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10 UNITED STATES DISTRICT COURT  
 11 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION  
 12

13 PARAMOUNT PICTURES  
 14 CORPORATION; COLUMBIA  
 PICTURES INDUSTRIES, INC.;  
 15 DISNEY ENTERPRISES, INC.;  
 TWENTIETH CENTURY FOX FILM  
 16 CORPORATION; WARNER BROS.  
 ENTERTAINMENT INC.;  
 17 UNIVERSAL CITY STUDIOS  
 PRODUCTIONS LLLP; UNIVERSAL  
 18 TELEVISION LLC; and UNIVERSAL  
 CONTENT PRODUCTIONS LLC,

19 Plaintiffs,

20 vs.

21 OMNIVERSE ONE WORLD  
 22 TELEVISION, INC.; JASON M.  
 DEMEO,

23 Defendants.  
 24

Case No. 2:19-cv-01156-DMG-PJWx

**PLAINTIFFS' MEMORANDUM IN  
 OPPOSITION TO DEFENDANTS'  
 MOTION TO SEVER, FOR A  
 MORE DEFINITE STATEMENT,  
 AND TO STRIKE**

Judge: Hon. Dolly M. Gee  
 Courtroom: 8C  
 Date: May 24, 2019  
 Time: 9:30 am

Filed concurrently:  
 (1) Declaration of Glenn D. Pomerantz  
 (2) Plaintiffs' Request for Judicial  
 Notice

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## INTRODUCTION

1  
2 Plaintiffs are studios responsible for numerous popular and acclaimed films  
3 and television shows, such as Star Trek, The Karate Kid, Zootopia, Gravity, The  
4 Danish Girl, and Modern Family, to which Plaintiffs hold the copyrights. (Compl.  
5 ¶¶ 6–14, 22–26; Ex. A.) Many of Plaintiffs’ works air on live television every day,  
6 which constitute public performances of the works under the Copyright Act. *See* 17  
7 U.S.C. § 106(4). Plaintiffs license their exclusive right to publicly perform these  
8 works to television broadcasters and online streaming companies such as Amazon  
9 Prime and YouTube TV. (Compl. ¶ 2.)

10 Defendants Omniverse One World Television, Inc. and its CEO Jason DeMeo  
11 (collectively, “Omniverse”) are directly infringing on Plaintiffs’ exclusive rights to  
12 publicly perform their copyrighted works. Omniverse illegally streams live  
13 television programming—including Plaintiffs’ works—over the internet through  
14 dozens of downstream services to thousands of end users, all without a license to do  
15 so from Plaintiffs. (Compl. ¶ 27.) Omniverse also induces downstream services to  
16 join this infringing television streaming marketplace and materially contributes to  
17 their direct infringement by providing these services with access to infringing  
18 content. (Compl. ¶¶ 29–30, 34–37, 57, 72–79, 84–91.) All of this misconduct is  
19 detailed in a 23-page complaint, complete with screenshots of infringement in  
20 action, filed by Plaintiffs to end Omniverse’s wrongdoing.

21 Omniverse’s meritless motion seeks to put off that end while Omniverse  
22 continues to illegally stream Plaintiffs’ copyrighted content. As Omniverse knows  
23 quite well—and as is clear from the face of Plaintiffs’ complaint—Plaintiffs have  
24 not authorized Omniverse to transmit streams of their copyrighted content to  
25 downstream services and end users. Instead of answering and confronting the  
26 allegations of Plaintiffs’ complaint, Omniverse moves (1) to compel a more definite  
27 statement of the complaint, (2) to strike purportedly “scandalous” and “immaterial”  
28 allegations from the complaint, and (3) to sever seven of the eight Plaintiffs

1 involved in this action. No authority supports any of these claims for relief, and  
2 courts have repeatedly warned that such motions must be viewed with skepticism  
3 because they are often brought for the purpose of delay.

4 Omniverse’s motion fails first and foremost because it rests on allegations  
5 that are unsupported by any declaration or other evidence and are outside of (and  
6 contrary to) the complaint. At this stage of litigation, the complaint must be taken  
7 as true, and at no stage of litigation may a party demand relief based on disputed  
8 facts without supporting its factual assertions with evidence. Separately, the request  
9 for a more definite statement fails because the complaint sufficiently puts  
10 Omniverse on notice of Plaintiffs’ copyright infringement claims. The request to  
11 strike fails because the “Dragon Box” allegations that Omniverse seeks to strike are  
12 neither scandalous nor immaterial: Dragon Box was Omniverse’s business partner  
13 and has previously identified Omniverse as a provider of its infringing content. And  
14 the request to sever fails because Plaintiffs have properly joined in one suit to allege  
15 their substantially identical claims, and Omniverse has not identified any prejudice  
16 from this joinder. The Court should deny Omniverse’s motion.

## 17 **STATEMENT OF THE CASE**

### 18 **A. Factual Allegations of the Complaint**

19 Plaintiffs’ complaint clearly alleges that Omniverse “transmit[s] streams of  
20 unauthorized movies and television programs—including [Plaintiffs’] Copyrighted  
21 Works—to numerous downstream services,” which in turn “provide unauthorized  
22 streaming content direct to end consumers.” (Compl. ¶ 27.) Omniverse also  
23 previously had its own direct-to-consumer live television streaming service via the  
24 “OmniBox.” (Compl. ¶¶ 54–55.) All of this conduct is unauthorized because  
25 “Plaintiffs have *not* granted licenses that permit Defendant DeMeo or Omniverse to  
26 stream the Copyrighted Works.” (Compl. ¶¶ 26, 32.)

27 Plaintiffs have alleged that Omniverse’s unauthorized streaming directly  
28 violates Plaintiffs’ exclusive rights to publicly perform their copyrighted works.

1 (Compl. ¶¶ 27, 64–67.) Further, Omniverse induces direct-to-consumer streaming  
2 services to enter the infringing streaming marketplace and materially contributes to  
3 their direct infringement by providing them with content streams. (Compl. ¶¶ 29–  
4 30, 34–37, 57, 72–79, 84–91.) These Omniverse-powered downstream services  
5 stream that infringing content—live television programming on channels owned by  
6 Plaintiffs and their affiliates, and on other channels that air Plaintiffs’ copyrighted  
7 works—to customers. (*See, e.g.*, Compl. ¶¶ 39, 46, 50.)

8 **B. Omniverse’s Contrary Factual Assertions Are Improper**

9 At this stage of the litigation, the allegations of the complaint must be taken  
10 as true, and the forms of relief that Omniverse is seeking must be assessed on the  
11 four corners of the complaint and relevant judicially noticeable materials. *See, e.g.*,  
12 *Coughlin v. Rogers*, 130 F.3d 1348, 1350–51 (9th Cir. 1997) (motion to sever);  
13 *S.E.C. v. Sands*, 902 F. Supp. 1149, 1165 (C.D. Cal. 1995) (motion to strike);  
14 *Cellars v. Pac. Coast Packaging, Inc.*, 189 F.R.D. 575, 578 (N.D. Cal. 1999)  
15 (motion for a more definite statement).

16 Omniverse’s motion upends this basic hornbook rule, for the motion rests  
17 almost entirely on Omniverse’s claims that (1) a freewheeling, undisclosed, “long-  
18 standing” contract between DirecTV and an entity called Hovsat, Inc. somehow  
19 authorizes the streaming of Plaintiffs’ works with “no limitations with regard to  
20 geographic markets, nor innovating with regard to delivery method” (Mot. at 1), and  
21 (2) Omniverse operates merely as “a marketing partner of” Hovsat (Mot. at 9). Both  
22 of these claims directly contradict allegations in the complaint. (*See, e.g.*, Compl.  
23 ¶¶ 27–37, 53–63.) Thus, they cannot, as a matter of law, be a basis for granting the  
24 relief Omniverse seeks.

25 But what Omniverse is doing actually goes well beyond merely contradicting  
26 the complaint. The allegations on which Omniverse’s motion rests are based on  
27 zero supporting materials, let alone materials that could be judicially noticed. The  
28 first two paragraphs of the motion’s “Statement of Facts” are devoid of a single

1 citation. (Mot. at 1.) The motion does not attach the purported licensing agreement  
2 between DirecTV and Hovsat or supporting documentation for other factual  
3 assertions. To be clear, attaching such evidence would itself have been improper  
4 because, at this stage of the litigation and given the relief Omniverse seeks, the  
5 complaint’s allegations must be taken as true. (*See supra* p. 3.) And regardless, as  
6 explained below, the motion has no *legal* merits in addition to having no *factual*  
7 merits. Nevertheless, the absence of evidence to support the factual allegations on  
8 which Omniverse’s motion rests serves to underscore the motion’s impropriety.<sup>1</sup>

9 Not only has Omniverse failed to support its complaint-contradicting  
10 “Statement of Facts” with evidence, it is interfering with the gathering of such  
11 evidence. After filing the complaint, Plaintiffs requested that Omniverse provide  
12 specific evidence related to this case, including evidence showing any purported  
13 license that authorized Omniverse to stream Plaintiffs’ copyrighted works.  
14 (Pomerantz Decl. ¶ 2.) After delaying responding to Plaintiffs’ requests for several  
15 weeks, Omniverse failed to provide any license that would allow it to stream  
16 Plaintiffs’ copyrighted works. (*Id.*) And after the Court allowed the parties to serve  
17 stipulated early subpoenas on DirecTV and Hovsat, Omniverse has refused to  
18 provide Plaintiffs with the contact information for Hovsat’s attorney, despite the fact  
19 that Omniverse’s counsel had told Plaintiffs that he had been in contact with that  
20 attorney. (*Id.* ¶¶ 3–4.) Instead, Omniverse told Plaintiffs to directly contact  
21  
22  
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25  
26 <sup>1</sup> Plaintiffs’ criticism of Omniverse’s reliance on unsupported factual assertions in  
27 its motion is not an invitation for Omniverse to sandbag Plaintiffs by attaching new,  
28 contested evidence to its reply. Plaintiffs object to the introduction of any new  
evidence on reply. The motion must be based only on the four corners of the  
pleadings. (*See supra* p. 3.)



1 Hovsat’s purported owner, Shant Hovnanian, who, according to Omniverse, is now  
2 in Armenia.<sup>2</sup> (*Id.* ¶ 4.)

3 Thus, it is not merely that Omniverse is trying to derail this litigation with  
4 factual assertions contrary to the complaint and unsupported by evidence.  
5 Omniverse also is making clear that it has no desire for the *actual* facts about the  
6 purported DirecTV-Hovsat contract to come to light. That is unsurprising because  
7 DirecTV, which has complied with the Court’s subpoena, has no evidence of any  
8 contract resembling what Omniverse describes. (*Id.* ¶ 3.)

9 The Court need not, and indeed cannot, consider Omniverse’s bare assertions  
10 about its supposed relationship with Hovsat and Hovsat’s supposed relationship with  
11 DirecTV. Hovsat and DirecTV are irrelevant to a motion challenging the complaint,  
12 which makes no mention of Hovsat at all. Regardless, whether considering  
13 Omniverse’s improper factual assertions or not, Omniverse’s motion fails on the  
14 legal merits, as set forth below.

### 15 ARGUMENT

#### 16 **A. Omniverse’s Request for a More Definite Pleading Should Be** 17 **Denied Because the Complaint Intelligibly and Sufficiently States** **Plaintiffs’ Copyright Infringement Claims**

18 Omniverse’s motion asks the Court for a more definite statement under  
19 Federal Rule of Civil Procedure 12(e), claiming that it cannot frame a responsive  
20 pleading because it is not clear on whether “Plaintiffs are alleging Omniverse  
21 pirated the properties in question, or Omniverse’s marketing activities have merely  
22 exceeded the scope [of] Hovsat’s licensed rights, or both.” (Mot. at 6.)  
23 Omniverse’s contention is meritless.

24

25

26

27 <sup>2</sup> Hovnanian currently faces United States federal civil tax enforcement proceedings  
28 involving over \$16 million in penalties, and the United States Government has not  
been able to serve him in that case. (Pomerantz Decl. ¶ 4.)

1                   **1. Legal Standard for Motion for More Definite Statement**

2                   Under Federal Rule of Civil Procedure 12(e), “[a] party may move for a more  
3 definite statement of a pleading ... which is so vague or ambiguous that the party  
4 cannot reasonably prepare a response. The motion must be made before filing a  
5 responsive pleading and must point out the defects complained of and the details  
6 desired.” Rule 12(e) motions “are viewed with disfavor and are rarely granted  
7 because of the minimal pleading requirements of the Federal Rules. Parties are  
8 expected to use discovery, not the pleadings, to learn the specifics of the claims  
9 being asserted.” *Sagan v. Apple Computer, Inc.*, 874 F. Supp. 1072, 1077 (C.D. Cal.  
10 1994) (citation omitted). They can be used only “to attack *unintelligibility*, not mere  
11 lack of detail, and a complaint is sufficient if it is specific enough to apprise the  
12 defendant of the substance of the claim asserted against him or her.” *San*  
13 *Bernardino Pub. Emps. Ass’n v. Stout*, 946 F. Supp. 790, 804 (C.D. Cal. 1996)  
14 (emphasis added). “Thus, a motion for a more definite statement should not be  
15 granted unless the defendant literally cannot frame a responsive pleading.”  
16 *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1461 (C.D. Cal. 1996).

17                   Further, the motion “must be considered in light of the liberal pleading  
18 standards of Rule 8(a) (a Complaint need only be a ‘short and plain statement of the  
19 claim showing that the pleader is entitled to relief[.]’).” *Id.* at 1462. It is “improper  
20 when the ‘defects complained of and the details desired’ relate solely to affirmative  
21 defenses” because “affirmative defenses must be pleaded in the answer, not the  
22 complaint.” *WB Music Corp. v. Futuretoday, Inc.*, No. 2:18-CV-01238-CAS-  
23 FFMx, 2018 WL 4156589, at \*3 (C.D. Cal. Aug. 28, 2018) (citations omitted).

24                   **2. Omniverse’s Request for a More Definite Statement Fails**  
25                   **Because It Raises Only Unsupported Allegations That Are**  
26                   **Not in the Complaint and Do Not Show that the Pleading is**  
27                   **Unintelligible**

28                   Plaintiffs’ complaint contains sufficient allegations to satisfy the limited  
pleading requirements of Rule 8(a) and put Omniverse on notice of Plaintiffs’

1 claims. *See San Bernardino Pub. Emps. Ass’n*, 946 F. Supp. at 804. Plaintiffs have  
2 brought three causes of action: direct copyright infringement; inducement; and  
3 material contribution to copyright infringement. (Compl. ¶¶ 64–94.) Each is  
4 intelligibly and sufficiently stated in the complaint.

5 The complaint alleges the necessary elements for a direct copyright  
6 infringement action: (1) Plaintiffs’ ownership of copyrighted works and (2)  
7 Omniverse’s infringement of Plaintiffs’ exclusive right to publicly perform those  
8 works by transmitting streams of Plaintiffs’ copyrighted works airing on live  
9 television to the public through downstream internet streaming services. (*E.g.*,  
10 Compl. ¶¶ 14, 26–27, 29, 32, 53, 55; Ex. A.) That is all Plaintiffs are required to  
11 plead to put Omniverse on notice of their direct copyright infringement claims. *See*,  
12 *e.g.*, *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 433 (1984)  
13 (“Anyone who violates any of the exclusive rights of the copyright owner, that is,  
14 anyone who trespasses into his exclusive domain by using or authorizing the use of  
15 the copyrighted work in one of the five ways set forth in the statute, is an infringer  
16 of the copyright.” (internal quotation marks and citation omitted)).

17 Plaintiffs also have alleged that Omniverse induces others to enter the illegal  
18 streaming market and materially contributes to their direct infringement by  
19 providing downstream services with access to this infringing content. (*E.g.*, Compl.  
20 ¶¶ 53, 57.) Again, these allegations are sufficient to put Omniverse on notice of  
21 Plaintiffs’ secondary liability claims. *See Perfect 10, Inc. v. Visa Int’l Serv. Ass’n*,  
22 494 F.3d 788, 795 (9th Cir. 2007).

23 Omniverse does not identify unintelligibility in Plaintiffs’ complaint, and its  
24 motion demonstrates that Omniverse knows exactly what this case is about: direct  
25 and secondary copyright infringement claims. (Mot. at 2.) At most, Omniverse  
26 seeks details about its own streaming operations. For example, Omniverse asserts  
27 that “Plaintiffs’ Complaint does not allege Omniverse [is] streaming, linking, or  
28 otherwise providing pirated copyrighted properties,” and “Plaintiffs are accusing

1 Omniverse of piracy without stating facts alleging *how* Omniverse committed  
2 piracy.” (Mot. at 4, 9.) But Plaintiffs allege throughout the complaint that  
3 Omniverse’s streaming constitutes infringement because Omniverse lacks  
4 authorization to stream Plaintiffs’ copyrighted works. (*E.g.*, Compl. ¶¶ 1, 4, 18, 27–  
5 30, 54–57, 64–71, 77, 88.) If by “piracy” Omniverse means copyright infringement,  
6 then that is amply pleaded. (*See* Compl. ¶¶ 64–94.) The technical details of  
7 Omniverse’s illegal streaming operations will be established through discovery, as is  
8 proper under the Federal Rules. *See Sagan*, 874 F. Supp. at 1077. Requiring  
9 Plaintiffs to plead such details in the complaint would upend the federal notice-  
10 pleading system.

11       Rather than identifying fatal unintelligibility within the complaint, Omniverse  
12 seeks to introduce unsupported allegations regarding a third party, “Hovsat,” that are  
13 outside the complaint. (*E.g.*, Mot at 1, 6.) The complaint contains no allegations  
14 whatsoever regarding Hovsat or indicating that Omniverse is a “marketer,” much  
15 less that “Omniverse does not have the authorization to market Hovsat’s licensed  
16 content.” (Mot. at 1, 6.) Omniverse cannot show the complaint to be  
17 “unintelligible” based on allegations that are *not in the complaint*. *See Cellars*, 189  
18 F.R.D. at 578 (“[T]he proper test in evaluating a motion under Rule 12(e) is whether  
19 *the complaint* provides the defendant with a sufficient basis to frame his responsive  
20 pleadings.” (emphasis added) (citation omitted)). Omniverse’s arguments are  
21 relevant, if at all, to an affirmative defense, which has nothing to do with the  
22 intelligibility of Plaintiffs’ complaint. *See WB Music Corp.*, 2018 WL 4156589, at  
23 \*3; *Worldwide Church of God v. Phila. Church of God, Inc.*, 227 F.3d 1110, 1114  
24 (9th Cir. 2000) (noting that a license is an affirmative defense to a copyright  
25 infringement claim). Therefore, the Court should deny Omniverse’s request for a  
26 more definite statement.

27  
28

1           **B.     The Complaint’s References to Dragon Box May Not be Stricken**  
 2           **Because They Are Neither “Scandalous” nor “Immaterial”**

3           Omniverse’s motion also seeks to strike five references to Dragon Box in the  
 4 complaint as “scandalous” and “immaterial.” (Mot. at 8–9 (citing Compl. ¶¶ 1, 1  
 5 n.1, 3, 30, 37).) Omniverse claims that the five references are “immaterial and cast  
 6 a derogatory light on Omniverse and prejudice Omniverse in further proceedings”  
 7 because Dragon Box is “a known pirate of copyrighted broadcast content.” (Mot. at  
 8 2, 9.) This claim is frivolous, given that, among other things, Omniverse does not  
 9 challenge the complaint’s allegation that “Defendants d[id] business with ... Dragon  
 10 Box ... and together provide[d] unauthorized streams of the Copyrighted Works.”  
 11 (Compl. ¶ 18.)

12                   **1.     Legal Standard for Motion to Strike**

13           Federal Rule of Civil Procedure 12(f) provides that “[t]he court may strike  
 14 from a pleading an insufficient defense or any redundant, immaterial, impertinent, or  
 15 scandalous matter.” Just as with the motion’s 12(e) request for a more definite  
 16 statement, “Rule 12(f) motions are generally ‘disfavored’ because they are ‘often  
 17 used as delaying tactics, and because of the limited importance of pleadings in  
 18 federal practice.’” *Bureerong*, 922 F. Supp. at 1478 (citation omitted). And, also  
 19 like the motion’s 12(e) request, “[t]he grounds for the motion [to strike] must appear  
 20 on the face of the pleading under attack or from matter which the court may  
 21 judicially notice.” *Sands*, 902 F. Supp. at 1165.

22           Allegations are “immaterial” only if “it is clear that the matter to be stricken  
 23 can have *no possible bearing* on the subject matter of the litigation.” *San*  
 24 *Bernardino Pub. Emps. Ass’n*, 946 F. Supp. at 803 (emphasis added). And  
 25 allegations can be deemed “scandalous” only if they “cast a ‘cruelly’ derogatory  
 26 light on a party or other person.” *Id.* Further, “[g]iven their disfavored status,  
 27 courts often require “a showing of prejudice by the moving party” before granting  
 28

1 the requested relief.” *Mag Instrument, Inc. v. JS Prod., Inc.*, 595 F. Supp. 2d 1102,  
2 1106 (C.D. Cal. 2008) (citations omitted).

3 Courts apply these standards stringently. For instance, in *Holmes v.*  
4 *Electronic Document Processing, Inc.*, the plaintiff’s complaint accused the  
5 defendants—a legal service company—of providing “sewer service.” 966 F. Supp.  
6 2d 925, 928–29 (N.D. Cal. 2013). The defendants moved to strike the term “sewer  
7 service” as scandalous and immaterial. *Id.* at 938. The court denied that motion,  
8 holding that such references did “not rise to the level of casting Defendants in a  
9 ‘cruelly derogatory light’ and thus were not ‘scandalous.’” *Id.* Nor were the  
10 references “immaterial”; improper business practices could be relevant to the  
11 defendants’ liability. *Id.* The court also found that the defendants had failed to  
12 establish any prejudice arising from the disparaging language. *Id.*

13 **2. Accurately Noting that Omniverse Was in Business with**  
14 **Dragon Box Is Neither Immaterial nor Scandalous**

15 Omniverse argues that the complaint’s references to and comparisons  
16 between it and Dragon Box are immaterial “because Dragon Box is a hardware  
17 device utilizing software to search and link pirated content and Omniverse is a  
18 marketing partner of a cable company.” (Mot. at 9.) Omniverse also argues that the  
19 comparisons are scandalous “because comparing the two unlike entities damages  
20 Omniverse through guilt by (misplaced) association.” (*Id.*) However, Omniverse  
21 has failed to show that the complaint’s references are immaterial or scandalous.  
22 None of the challenged allegations in the complaint cast Omniverse in a “cruelly  
23 derogatory light,” and all are relevant to Plaintiffs’ copyright infringement causes of  
24 action. *See Holmes*, 966 F. Supp. 2d at 938.

25 To begin with, there is no misplaced association here: The complaint alleges  
26 that Omniverse did business with Dragon Box, a fact that Omniverse does not  
27 dispute. Tellingly, Omniverse does not seek to strike paragraph 18 of the complaint,  
28 which states that “Defendants do business with California-based companies, such as

1 Dragon Box . . . , and together provide unauthorized streams of the Copyrighted  
2 Works to California residents.” (Compl. ¶ 18.) The complaint’s other five  
3 references to Dragon Box, which Omniverse does seek to strike, all relate to this  
4 undisputed business relationship. (*See* Compl. ¶¶ 1, 1 n.1, 3, 30, 37.)

5 It is wrong to suggest that references to this conceded business relationship  
6 and comparisons of these business partners are somehow “cruelly derogatory” to  
7 Omniverse. Plaintiffs have used no charged language to refer to Omniverse’s  
8 business operations. It is *Omniverse*, not Plaintiffs, who refer to Dragon Box as a  
9 known “pirate” and characterize Dragon Box’s applications as “known Dragon Box  
10 pirating apps.” (Mot. at 2, 8–9.) The complaint does not use the terms “pirate” or  
11 “piracy” at all, and instead uses legally relevant terms to describe Omniverse’s and  
12 Dragon Box’s copyright infringement. (*See* Compl. ¶¶ 1, 27-32; *see also* Trojan  
13 Decl. ¶ 3, Ex. B (Judgment and Permanent Injunction, *Netflix Studios, LLC v.*  
14 *Dragon Media Inc.*, 2:18-cv-00230-MWF-AS, ECF No. 59 (C.D. Cal. Jan. 29,  
15 2019) (consent judgment adjudicating Dragon Box as having engaged in copyright  
16 infringement)).)

17 Furthermore, Omniverse’s arguments mischaracterize the complaint.  
18 Omniverse claims that, “[i]n Paragraph 1 of Plaintiffs’ Complaint, Plaintiffs allege  
19 Omniverse is ‘an infringing, consumer-facing service, akin to Dragon Box.’” (Mot.  
20 at 9; *see also* Mot. at 6.) In fact, Omniverse has cropped out key context. Paragraph  
21 1 actually states: “Defendants are *not*, however, just an infringing, consumer-facing  
22 service, akin to Dragon Box. Defendants operate at a higher level in the supply  
23 chain of infringing content—recruiting numerous downstream services like Dragon  
24 Box into the illicit market and providing them with access to unauthorized streams  
25 of copyrighted content.” (Compl. ¶ 1 (emphasis added) (footnote omitted).)  
26 Plaintiffs do *not* allege that the two are the same. Omniverse sits above Dragon Box  
27 in the technical scheme of infringing content distribution.

28

1 Nor do the complaint’s allegations have “no possible bearing” on the subject  
2 matter of this litigation. Indeed, the allegations are directly relevant to Plaintiffs’  
3 claims of copyright infringement. Omniverse now concedes that they were in the  
4 streaming business with “a known pirate of copyrighted broadcast content”; that  
5 certainly is relevant to Omniverse’s liability, and state of mind for damages. (Mot.  
6 at 2.) Further, since Dragon Box pointed to *Omniverse* as the source of this “known  
7 pirated content” in a publicly filed declaration sworn under penalty of perjury, such  
8 allegations in the complaint have “bearing on the subject matter of the litigation,”  
9 namely, Omniverse’s liability for providing infringing content. *See San Bernardino*  
10 *Pub. Emps. Ass’n*, 946 F. Supp. at 803 (holding that “a motion to strike should not  
11 be granted unless it is clear that the matter to be stricken can have no possible  
12 bearing on the subject matter of the litigation”); *see also* Pomerantz Decl. ¶ 6, Ex. 1  
13 (Christoforo Decl., *Netflix Studios, LLC v. Dragon Media Inc.*, 2:18-cv-00230-  
14 MWF-AS, ECF No. 49-2, at ¶¶ 3–4 (C.D. Cal. Dec. 27, 2018) (quoted in Compl.  
15 ¶ 30)). Omniverse also says the applications that Dragon Box used to provide  
16 customers with live television programming are “known Dragon Box pirating apps.”  
17 (Mot. at 9.) References to these “known pirating” applications in the complaint are  
18 relevant to Omniverse’s liability and potential damages because Omniverse was  
19 identified as the source of those applications’ infringing content in Dragon Box’s  
20 declaration. (*See* Christoforo Decl., *supra*; Compl. ¶¶ 3, 30, 37.)

21 Omniverse also argues that because the technology involved in Dragon Box’s  
22 and Omniverse’s operations is different, the complaint’s references to Dragon Box  
23 are immaterial. (Mot. at 9.) This rests on the same false premise that the complaint  
24 equates Omniverse and Dragon Box. But even if an apples-to-apples comparison  
25 were required, and Omniverse cited no legal support for such a notion, the  
26 complaint also alleges that Omniverse previously offered the “OmniBox” hardware  
27 device with a direct-to-consumer television streaming service, similar to Dragon  
28 Box. (*See* Compl. ¶¶ 54–55.) This point of similarity with Dragon Box is relevant



1 to demonstrate that Omniverse is “well aware of how these downstream services  
2 work and know[s] the end result of [its] offering is the unauthorized and infringing  
3 streaming and copying of the Copyrighted Works.” (Compl. ¶ 55.)

4 Moreover, Omniverse has not established any prejudice. Given “the limited  
5 importance of pleadings in federal practice,” this request appears to be no more than  
6 a “delaying tactic[.]” *See Bureerong*, 922 F. Supp. at 1478. It should be denied.

7 **C. Plaintiffs Are Properly Joined Because They All Allege the Same**  
8 **“Series of Transactions or Occurrences” of Infringement from**  
9 **Omniverse Providing Unauthorized Streams of Live Television**  
10 **Content—including Plaintiffs’ Copyrighted Works—to the Public**

11 Lastly, Omniverse’s motion seeks to sever Plaintiffs into eight separate  
12 lawsuits, arguing that Plaintiffs are improperly joined because Plaintiffs have failed  
13 “to state facts that arise from a common transaction, occurrence, or series of  
14 transactions [or occurrences].” (Mot. at 4.) Omniverse premises this argument on  
15 its claim that the complaint does not state facts “alleging *how* Omniverse committed  
16 piracy.” (*Id.*) Omniverse asserts—without any citation—that “copyright  
17 infringement necessitates who, what, when, and where to establish facts arising out  
18 of the same transaction, occurrence, or series of transactions [or occurrences]  
19 suffered by all plaintiffs.” (*Id.*) This request, too, is meritless.

20 **1. Legal Standard for Permissive Joinder**

21 Joinder of plaintiffs is proper under Federal Rule of Civil Procedure 20 if  
22 “they assert *any* right to relief jointly, severally, or in the alternative with respect to  
23 or arising out of the same transaction, occurrence, or series of transactions or  
24 occurrences” and “*any* question of law or fact common to all plaintiffs will arise in  
25 the action.” Fed. R. Civ. P. 20(a)(1)(A)-(B) (emphasis added). Permissive joinder  
26 of parties “is to be construed liberally in order to promote trial convenience and to  
27 expedite the final determination of disputes, thereby preventing multiple lawsuits.”  
28 *League to Save Lake Tahoe v. Tahoe Reg’l Planning Agency*, 558 F.2d 914, 917 (9th  
Cir. 1977). “Under the rules, the impulse is toward entertaining the broadest

1 possible scope of action consistent with fairness to the parties; joinder of claims,  
2 parties and remedies is strongly encouraged.” *United Mine Workers of Am. v.*  
3 *Gibbs*, 383 U.S. 715, 724 (1966). “Rule 20 is designed to promote judicial  
4 economy, and reduce inconvenience, delay, and added expense.” *Coughlin*, 130  
5 F.3d at 1351.

6 Courts apply a three-pronged test to determine whether the “broadest scope of  
7 action” encompasses the joinder. “The first prong, the ‘same transaction’  
8 requirement, refers to similarity in the factual background of a claim.” *Id.* at 1350.  
9 Claims can “arise out of a systematic pattern of events and, therefore, arise from the  
10 same transaction or occurrence.” *Id.* For the second prong, when each plaintiff’s  
11 claim involves “different legal issues, standards, and procedures” that require  
12 “personalized attention,” there is no common question of law or fact. *Id.* at 1351.  
13 Finally, “a district court must examine whether permissive joinder would ‘comport  
14 with the principles of fundamental fairness’ or would result in prejudice to either  
15 side.” *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000).

16 **2. Joinder of Plaintiffs Is Proper Here to Challenge a**  
17 **“Systematic Pattern” of Infringement Caused by**  
18 **Omniverse’s Business Operations, and Omniverse Suffers No**  
19 **Prejudice Thereby**

19 Omniverse’s request to sever fails to demonstrate that Plaintiffs are  
20 improperly joined or that Omniverse is prejudiced by the joinder. The relief sought  
21 would *create* “inconvenience, delay, and added expense,” not eliminate it.

22 First, Plaintiffs have alleged that their claims arise out of the “same series of  
23 transactions or occurrences,” namely Omniverse’s “systematic pattern” of copyright  
24 infringement caused by their unauthorized online streaming business. *See Coughlin*,  
25 130 F.3d at 1350. Many other mass infringement cases involving multiple  
26  
27  
28

1 plaintiffs, such as *Grokster*, *Aereo*, *Napster*, *FilmOn*, and more,<sup>3</sup> have been brought  
2 to judgment based on similar allegations. Plaintiffs’ claims are all based on  
3 Omniverse transmitting public performances of their copyrighted content to the  
4 public without authorization by streaming live television content over the internet to  
5 consumers through downstream services. (Compl. ¶¶ 27–63.) These allegations are  
6 sufficient to state copyright infringement claims. And while the line-up of  
7 Plaintiffs’ copyrighted works playing on live television at any given time changes,  
8 the facts involved in Omniverse’s unauthorized streaming of that television content  
9 remain the same. This systematic pattern of infringement is constant as to all  
10 Plaintiffs, regardless of what works are at issue; the individual copyrighted works  
11 identified in Exhibit A to the complaint were merely exemplary. (See Compl. ¶ 14;  
12 Ex. A.) Thus, Plaintiffs have alleged “similarity in the factual background” of their  
13 claims because the operation of Omniverse’s business is a “systematic pattern of  
14 events” resulting in a related series of infringement. *See Coughlin*, 130 F.3d at  
15 1350.

16 Second, Plaintiffs’ claims also involve common questions of law and fact  
17 under Rule 20. Plaintiffs have alleged the same three legal claims of infringement,  
18 inducement, and material contribution. (Compl. ¶¶ 64–94.) These claims will  
19 involve the same legal and factual questions regarding where Omniverse obtains its  
20 live television programming, how Omniverse’s streaming operation works, and to  
21 whom Omniverse streams. Omniverse’s infringing actions are alleged to be uniform  
22 as to all Plaintiffs, regardless of the copyrighted works at issue. Therefore, no  
23 “personalized attention” would predominate any of the common factual and legal  
24 issues related to Plaintiffs’ claims. *See Coughlin*, 130 F.3d at 1351.

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26 <sup>3</sup> *Am. Broad. Cos. v. Aereo, Inc.*, 573 U.S. 431 (2014); *Metro-Goldwyn-Mayer*  
27 *Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005); *Fox Television Stations, Inc. v.*  
28 *Aereokiller, LLC (FilmOn)*, 851 F.3d 1002 (9th Cir. 2017); *A&M Records, Inc. v.*  
*Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001).

1 Omniverse claims that it “would be fundamentally unfair” to have Omniverse  
2 “litigate multiple counts of piracy covering all eight plaintiffs and their respective  
3 properties and unique facts.” (Mot. at 5.) But Omniverse has not identified *any*  
4 “unique facts” or legal issues that require “personalized attention” in order to  
5 resolve Plaintiffs’ claims. And if the Court were to grant severance, Omniverse  
6 would have to litigate *eight separate lawsuits*, each with three causes of action for  
7 copyright infringement and secondary liability from eight plaintiffs, all involving  
8 the same evidence of Omniverse’s business model and system of infringement.  
9 That would not be easier for Omniverse; it would be harder. Presumably,  
10 Omniverse hopes that the added inconvenience, delay, and expense caused to  
11 Plaintiffs would deter the suits from going forward, but severance exists to *eliminate*  
12 such factors, not exacerbate them. Under Rule 20 and the case law interpreting it, it  
13 is most fair and efficient to present Plaintiffs’ substantially identical claims in one  
14 suit. This joinder promotes “judicial economy” and reduces the “inconvenience,  
15 delay, and added expense” inherent in duplicative litigation. *See Coughlin*, 130 F.3d  
16 at 1351.

17 Omniverse’s cases do not provide otherwise. For example, *On the Cheap*  
18 *LLC v. Does 1-5011*, involved severance of over *five thousand* Doe defendants who  
19 allegedly had downloaded the same film from Bit Torrent. 280 F.R.D. 500, 501–03  
20 (N.D. Cal. 2011). “[J]oining multiple Doe defendants was improper since  
21 downloading the same file did not mean that each of the defendants were engaged in  
22 the same transaction or occurrence.” *Id.* at 502–03. Contrary to Omniverse’s  
23 attempted comparison, Plaintiffs’ claims involve Omniverse *streaming* their  
24 copyrighted works, not “downloading different copyrighted films and television  
25 shows.” (Mot. at 5 (emphasis omitted).) Omniverse also cited *Papagiannis v.*  
26 *Pontikis*, where the court severed the plaintiffs because “[a]lthough the allegedly  
27 fraudulent scheme may have been the same as to both victims, face-to-face fraud (as  
28 contrasted for example with a securities prospectus misrepresentation) necessarily

1 requires individualized proof.” 108 F.R.D. 177, 178–79 (N.D. Ill. 1985). Unlike the  
2 fraud claims in *Papagiannis*, Plaintiffs’ copyright infringement claims do not  
3 involve highly particularized questions and individualized proof for each Plaintiff’s  
4 claims. At most, each Plaintiff will establish that it owns copyrighted works and  
5 that Omniverse has transmitted those works to the public through its unauthorized  
6 live television streaming business.

7 Because Plaintiffs’ claims arise out of the same series of transactions and  
8 occurrences and involve the same questions of fact and law, Plaintiffs are  
9 permissibly joined under Rule 20. Omniverse has not identified any legal reason to  
10 sever, nor has it demonstrated that doing so would avoid undue prejudice or  
11 effectuate the efficiency and convenience policies behind the rule. Therefore, the  
12 Court should deny Omniverse’s request to sever.

13 **CONCLUSION**

14 For the foregoing reasons, Plaintiffs respectfully request that the Court deny  
15 all of the requests for relief in Omniverse’s motion. Moreover, given the  
16 widespread recognition that motions such as Omniverse’s are often brought purely  
17 for delay, and given the lack of any merit to Omniverse’s motion here, the Court  
18 should deny the motion promptly and direct Omniverse to answer the complaint.  
19

20 DATED: May 3, 2019

MUNGER, TOLLES & OLSON LLP

21  
22 By:           /s/ Glenn D. Pomerantz          

23 **GLENN D. POMERANTZ**

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