UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

YOLANDA B. ACKER, Plaintiff, - against - STEPHEN KING, Defendant.	Civil Action No. 13-CV-1717 (AWT)

REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6), OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT PURSUANT TO FED. R. CIV. P. 56

Defendant Stephen King ("King") hereby submits this reply memorandum in further support of his motion pursuant to Federal Rule of Civil Procedure 12(b)(6) for an order dismissing the Amended Complaint, or in, the alternative, for summary judgment under Rule 56.

Plaintiff's opposition papers do not alter the inescapable reality that, as a matter of law, King's novel, *Doctor Sleep*, is not substantially similar to her short story, *The Haunting of Addie Longwood*, and therefore, her copyright claim must be dismissed. As set forth in King's opening Memorandum of Law, it is well settled that copyright law does not protect generic ideas or the stock *scenes à faire* that are "as a practical matter indispensable, or at least standard, in the treatment of a given topic." *Hoehling v. Universal City Studios, Inc.*, 618 F.2d 972, 979 (2d Cir. 1980). (*See* Defendant's Memorandum of Law in Support of Motion to Dismiss Plaintiff's Amended Complaint or, in the Alternative, for Summary Judgment, Dkt. No. 34 ("Def. Mem.") at 11-14.) But all that Plaintiff's work and *Doctor Sleep* share are broad, unprotectible ideas and stock characters and situations common to countless works from the horror and suspense genres. That is not enough to plead a claim for copyright infringement.

Plaintiff's opposition papers make this point even more apparent. Her only response to King's substantive arguments is to state that "[the] fact still remains both characters are 12 year old girls with psychic abilities, at some point in the end of the story they both help reveal a secret and save the town." (Plaintiff's Response to Motion to Dismiss (Dkt. No. 37) ("Pl. Opp.") at 4.) As an initial point, the works establish that even this thumbnail description of the plots is inaccurate. As set forth in more detail in King's opening Memorandum of Law, the characters in *Doctor Sleep* do not "reveal a secret and save the town"; they use their psychic powers to battle a roaming band of supernatural beings to the death at the villains' headquarters, thousands of miles away from the town where the protagonists live. (*See* Def. Mem. at 20.) But even if Plaintiff's description of both works were accurate, she describes nothing more than a stock character (a 12 year old girl with psychic abilities) and a standard plotline (a hero helping to reveal a secret and save a town). The law is clear that "[g]eneral plot ideas are not protected by copyright law; they remain forever the common property of artistic mankind." *Berkic v. Crichton*, 761 F.2d 1289, 1293 (9th Cir. 1985). To grant Plaintiff copyright protection over these generic elements would give her a monopoly over vast swathes of several genres of fiction.[1]

Plaintiff devotes the rest of her opposition to quibbling with details about Defendant's characterization of her story and the procedural history of this case. In particular, she appears to interpret Defendant's statement that her Amended Complaint "attached certain documents . . . that had not been in the record of the case previously" (Def. Mem. at 3) as an argument that those attachments were inappropriate. On the contrary, Plaintiff was free to add whatever documents she deemed appropriate to her amended pleading. However, an examination of those

[1] Plaintiff also states that "Jessica's psychic abilities aren't limited as was stated in the report, she uses her gift to communicate with Addie Longwood, the deceased girl who needs her help to come together to save the town." Whether or not that is the case, the characters of Jessica and Abra (in *Doctor Sleep*) are significantly different characters, and are similar only at the broadest and most abstract level. (*See* Def. Mem. at 20-22.)

documents—in particular her manuscript—demonstrates that her copyright claim fails as a matter of law.[2]

Plaintiff's opposition papers do not remotely salvage her claims, nor could they.[3] Even a cursory review of the two works in issue reveals that there is no similarity of protectible expression between them, and accordingly, the court may dismiss Plaintiff's complaint with prejudice at the pleading stage. *See Currin v. Arista Records, Inc*., 724 F. Supp. 2d 286, 290 (D. Conn. 2010) ("[A] court must attempt to extract the unprotectible elements from [its] consideration and ask whether the *protectible elements*, *standing alone*, are substantially similar." (quoting *Knitwaves, Inc. v. Lollytogs Ltd*., 71 F.3d 996, 1002 (2d Cir. 1995))); *Peter F. Gaito Architecture, LLC v. Simone Dev. Corp*., 602 F.3d 57, 64 (2d Cir. 2010) ("[I]t is entirely appropriate for the district court to consider the similarity between [two] works in connection with a motion to dismiss, because the court has before it all that is necessary in order to make such an evaluation."). Even if the Court were to convert the motion to dismiss to a motion for summary judgment under Rule 56, there are no genuine disputes as to any material facts, and King is entitled to judgment as a matter of law.

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[2] Plaintiff, likely due to her inexperience with the court's electronic filing system, also appears to be particularly concerned about the heading that is automatically printed on documents filed electronically with the court. Needless to say, Defendant has not altered her submissions in any way. The supposed inaccuracies that Plaintiff identifies in Defendant's summary of her work (the family's last name, and Jessica's father's full name) are drawn directly from the documents Plaintiff attached to her Amended Complaint. (*See* Dkt. No. 27-2 at 3 ("Michael Reed Thompson") and 6 ("Mom's French toast was the tradition of the Johansen family").)

[3] Plaintiff's opposition does not address the fact that her "perjury" claim fails because there is no private right of action for perjury. *See Chien v. Commonwealth Biotechnologies, Inc.*, No. 3:12CV1378 (AWT), 2013 WL 4482750, at *8 (D. Conn. Aug. 21, 2013).

Dated: Middletown, Connecticut
May 7, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a copy of the foregoing was served by CMECF and/or mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System. I hereby further certify that a copy of the foregoing has been served, via regular United States mail, postage prepaid, this 7th day of May, 2014, upon:

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and

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/s/ Elizabeth A. McNamara
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