PLAINTIFF FAILS TO STATE A COPYRIGHT CLAIM.

8 For purposes of this Motion only, Defendants assume that Plaintiff owns any
9 copyright in the *Looney* materials and that Defendants had access to them before
10 *Zootopia*’s creation. In order to state a claim for copyright infringement, Plaintiff
11 must demonstrate that *Looney* and *Zootopia* are “substantially similar” in their
12 protected elements. Order at 6-9 (setting forth applicable legal standards).³

13 As with Defendants’ initial motion to dismiss, the Court must apply the
14 “extrinsic test” to assess substantial similarity, which requires an objective analysis
15 of the “articulable similarities between the plot, themes, dialogue, mood, setting,
16 pace, characters, and sequence of events.” *Funky Films*, 462 F.3d at 1077. The
17 Court must “inquire only whether the protectable elements, standing alone, are
18 substantially similar,” and filter out any non-protectable elements, including
19 “general plot ideas,” “stock scenes and themes,” and “*scenes-a-faire* ... that flow
20 necessarily or naturally from a basic plot premise.” *Cavalier v. Random House,*
21 *Inc.*, 297 F.3d 815, 822-23 (9th Cir. 2002); *Rice v. Fox Broadcasting Co.*, 330 F.3d
22 1170, 1174-75 (9th Cir. 2003). As explained below, the amended complaint

23 _____
24 ³ The Court noted that where access is conceded, a plaintiff bears a somewhat lesser
25 burden of showing of substantial similarity. Order at 8. This “inverse ratio rule”
26 has had a “checkered application” in the Ninth Circuit and has never been
27 determinative of any decision. *See generally* 4 Nimmer on Copyright § 13.03[D];
28 D. Aronoff, *Exploding the Inverse Ratio Rule*, 56 J. COPYRIGHT SOC’Y OF THE
U.S.A. 125 (2008). It is well-settled that no matter the degree of access, “the
absence of substantial similarity that must underlie every successful claim still
dooms the infringement suit.” Nimmer, *supra*; *see Funky Films, Inc. v. Time*
Warner Entm’t Co., 462 F.3d 1072, 1081 (9th Cir. 2006).

1 indisputably confirms the Court’s conclusion that Plaintiff cannot establish
2 substantial similarity as a matter of law.

3 **A. The Plots And Sequences Are Not Substantially Similar**

4 As the Court held, Plaintiff’s initial complaint described the animated and
5 live-action plots of *Looney* in general terms and made “strained comparisons” to
6 *Zootopia* that fell far short of demonstrating substantial similarity. Order at 9-13.
7 The amended complaint recycles the same generic plot ideas the Court previously
8 rejected as unprotectable, and the actual *Looney* materials, which the complaint
9 almost entirely ignores, show that Plaintiff’s comparisons to *Zootopia* are not
10 merely “strained”—they are absurd.

11 The 79-page chart of “Similarity in Plot and Events,” which relies on cherry-
12 picked descriptions of random elements scattered throughout *Looney* and *Zootopia*,
13 does not help Plaintiff.⁴ As the Ninth Circuit has ruled, these charts “are inherently
14 subjective and unreliable.” *Litchfield v. Spielberg*, 736 F.2d 1352, 1356 (9th Cir.
15 1984); *see also Kouf v. Walt Disney Pictures*, 16 F.3d 1042, 1045-46 (9th Cir.
16 1994). What matters is the works themselves, not Plaintiff’s self-serving
17 characterizations of them. No amount of creative lawyering can force a square peg
18 into a round hole or make *Looney* anything like *Zootopia*.

19 **Animated Plot.** The amended complaint repeats almost verbatim the same
20 high-level comparison between *Looney*’s animated story-within-a-story and
21 *Zootopia* that the Court previously rejected. Order at 10; *compare* Doc. 1 ¶ 71 with
22 FAC ¶ 118. As the Court held, Plaintiff merely describes “a buddy movie starring
23 talking animals ... set in a place called ‘Zootopia,’” which is a basic plot idea and
24 not subject to copyright protection. Order at 10; *see Buggs v. Dreamworks, Inc.*,

25 _____
26 ⁴ Plaintiff’s lengthy charts of “similarities,” FAC Exs. 6-7, are duplicative of the
27 allegations in the amended complaint and fail for the same reasons explained
28 herein. The charts, like the amended complaint, mischaracterize the works, ignore
the vast differences between them, and—at most—identify generic, high-level
similarities that cannot give rise to substantial similarity.

1 2010 WL 5790251, at *5 (C.D. Cal. Dec. 28, 2010) (plot idea of anthropomorphic
2 pests who are flushed down the drain, have adventures in the sewer, and save their
3 respective communities unprotectable); *Campbell v. Walt Disney Co.*, 718 F. Supp.
4 2d 1108, 1112 (N.D. Cal. 2010) (plot idea of “a cocky young race-car driver ... who
5 learns life lessons from an older mentor” unprotectable); *Basile v. Warner Bros.*
6 *Entm’t, Inc.*, 2016 WL 5867432, at *6 (C.D. Cal. Jan. 4, 2016) (plot idea of “a
7 humble hero with a previously unknown powerful ancestry who learns his true
8 identity and must save his home planet” unprotectable).

9 The amended complaint also mischaracterizes the *Looney* materials. Those
10 materials do not contain many of the plot ideas Plaintiff describes, and instead
11 reveal an even more generic “[p]remise”: “Backstage at the zoo. Every morning,
12 the animals punch in and go to work. At closing time, they punch out and go home.
13 It’s a metaphor for life and for America.” FAC Ex. 1 at 17. The *Looney* materials
14 elsewhere describe the animals’ basic characteristics, *id.* at 1-6, but do not articulate
15 any actual plot—let alone one that is concrete and “specific enough to be
16 protectable.” Order at 10.

17 The *Looney* materials also expose the many and substantial differences from
18 *Zootopia*. *Looney* takes place in a zoo created and controlled by humans, while
19 *Zootopia* is premised on a fictional world of anthropomorphic animals where
20 humans never existed. See *Rosenfeld v. Twentieth Century Fox Film*, 2009 WL
21 212958, at *2 (C.D. Cal. Jan. 28, 2009) (distinguishing plots where defendants’
22 work, unlike plaintiff’s, “has no human characters at all”). The animals in *Looney*
23 are “high school kids,” FAC Ex. 1 at 1, whereas *Zootopia* primarily involves adult
24 animals working in the big city. *Looney* contains none of the concrete plot
25 elements in *Zootopia*—there is no bunny cop who partners with a con-artist fox to
26 solve a missing-animal crime, and there is no sheep who seizes political control by
27 tricking prey animals into believing all predator animals are “savage.”

28 The *Looney* materials also refute the generic comparisons in Paragraph 118

1 of the amended complaint. For example, Plaintiff alleges that in both works, “a
 2 small prey animal” seeks to “upend the power structure, but the scheme goes too far
 3 and fails.” *Id.* ¶ 118. In *Looney*, Fuzz the koala wants to replace Griz as “Big Man
 4 in the Zoo” and “get ChaCha the sexy Cheetah.” *Id.* Ex. 1 at 1, 2. He “irritat[es]”
 5 and “challeng[es]” Griz, but “always manages [to] get[] away unharmed.” *Id.* at 6.
 6 In *Zootopia*, Bellwether the sheep concocts an elaborate scheme to seize political
 7 control from predator animals on behalf of the prey population, but is caught and
 8 arrested. These story arcs are nothing alike.

9 No better is Plaintiff’s effort to conflate the stock character descriptions in
 10 *Looney* with the sequence of events in *Zootopia* where Nick tricks Judy into buying
 11 a giant popsicle that he melts into smaller ones. *Id.* ¶¶ 119-24. *Looney* does not
 12 contain a remotely similar sequence. The random elements that Plaintiff selectively
 13 plucks from the *Looney* materials—*e.g.*, Roscoe is an outcast who “likes to pull
 14 pranks” and Hugo believes that “If you want to be an elephant, you can be an
 15 elephant,” *id.*—are stock and unprotected, as the Court has already held.

16 **Live-Action Plot.** Again, the amended complaint describes *Looney*’s live-
 17 action plot using the same stock elements the Court already rejected as generic and
 18 “too vague to support a claim of substantial similarity.” Order at 11; *compare* Doc.
 19 1 ¶¶ 72-75 with FAC ¶ 125; *see also Benjamin v. Walt Disney Co.*, 2007 WL
 20 1655783, at *6 (C.D. Cal. June 5, 2007) (concept of “females that have escaped
 21 their humble past to pursue their dreams of working and living in the big city”
 22 unprotectable). The amended complaint includes more detail about the elements,
 23 but these details only confirm that Plaintiff’s comparisons are inapt—for example,
 24 Zeke grows up in Topeka and aspires to become an animator in Hollywood, while
 25 Judy is from Bunnyburrow (a fictional carrot-farming town for bunnies) and hopes
 26 to become the first rabbit officer in Zootopia.

27 A review of the *Looney* materials only highlights the absurdity of Plaintiff’s
 28 comparisons. Plaintiff asserts that both protagonists “go to an asylum to solve the

1 problem of the out-of-control Zootopian characters.” FAC ¶ 125(o). In *Looney*,
2 Zeke becomes haunted by his “adolescent nightmare” and “harassed by his
3 characters,” is committed to an insane asylum, and must “figure[] out who he really
4 is” to escape. *Id.* Ex. 1 at 25-26. In *Zootopia*, Judy and Nick discover the missing
5 animals hidden in a remote asylum and rescue them.

6 Plaintiff claims both protagonists are forced to give up their dream job and
7 leave important projects unfinished. *Id.* ¶ 125(m). As the Court noted, this
8 mischaracterizes *Zootopia*; Judy “voluntarily resigns at the height of her success”
9 and, “so far as she knows, she has solved the mystery of why animals go savage.”
10 Order at 12. Zeke, in contrast, is fired and dragged off the set of his TV show.
11 FAC Ex. 1 at 19.

12 The protagonists also “express[] love” for their partners in very different
13 ways. *Id.* ¶ 125(w). In *Looney*, Zeke confesses his love for Robin and they “kiss
14 and get together.” *Id.* Ex. 1 at 22-23. In *Zootopia*, Judy and Nick have a platonic,
15 professional relationship. Plaintiff’s claim that Judy’s affirmation she loves Nick as
16 a friend (“Yes, I do.”) “evokes wedding vows,” *id.* ¶ 125(w), is ridiculous.

17 Ultimately, there is no comparison between the works’ plots. *Zootopia* does
18 not contain any live-action portion or human character. *See Rosenfeld*, 2009 WL
19 212958, at *2 (distinguishing animated and live-action plots). That dispositive
20 difference aside, *Looney*’s live-action story in no way resembles *Zootopia*’s story.
21 *Looney* does not depict a human protagonist who “fights his way onto the police
22 force, only to uncover an apparent scheme by the Mayor to cover up wrongdoing by
23 persons of his social group.” Order at 13. *Looney* depicts the rise and fall of a
24 human animator struggling with sanity and love. Unlike *Zootopia*, *Looney* includes
25 raunchy jokes, sexual and romantic relationships, and profanity.⁵ The fundamental

26 _____
27 ⁵ *See, e.g.*, FAC Ex. 1 at 16 (opening sequence where Zeke “does a cartoon routine
28 of adoring and molesting” a blindfolded Pamela Anderson), *id.* (“Don’t you ever
get enough?” “Of you, no.”), 18 (“Don’t tell me you’re still hot for her...?”), *id.*

1 differences between these works definitively preclude any finding of substantial
 2 similarity. *See Funky Films*, 462 F.3d at 1078 (no infringement where “an actual
 3 reading of the two works reveals greater, more significant differences and few real
 4 similarities”); *Benay v. Warner Bros. Entm’t, Inc.*, 607 F.3d 620, 626 (9th Cir.
 5 2010) (no infringement where “many more differences than similarities”).

6 **B. The Themes Are Not Substantially Similar**

7 The amended complaint largely repeats the same stock themes the Court held
 8 were not “specific enough to be protectable.” Order at 10; *compare* Doc. 1 ¶ 54
 9 with FAC ¶ 102(i)-(v) (whether one can “become anything,” “change,” “overcome
 10 ... prejudices,” “live up to utopian ideals,” and “balance between utopian and
 11 deterministic views”). The new themes Plaintiff identifies—*i.e.*, whether characters
 12 “can achieve success while upholding moral and ethical behavior,” “what makes an
 13 individual deserving of being loved,” and whether society functions “according to
 14 primitive and natural behaviors,” FAC ¶ 102(vi)-(ix)—likewise fail. “Stock
 15 themes” like these are not subject to copyright protection. *Cavalier*, 297 F.3d at
 16 822; *see Basile*, 2016 WL 5867432, at *8 (“human origin and good-versus-evil”);
 17 *Rosenfeld*, 2009 WL 212958, at *3 (“the importance of believing in oneself and
 18 following one’s dreams”); *Campbell*, 718 F. Supp. 2d at 1113 (“themes of self-
 19 reliance and the importance of friendship and teamwork”).

20 Moreover, many of these themes are not actually reflected in the *Looney*
 21 materials. It is telling that Plaintiff’s conclusory allegations contain no detail or
 22 supporting citations to its work. For example, the *Looney* materials do not
 23 reference the evolution of animals from a “primitive” to a “civilized” state. *Cf.*

24
 25 (“[Leon]’s a bigger asshole than Zeke”), 19 (“I’m not gonna endorse that crap.”),
 26 20 (Zeke pitches a “serious action blood-fest”), 22 (Zeke “is about to score with
 27 April”), 23 (“Zeke and Robin kiss and get together”). The animated portion of
 28 *Looney* is rife with similar examples. *See, e.g., id.* at 2 (Roscoe “has a volcanic
 libido” and “harass[es] and gross[es]-out females”), 5 (Mimi is “romantic,” “sexy,”
 and “likes all of these guys”), 6 (Cha is a “sex goddess cheerleader”).

1 FAC ¶ 102. Nor do those materials address “prejudice” and “stereotypes” or
2 explore whether “a diverse society can live up to utopian ideals,” *id.*—they describe
3 nothing more than teenage animals competing for popularity and love. The only
4 arguable theme in *Looney* is whether the flawed characters are deserving of
5 romantic love. *See id.* Ex. 1 at 3 (“Will he ever actually be loved ...? Ah, that is
6 the eternal question in these cartoons.”). *Zootopia* has nothing to do with romantic
7 love. And *Zootopia* contains key themes—*e.g.*, “try to make the world a better
8 place” and “never give up,” *id.* Ex. 8 at 107, 109—absent from *Looney*. *See*
9 *Campbell*, 718 F. Supp. 2d at 1113 (no infringement where themes differ).

10 C. The Character Designs Are Not Substantially Similar

11 The amended complaint attaches the same character designs that the Court
12 already reviewed and concluded were dissimilar. As the Court explained, the
13 “differences between the character designs outnumber the similarities,” and any
14 similarities “boil down to the fact that both ensembles consist of anthropomorphic
15 animals whose attributes flow to some extent from their physical form.” Order at
16 15. Although the amended complaint unnecessarily devotes several additional
17 pages to describing the character designs, at no point does Plaintiff introduce any
18 new information that contradicts what we can see with our own eyes.

19 Plaintiff merely lists generic anatomical features that flow from the common
20 premise of anthropomorphic animals—*e.g.*, the characters have (i) comparatively
21 large heads, (ii) dexterous limbs and joints, (iii) flexible torsos and spines,
22 (iv) human-like facial features, like cheeks and eyelashes, and expressions, like
23 smiles and scowls, and (v) two feet planted flat on the ground. FAC ¶¶ 63-71.
24 Such stock, generic features cannot give rise to substantial similarity. *See* Order at
25 15; *Mandeville-Anthony v. Walt Disney Co.*, 2012 WL 4017785, at *3 (C.D. Cal.
26 July 28, 2012) (no substantial similarity where “car characters share attributes that
27 flow from their make and country of origin”). And nothing changes the Court’s
28 conclusion that “the animation style itself is very different between the two sets of

1 characters: whereas the Disney characters are typically cute and appealing, the
2 *Looney* characters evoke a darker, seedier aesthetic.” Order at 15.

3 Plaintiff also attaches “tracing studies,” which purport to show “common[]
4 expressive inflection points” between Plaintiff’s artwork and images of *Zootopia*
5 characters selectively plucked from the motion picture and publicity materials, but
6 these do not help Plaintiff. FAC ¶ 72. These “studies” are transparently improper
7 and unsubstantiated “expert” materials,⁶ which “courts routinely disregard ... in
8 conducting the extrinsic test.” *Shame on You Prods., Inc. v. Banks*, 120 F. Supp. 3d
9 1123, 1147 (C.D. Cal. 2015). They are also irrelevant and misleading. Among
10 other reasons, they compare different facial features and body parts; for example,
11 one study compares the shape of Ms. Quilty’s eye line to Bellwether’s oversized
12 glasses, another compares Fuzz’s body posture to Finnick’s loose clothing, and
13 another compares Roscoe’s nose to Nick’s mouth. FAC Ex. 5 at 2, 6, 10. In
14 several instances, the *Zootopia* character images are rotated and manipulated to
15 create the appearance of similarity. *Id.* at 1-2, 9-10. At most, the tracings identify
16 generic, high-level similarities based on common human expressions that are
17 unprotectable.

18 In order to facilitate a side-by-side comparison by the Court, Defendants
19 briefly address below each of Plaintiff’s pairings (*Id.* ¶¶ 63-71):

20 **Zootopia’s Judy v. Looney’s Mimi.** Judy is a rabbit; Mimi is a squirrel.
21 Judy wears a police officer’s uniform; Mimi wears no clothing. Judy does not have
22 a prominent tail; Mimi’s bushy tail, which Plaintiff describes as “very expressive—
23 and kind of sexy,” *id.* Ex. 1 at 5, is a prominent feature. Their shared anatomical
24 features—*e.g.*, “muzzles with ‘cute,’ small rounded noses,” “slight, blunted
25 snouts,” and “smallish closed mouth[s],” *id.* ¶ 64(b)—are unprotectable.

26
27 ⁶ During the parties’ meet-and-confer discussion, Plaintiff’s counsel refused to
28 identify how these materials were created or by whom. Bloom Decl. ¶ 5.

1 **Zootopia’s Nick v. Looney’s Roscoe.** Nick, a fox, wears smart clothing
 2 (pants, shirt, and tie); Roscoe, a hyena, wears none.⁷ As the Court noted, Nick
 3 “sports smooth fur, a straight back, and a full bushy tail,” whereas Roscoe
 4 “slouches sheepishly, emphasizing his protruding, paunchy belly and disheveled fur
 5 ... [and has a] scrawny, rather stunted tail.” Order at 15; *see also* FAC Ex. 1 at 2
 6 (Roscoe “has bad posture” and is “ugly”). Despite Plaintiff’s contrary allegation,
 7 FAC ¶ 63, its tracing studies make clear that Nick, unlike Roscoe, has whiskers. *Id.*
 8 Ex. 5 at 2. Plaintiff alleges that both characters “evoke a sly, wise-guy, conniving”
 9 impression, *id.* ¶ 63(a), but the depiction of “traditional trickster animals [as] sly” is
 10 not protectable. Order at 15; *see also Mandeville-Anthony*, 2012 WL 4017785, at
 11 *3 (plaintiff cannot claim a “property interest in stereotyped characters”).

12 **Zootopia’s Bellwether v. Looney’s Ms. Quilty.** Bellwether is a sheep; Ms.
 13 Quilty is an ostrich. Bellwether wears a dress and eyeglasses; Ms. Quilty wears
 14 nothing. Bellwether is cute and small; Ms. Quilty is “[un]attractive [and] large.”
 15 FAC Ex. 1 at 6. The characters’ few similarities—*e.g.*, both appear “passive” and
 16 have black and white tones and hair on their heads, *id.* ¶ 71—are *scenes-a-faire*.

17 **Zootopia’s Flash v. Looney’s Monty.** Although both characters are sloths,
 18 the similarities end there. Flash is dressed as an office worker (with tie, slacks, and
 19 coffee mug); Monty wears no clothing. Plaintiff’s assertion that the characters have
 20 “similar head shapes” is not only irrelevant, but wrong—Flash’s head is circular
 21 and Monty’s is oval, and the characters’ hairstyles, eyes, noses, and mouths are
 22 very different. *Id.* ¶ 65. The common features—*e.g.*, “sleepy eyes” and “slumped
 23 posture,” *id.*—are based on a sloth’s physical attributes and are not protectable.

24
 25
 26 ⁷ Plaintiff’s citation to a screenshot from a *Zootopia* trailer showing Nick without
 27 clothing, FAC ¶ 53, is highly deceptive. The trailer states that animals in *Zootopia*
 28 “do *not* go to work nude,” and the very next shot shows Nick wearing clothing.
<https://www.youtube.com/watch?v=g9lmhBYB11U> (00:00:28).

1 **Zootopia’s Finnick v. Looney’s Fuzz.** Finnick is a fennec fox who wears a
 2 track suit and sunglasses and has a prominent tail; Fuzz is a koala bear who has no
 3 clothes, accessories, or visible tail. Finnick’s “scowl” and “large long ears,” *id.*
 4 ¶ 66, are consistent with a fennec fox’s actual appearance and are unprotectable.

5 **Zootopia’s Bogo v. Looney’s Griz.** Bogo is a water buffalo with horns; Griz
 6 is a grizzly bear. Bogo wears a police chief’s uniform; Griz wears nothing. Their
 7 common features—*e.g.*, a “snarl,” “‘tough guy’ body language,” and “broad,
 8 muscular shoulders and arms”—are generic and flow from the basic, unprotectable
 9 idea that “large animals are strong.” Order at 15.

10 **Zootopia’s Yax v. Looney’s Max.** Yax is a yak; Max is an ibex. Yax has
 11 dreadlocks and a necklace; Max has neither. And Max, unlike Yax, is depicted as
 12 “sporty.” FAC Ex. 1 at 6. The fact that both have “hooves,” “long muzzles,” and
 13 “tails,” *id.* ¶ 69, is immaterial, as those traits are inherent to the animals.

14 **Zootopia’s Gazelle v. Looney’s Cha.** Gazelle is a gazelle with horns; Cha is
 15 a cheetah. Gazelle wears a costume (high heels, skirt, and top); Cha does not. And
 16 Gazelle is a prey animal whereas Cha is a predator—an important distinction in the
 17 *Zootopia* storyline. Plaintiff alleges that both characters strike “alluring” poses,
 18 wear eye makeup, and have long fingernails and “figure-eight” bodies, *id.* ¶ 68, but
 19 these are stock traits flowing from the fact that both characters are female
 20 performers. *See Shame on You*, 120 F. Supp. 3d at 1164 (“32-year-old female who
 21 is pretty and likeable”); *Alexander v. Murdoch*, 2011 WL 2802899, *10 (S.D.N.Y.
 22 May 27, 2011) (“stunningly beautiful, fiery, temperamental, Latina mother”).

23 **Zootopia’s Dharma v. Looney’s Hugo.** Dharma is a female armadillo;
 24 Hugo is a male aardvark.⁸ Dharma wears a skirt, sweater, and glasses; Hugo wears
 25 no clothes. Dharma slouches and appears older; Hugo puffs out his “muscle-
 26

27 ⁸ Plaintiff alleges that Hugo is an armadillo, but *Looney*—which supersedes the
 28 complaint—confirms that he is an aardvark. FAC Ex. 1 at 1, 3.

1 bound” chest and appears young. FAC Ex. 1 at 3. Dharma has a prominent shell;
2 Hugo has none. The characters’ “contoured heads, muzzles, and snouts,” *id.* ¶ 70,
3 derive from their respective species.

4 **D. The Character Traits Are Not Substantially Similar**

5 The allegations in Plaintiff’s initial complaint were “too general” to permit a
6 comparison between the works’ characters. Order at 16. Although the amended
7 complaint attaches the *Looney* character descriptions and a 54-page chart of
8 “Character Similarities,” it still fails to demonstrate substantial similarity. As the
9 Court explained, in order to qualify for copyright protection, characters must (1)
10 have “physical as well as conceptual qualities,” (2) be “sufficiently delineated,” and
11 (3) be “especially distinctive.” Order at 16 (quoting *DC Comics v. Towle*, 802 F.3d
12 1012, 1021 (9th Cir. 2015)). Few characters have satisfied that exacting test, *id.*,
13 and the characters in *Looney* do not come close. The generic character descriptions
14 in the amended complaint are, like those in the initial complaint, not detailed or
15 distinctive enough to warrant protection. *Cf. id.* And even if they were, the *Looney*
16 materials reveal stark, fundamental differences between each of Plaintiff’s character
17 comparisons that preclude any finding of substantial similarity. *See Warner Bros.*
18 *Inc. v. Am. Broad. Co.*, 720 F.2d 231, 242 (2d Cir. 1983) (there can be no
19 infringement where a character’s “appearance, behavior, or traits ... significantly
20 differ from those of a copyrighted character”).

21 **Judy v. Mimi and Hugo.** The amended complaint lists common
22 characteristics—*e.g.*, “outsider,” “underestimated,” “brave, energetic, and
23 enthusiastic,” “good natured,” and “kindhearted,” FAC ¶ 82; *id.* Ex. 6 at 1-17—
24 that, like those in the initial complaint, are “too general” to be protectable. Order at
25 16; *see Benjamin*, 2007 WL 1655783, at *6 (“attractive, likable, 30-year-old
26 females that have escaped their humble past to pursue their dreams of working and
27 living in the big city”); *Shame on You*, 120 F. Supp. 3d at 1164-65 (“good girl” and
28 “nice guy”); *Gallagher v. Lions Gate Entm’t Inc.*, 2015 WL 12481504, at *8 (C.D.

1 Cal. Sept. 11, 2015) (“bubbly”); *Kullberg v. Pure Flix Entm’t LLC*, 2016 WL
2 7324155, at *2 (C.D. Cal. Oct. 12, 2016) (“kind,” “loyal,” and “courageous”).

3 The initial complaint failed to explain “who [Mimi and Hugo] are, or what
4 role they play.” Order at 16. Now that the *Looney* materials have finally surfaced,
5 it is evident why the initial complaint resorted to such generalizations. We now
6 know that Mimi and Hugo are a teenage squirrel and aardvark who play supporting
7 roles in *Looney* and are not at all similar to Judy, the heroine in *Zootopia*. FAC
8 Ex. 1 at 1, 3, 5. And of course, there is no case finding substantial similarity based
9 on a composite of traits drawn from multiple characters, which would contradict
10 settled case law setting a “high” bar for character infringement. *Sheldon Abend*
11 *Revocable Tr. v. Spielberg*, 748 F. Supp. 2d 200, 208 (S.D.N.Y. 2010).

12 Mimi, the only animal in *Looney* who lives outside the zoo’s confines,
13 “knows the real world” and “human beings.” FAC Ex. 1 at 5. She is “sexy,”
14 “romantic,” and attracted to “all of the[] guys” in the zoo. *Id.* Judy, who comes
15 from a small carrot-farming suburb, does not know the “real world” or “human
16 beings,” and has no romantic or sexual interests. Nor is Hugo anything like Judy.
17 He is described as a “dorky guy” and “bore” who wants “June as [his] girlfriend.”
18 *Id.* Ex. 1 at 3. Judy is popular, well-liked, and has no romantic aspirations.

19 Plaintiff also invents characteristics that are not actually in the *Looney*
20 materials. For example, Plaintiff claims that Mimi is a “victim of prejudice.” *Id.*
21 ¶ 82. *Looney* notes that other animals do not understand Mimi because she lives in
22 the “real world,” but there is nothing in her half-page character description (which
23 the amended complaint notably fails to cite) that mentions prejudice, let alone
24 describes any form of bias or discrimination because she is a squirrel or lives
25 outside the zoo. Likewise, there is no hint that she is “unappreciated,” *id.*—to the
26 contrary, other animals “treasure her as a friend, just not as a lover.” *Id.* Ex. 1 at 5.

27
28

1 **Nick v. Roscoe and Monty.** Plaintiff alleges that Nick is substantially
 2 similar to an amalgamation of Roscoe the koala and Monty the sloth, admitting he
 3 is not comparable to any one character standing alone. The amended complaint
 4 again compares common characteristics—*e.g.*, “sly,” “outcast,” “pessimistic and
 5 negative,” “bad attitude,” “agile,” and “cynical,” *id.* ¶¶ 83-86; *id.* Ex. 6 at 18-34—
 6 that are stock and unprotectable. *See Thomas v. Walt Disney Co.*, 2008 WL
 7 425647, at *5 (N.D. Cal. Feb. 14, 2008) (“inquisitive” and “curious” character);
 8 *Sheldon*, 748 F. Supp. 2d at 207-09 (“troubled and depressed teenager”). And
 9 many of these traits flow from the characters’ respective species. *See Order* at 15
 10 (“sly” fox unprotectable).

11 Again, the *Looney* materials expose radical differences between these
 12 characters. For example, Nick is a sophisticated con artist who schemes to earn a
 13 living; Roscoe is a juvenile “prankster” who would rather “cause trouble” than
 14 work. FAC Ex. 1 at 2. Nick is smooth and polished; Roscoe, is “ugly,” “uncouth,”
 15 and others “would be embarrassed to be seen with him.” *Id.* at 2-3. Nick, unlike
 16 Roscoe, does not “harass[] and gross[]-out females” or have “a volcanic libido.” *Id.*
 17 at 2. And Nick, unlike Monty, is not “lazy” or a “highly educated and cultured
 18 epicure.” *Id.* at 4. Plaintiff continues to mischaracterize the *Looney* materials
 19 when, for example, it states that Roscoe “is an outcast because of his reviled
 20 species,” FAC ¶ 86—if anything, he appears to be ostracized because of his
 21 unkempt appearance, low-class status, and offensive behavior. *Id.* Ex. 1 at 2-3.

22 **Bellwether v. Ms. Quilty and Fuzz.** Plaintiff relies on an amalgamation of
 23 characters with different genders and traits. The common characteristics Plaintiff
 24 cites—*e.g.*, “vain,” “unappreciated,” and “a little Napoleon,” FAC ¶ 87(a); *id.* Ex. 6
 25 at 35-41, 53-54—are generic and stock. *See Gallagher*, 2015 WL 12481504, at *8-
 26 9 (“spoiled rich girl,” “bubbly,” “strong,” and “quirky”). And these characters are
 27 plainly dissimilar. Bellwether, the villain in *Zootopia*, seeks to wrest political
 28 control by making the predator animals appear “savage” and installing herself as

1 mayor. Fuzz, an adolescent koala who sometimes appears as a “Proboscis Monkey
2 with a phallic nose,” hopes to become popular and “get ChaCha the sexy Cheetah,”
3 and is a “hero” rather than a villain. FAC Ex. 1 at 1-2. Ms. Quilty is a biology and
4 ecology teacher who complains about her “miserable” marriage. *Id.* at 6.

5 Again, Plaintiff grossly mischaracterizes the *Looney* materials in an effort to
6 manufacture similarities where none exist. For example, Plaintiff alleges that
7 Bellwether and Ms. Quilty both “use[] biology” in their schemes to upend the
8 power structure. FAC ¶ 87(a). As noted above, Ms. Quilty is a biology teacher.
9 She does not, like Bellwether, mastermind a new form of biological warfare as part
10 of a scheme to obtain political control. Indeed, Ms. Quilty has no involvement
11 whatsoever with the high-school animals’ competition for popularity and girls.

12 **Bogo v. Griz.** Plaintiff alleges that Bogo and Griz (who is inconsistently
13 referred to as “Cody” in the *Looney* materials) are both “big, strong, intimidating, []
14 grizzled” and “natural leaders,” *id.* ¶ 87(b), but these are stock characteristics and
15 flow from the fact that both are authority figures within their respective groups
16 (Bogo is the chief of police; Griz is the “big man on campus”). *See Shame on You*,
17 120 F. Supp. 3d at 1167 (“a loud-mouthed best friend in a comedy film is a stock
18 character”). Moreover, these characters are very different. Bogo is a professional
19 adult and has no romantic relationship; Griz is an adolescent football player and
20 “Prom King” who dates a “[g]orgeous sex goddess cheerleader.” FAC Ex. 1 at 6,
21 17. And Griz, unlike Bogo, “massacr[es]” and “clobber[s]” the other animals. *Id.*

22 **Yax v. Max.** Plaintiff’s comparison, recycled from its initial complaint,
23 should again be rejected. It is irrelevant that these characters have vaguely similar
24 names and jobs; neither fact gives rise to copyright protection. *Gallagher*, 2015
25 WL 12481504, at *8 (“similar sounding names” do not create substantial
26 similarity); *Sheldon*, 748 F. Supp. 2d at 209 (“basic character type,” such as an
27 “assistant,” unprotectable). Moreover, Yax is not the “proprietor” of The Mystic
28 Springs Oasis, FAC ¶ 87(c), but works there as a front-desk employee.

1 **Gazelle v. Cha.** Plaintiff claims that Gazelle and Cha are both “Latin female
2 characters, in the bodies of African animals, who are ostensibly attractive and
3 function as performers and sex symbols.” *Id.* ¶ 87(d). These characteristics are
4 stock and unprotected. *See Alexander*, 2011 WL 2802899, at *10 (“Latin mother”
5 who is “stunningly beautiful, fiery, [and] temperamental” is a stock character).
6 Plaintiff also mischaracterizes Gazelle, who is portrayed in *Zootopia* as a socially
7 conscious pop star. In contrast, Cha is a high-school “Prom Queen” and “sex
8 goddess cheerleader” who dates “Cody the Bear” and “tries to make [him] jealous”
9 by flirting with other animals. FAC Ex. 1 at 6, 17.

10 **Flash v. Monty.** Plaintiff’s assertion that Flash and Monty both “put great
11 store in appearances,” *id.* ¶ 87(e), is not only irrelevant—this is hardly a distinctive
12 character trait—but wrong. The *Zootopia* guide Plaintiff quotes makes clear that
13 Flash takes a long time to dress not because he is fashionable, but because he is
14 slow. *See id.* Ex. 10 at 47 (“It take Flash an hour to tie his tie”). And these
15 characters are plainly different. Flash, a clerk at the Department of Mammal
16 Vehicles, is friendly and helpful to Nick and Judy. Monty is a “highly educated
17 and cultured epicure” who “can be bought off,” is “incredibly pessimistic and
18 negative,” and “deflate[s]” and “sabotages” the other animals. *Id.* Ex. 1 at 4.

19 **Gideon v. Oog.** Plaintiff compares Gideon (a fox in *Zootopia*) and Oog (a
20 human in *Looney*) because both are “big, strong, mean bullies as youths, who
21 become kind and decent as adults.” *Id.* ¶ 87(f). These shared similarities are
22 generic, and it is plain from the face of the Complaint that the characters are
23 depicted very differently. *See Schkeiban v. Cameron*, 2012 WL 5636281, at *1-2
24 (C.D. Cal. Oct. 4, 2012) (“bullied teenager” stock character). The *Looney* materials
25 reveal even more differences. Oog is the romantic foil who competes with Zeke for
26 Robin’s love, while Gideon is a minor side character in *Zootopia*. Plaintiff’s claim
27 that Oog teaches Zeke to “overcome ... biases,” FAC ¶ 78(f), is false—nothing in
28 *Looney* suggests that Zeke is biased (against “‘average’ looking women” and

1 unsuccessful people, *id.* ¶ 116, or otherwise) or that he overcomes those biases.

2 **Animal Ensemble.** Plaintiff asserts that the ensembles in *Looney* and
 3 *Zootopia* both represent “a diverse ethnic and cultural society ... with a multi-tiered
 4 class and power structure.” *Id.* ¶ 88. No one can claim a legal monopoly on “a
 5 ‘melting pot’ representative of America.” *Id.* The use of “diverse” animals with
 6 different traits flows from the works’ shared premise of anthropomorphizing
 7 animals and is not protectable. *See Thomas*, 2008 WL 425647, at *5 (“the fact that
 8 both [characters] are talking fish directly flows from the idea of a young fish
 9 discovering the ocean”); *Mandeville-Anthony*, 2012 WL 4017785, at *3 (concept of
 10 animated, anthropomorphic cars not copyrightable); *Cory Van Rijn, Inc. v. Cal.*
 11 *Raisin Advisory Bd.*, 697 F. Supp. 1136, 1144 (E.D. Cal. 1987) (“common idea of
 12 an anthropomorphic raisin” unprotectable). Even if the concept of a diverse animal
 13 ensemble were copyrightable—and it plainly is not—the many differences between
 14 the animals’ appearances and traits precludes any finding of substantial similarity.

15 **E. The Dialogue And Titles Are Not Substantially Similar**

16 As the Court found, the initial complaint failed to show substantial similarity
 17 of dialogue because it did not demonstrate “extended similarity” or distinctive
 18 dialogue beyond “ordinary, common expressions.” Order at 16-17. The same is
 19 true of the amended complaint. Plaintiff compares three short lines from the
 20 *Looney* character descriptions—the first two of which were also in the initial
 21 complaint—to *dialogue* in *Zootopia* expressing a similar sentiment:

22 1. ““If you want to be an elephant, you can be an elephant.”” FAC Ex. 1 at
 23 3; *compare with* FAC ¶ 96 (“You want to be an elephant when you grow up, you be
 24 an elephant.”) (“[H]e loves all things elephant. Wants to be one....”).

25 2. “He has no hope that he can change or improve; or that anyone else can
 26 change or improve.” FAC Ex. 1 at 4; *compare with* FAC ¶ 98 (“Everyone comes to
 27 Zootopia thinking they can be anything they want. Well, you can’t. You can only
 28 be what you are.”) (“[T]here’s no point in trying to be anything else.”).

1 3. “[A]n animal can be whatever he wants to be.” FAC Ex. 1 at 3; *compare*
2 *with* FAC ¶ 97 (“[T]his is Zootopia, anyone can be anything.”) (“Our ancestors [...]”
3 declared that anyone can be anything.”) (“[I]n Zootopia, anyone can be anything.”).

4 There is no “extended similarity”—*Zootopia* runs 108 minutes and contains
5 about 20,000 words of dialogue, FAC Ex. 8, yet Plaintiff can only identify a few
6 scattered lines (two of which are not even dialogue) that are supposedly similar.
7 That is not sufficient. *See* Order at 17; *Gallagher*, 2015 WL 12481504, at *10
8 (holding that “[a] mere three sentences taken from a 302-page book compared to
9 three sentences from a 90-minute motion picture falls far short of the ‘extended
10 similarity’ required”). Nor is this dialogue distinctive. As the Court already held,
11 the concepts expressed in these lines—that an animal can be whatever it wants to
12 be, and that an animal never changes—are “ordinary, common” sentiments that
13 cannot give rise to infringement. *Id.*

14 The Court also confirmed that Defendants’ use of the word “Zootopia” “is
15 insufficient to rescue the Complaint from its many other deficiencies.” Order at 18.
16 It is well-settled that titles, names, and words are not copyrightable. 37 C.F.R.
17 § 202.1(a) (excluding “[w]ords and short phrases such as names, titles, and
18 slogans” from copyright protection).⁹ Moreover, we now know that the two works
19 use the word “Zootopia” in very different ways. In *Looney*, “Zootopia” is never
20 used in dialogue, and appears only two times in all of the *Looney* materials—once
21 on the cover page and once in the treatment to identify the name of Zeke’s TV
22 show. FAC Ex. 1 at 17. In Defendants’ work, “Zootopia” refers to the name of a
23 fictional city in which anthropomorphic animals of different species live and
24 work—and, as explained above, is very different from the TV show in *Looney*.

25
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27 ⁹ Plaintiff’s insinuation that it alone created and coined the term “Zootopia” is also
28 wrong. *See* Doc. 12 at 19 n.6.

1 **F. The Settings Are Not Substantially Similar**

2 Plaintiff’s amended complaint simply copies or paraphrases the setting
3 comparisons this Court previously analyzed and rejected. *Compare* Doc. 1 ¶¶ 55-
4 56 *with* FAC ¶¶ 106-07. As the Court held, *Zootopia* takes place “in an entirely
5 fictional, computer-animated city ... that is divided into several temperature-
6 controlled, unique zones to accommodate the anthropomorphic animals who live
7 there” and *Looney* does not. Order at 17; *see Gallagher*, 2015 WL 12481504, at
8 *10 (“the setting for half of *Cabin*’s scenes and an integral aspect of the plot [is not]
9 merely a minor difference”). The *Looney* materials attached to the amended
10 complaint simply confirm the animated portion takes place in a zoo and the live-
11 action part takes place in Los Angeles and Topeka. FAC Ex. 1 at 16, 17, 21.

12 The animated settings described in the amended complaint, all of which were
13 in the initial complaint, are generic and flow from the basic plot premise of a world
14 of anthropomorphic animals. *See Cavalier*, 297 F.3d at 824. Moreover, many of
15 these settings are not apparent in *Looney*—for example, there is no indication that
16 the zoo animals in *Looney* occupy “human-like physical environments,” such as
17 apartments and workplaces, FAC ¶ 106, or live in discrete “neighborhood[s]” in a
18 place called “Zootopia,” as do the characters in *Zootopia*. Plaintiff also overlooks
19 key differences between these settings. For example, the “Watering Hole” in
20 *Looney* is a bar, *id.* Ex. 1 at 6, whereas the “Mystic Spring Oasis” in *Zootopia* is a
21 naturalist club where animals have spa treatments and take yoga classes.

22 Nor are there any similarities between the live-action portion of *Looney* and
23 *Zootopia*. As in the initial complaint, Plaintiff claims that both works depict a:
24 (i) small hometown, (ii) educational institution, (iii) big city, (iv) institutional
25 workplace, (v) “private male-only room,” (vi) media venue, and (vii) asylum.
26 *Compare* Doc. 1 ¶ 56 *with* FAC ¶ 107. These, too, are generic *scenes-a-faire*. *See*
27 *Williams v. Crichton*, 84 F.3d 581, 589 (2d Cir. 1996) (“electrified fences,
28 automated tours, dinosaur nurseries, and uniformed workers ... are classic *scenes a*

1 *faire*” flowing from the concept of a dinosaur zoo). Moreover, there are obvious
 2 differences between these settings. Topeka is not Bunnyburrow and Los Angeles is
 3 not Zootopia. And the educational institutions (college v. police academy),
 4 workplaces (movie studio v. police department), “male-only rooms” (locker room
 5 v. boy scout clubhouse), media venues (talk show v. press conference) and asylums
 6 (insane asylum for humans v. remote asylum where “savage” animals are hidden
 7 from society) are facially dissimilar.

8 **G. The Mood and Pace Are Not Substantially Similar**

9 For the most part, the amended complaint simply repeats the same generic
 10 similarities in mood and pace that the Court already rejected—*e.g.*, both works
 11 involve “light moments juxtaposed with dark moments” and “sometimes exhibit[]
 12 frenetic energy” during comedic and uplifting moments “while other times slowing
 13 down for the exposition of disappointment and disillusionment.” *Compare* Doc. 1
 14 ¶ 77 with FAC ¶¶ 129, 131. As the Court observed, such generic descriptions could
 15 encompass “nearly every animated movie Disney has ever made” and are not
 16 protectable. Order at 16; *see Mandeville-Anthony*, 2012 WL 4017785, at *4.

17 Paragraph 130 includes new descriptions, but these blatantly mischaracterize
 18 both *Looney* and *Zootopia*. For example, *Zootopia* is not a “psychodrama about
 19 madness,” FAC ¶ 130—it is an animated picture about a bunny cop and con-artist
 20 fox who team up to solve a missing-animals crime and defeat Bellwether’s scheme
 21 to make predator animals appear “savage.” And *Looney* is not a “political fable
 22 about utopias.” *Id.* Far from it. The animated story-within-a-story is a high school
 23 drama about teenage animals looking for popularity and love.

24 **H. The Combinations Of Elements Are Not Substantially Similar**

25 In *Metcalf v. Bochco*, the Ninth Circuit concluded that even where a work’s
 26 individual elements are not protectable, “[t]he particular sequence in which an
 27 author strings a significant number of unprotectable elements can itself be a
 28 protectable element.” 294 F.3d 1069, 1074 (9th Cir. 2002). In that case, the Court

1 detailed the many “striking” similarities between the works at issue, and ruled that
2 their “cumulative weight” allowed plaintiffs to survive summary judgment. *Id.*
3 Relying on *Metcalfe*, Plaintiff alleges that Defendants copied the “selection,
4 arrangement, and combination of elements” in *Looney*. FAC ¶¶ 136-38.

5 The narrow test articulated in *Metcalfe* has not remotely been satisfied. As the
6 Ninth Circuit has made clear, “it is not true that *any* combination of unprotectable
7 elements automatically qualifies for copyright protection.” *Satava v. Lowry*, 323
8 F.3d 805, 811 (9th Cir. 2003). Rather, the similarities must be “voluminous, nearly
9 identical, and occur[] in the same pattern.” *Gable v. NBC*, 727 F. Supp. 2d 815,
10 843-44 (C.D. Cal. 2010), *aff’d*, 438 F. App’x 587 (9th Cir. 2011).¹⁰

11 Here, the alleged similarities are not “voluminous” or “identical” and do not
12 “occur[] in the same pattern.” *Id.* To the contrary, as described above, *Looney* and
13 *Zootopia* are different in every key respect. *Supra* at 7-23; *see also* Order at 11
14 (*Looney* is “different in key respects from the plot of *Zootopia*”). Courts have
15 consistently declined to apply *Metcalfe* where, as here, the alleged similarities are
16 “random and have no concrete pattern or sequence in common.” *Bethea v. Burnett*,
17 2005 WL 1720631, at *14 (C.D. Cal. June 28, 2005); *see also Shame on You*, 120
18 F. Supp. 3d at 1170-71 (no “common pattern of unprotected elements”).

19 **III. PLAINTIFF’S DERIVATIVE STATE-LAW CLAIMS ALSO FAIL**
20 **AS A MATTER OF LAW AND SHOULD BE DISMISSED.**

21 The Court should also dismiss Plaintiff’s state-law claims, each of which
22 fails as a matter of law. To allege a breach of implied-in-fact contract claim,
23 Plaintiff must demonstrate “substantial similarity” between the works at issue.
24 *Benay*, 607 F.3d at 631. The Ninth Circuit has “specifically rejected the contention
25 that liability could be imposed on defendants on the basis of less than substantial

26 _____
27 ¹⁰ Notably, courts have consistently declined to expand *Metcalfe* beyond the unique
28 facts of that case. *See Zella v. E.W. Scripps Co.*, 529 F. Supp. 2d 1124, 1138 (C.D.
Cal. 2007) (collecting cases).

1 similarities.” *Id.* The same is true for Plaintiff’s breach of confidence claim, which
 2 requires a showing of Defendants’ “disclosure or use” of *Looney, Aliotti v. R. Dakin*
 3 & *Co.*, 831 F.2d 898, 903 (9th Cir. 1987); *see* 5 Nimmer § 19D.08, and unfair
 4 competition claim, which is derivative of Plaintiff’s other claims.¹¹ FAC ¶ 170. As
 5 described above, the concrete elements in *Looney* bear no similarity to those in
 6 *Zootopia*, let alone “substantial similarity.” Because these works are not similar,
 7 and Defendants do not “use” any of Plaintiff’s ideas or materials, Plaintiff cannot
 8 sustain its state-law claims. The Court should dismiss those claims as well.

9 Absent dismissal, Plaintiff will re-file these claims, which would require a
 10 state court to undertake the same analysis as this Court and force Defendants to
 11 incur additional fees (without the benefit of the federal fee-shifting statute, 17
 12 U.S.C. § 505). Federal courts should exercise supplemental jurisdiction to dismiss
 13 state-law claims where, as here, it would serve “economy, convenience, fairness,
 14 and comity.” *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997).

15 IV. CONCLUSION

16 The Court should dismiss Plaintiff’s Complaint in its entirety with prejudice.
 17

18
 19 Dated: August 28, 2017

O’MELVENY & MYERS LLP

By: /s/ Daniel M. Petrocelli

Daniel M. Petrocelli

21
 22 Attorneys for Defendants
 23 The Walt Disney Company, et al.
 24
 25
 26

27 ¹¹ To the extent that Plaintiff’s unfair competition claim is derivative of its federal
 28 copyright infringement claim, it is also preempted. 17 U.S.C. § 301.