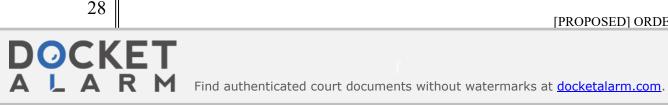
1	MOLLY M. LENS (S.B. #283867)	
2	mlens@omm.com DANIEL M. PETROCELLI (S.B. #97802)	
3	dpetrocelli@omm.com O'MELVENY & MYERS LLP	
4	1999 Avenue of the Stars, 8th Floor Los Angeles, California 90067-6035 Telephone: +1 310 553 6700 Facsimile: +1 310 246 6779	
5	Facsimile: +1 310 333 6700	
6	Attorneys for Defendant	
7	Paramount Pictures Corporation	
8	UNITED STATES DISTRICT COURT	
9	CENTRAL DISTRICT OF CALIFORNIA	
10		
11	SHOSH YONAY and YUVAL YONAY,	Case No. 2:22-CV-3846-PA
12	Plaintiffs,	[PROPOSED] ORDER
13	v.	GRANTING DEFENDANT PARAMOUNT PICTURES
14 15	PARAMOUNT PICTURES CORPORATION, a Delaware corporation, and DOES 1-10,	CORPORATION'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT
16	Defendants.	
17	Defendants.	Hearing Date: November 7, 2022 Hearing Time: 1:30 PM Place: Courtroom 9A
18		Judge: Hon. Percy Anderson
19		
20		
21		
22		
23		
24		
2526		
27		
28		



[PROPOSED] ORDER GRANTING

[Proposed] Order

Pending before the Court is Paramount Picture Corporation ("PPC")'s Motion to Dismiss Plaintiffs' First Amended Complaint ("Motion"). For the reasons summarized below, the Court grants the Motion.

At the outset, Plaintiffs fail to state a claim for copyright infringement because they do not plausibly allege a substantial similarity between the original, protectable elements of PPC's 2022 film Top Gun: Maverick ("Maverick") and Ehud Yonay's 1983 nonfiction article Top Guns (the "Article"). See Rentmeester v. Nike, Inc., 883 F.3d 1111, 1117 (9th Cir. 2018). Factual information "may not . . . form the basis for a copyright claim." Corbello v. Valli, 974 F.3d 965, 971 (9th Cir. 2020). The same is true for ideas, scènes à faire, and stock scenes and themes. See Musero v. Mosaic Media Grp., Inc., 2010 WL 11595453, at *2 (C.D. Cal. Aug 9, 2020). Such unprotectable elements aside, Maverick and the Article are wholly dissimilar works. Among other things, they advance unrelated plots, contain different sequencing, pacing, and moods, and utilize distinct characters, themes, and dialogue. As a result, Maverick does not infringe on Plaintiffs' copyright in the Article.

Because there is no substantial similarity between the Article and *Maverick*, *Maverick* is not a derivative work of the Article as a matter of law, and thus, Plaintiffs' declaratory relief claim also fails.

Finally, Plaintiffs' contract claim fares no better. Plaintiffs' assertion that Yonay's 1983 assignment of his motion picture rights in the Article to PPC (the "Assignment") obligated PPC to provide him with a credit on *Maverick* is undermined by the Assignment's unambiguous language. *See Monaco v. Bear Stearns Residential Mortg. Corp.*, 554 F. Supp. 2d 1034, 1040 (C.D. Cal. 2008) ("Resolution of contractual claims on a motion to dismiss is proper if the terms of the contract are unambiguous."). The Assignment plainly requires that a film be

[PROPOSED] ORDER GRANTING



- 1		
1	produced under the Assignment's copyright grant before any credit obligation is	
2	triggered. Dkt. 16, Ex. 2 at ¶ 7(b). Here, because <i>Maverick</i> does not use any of the	
3	Article's protectible expression—and because Plaintiffs themselves allege that PPC	
4	did not possess any rights under the Assignment after Plaintiffs' copyright	
5	termination, Am. Compl. ¶ 37—Maverick necessarily was not produced under the	
6	Assignment's grant. So no credit is due.	
7	Accordingly, the Court hereby ORDERS that the Motion is GRANTED .	
8	Plaintiffs' First Amended Complaint is hereby dismissed with prejudice.	
9	IT IS SO ORDERED.	
10		
11	Dated:	
12	The Honorable Percy Anderson Judge, United States District Court	
13	for the Central District of California	
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28	[PROPOSED] ORDER GRANTING	

