

1 John T. Wilson* (Texas Bar No. 24008284)
2 Jennifer M. Rynell* (Texas Bar No. 24033025)
3 eservice@wilsonlegalgroup.com
4 **WILSON WHITAKER RYNELL**
5 Wilson Legal Group P.C.
6 16610 Dallas Parkway, Suite 1000
7 Dallas, Texas 75248
8 (T) 972-248-8080
9 (F) 972-248-8088
10 *Pro Hac Vice Applications Pending

11 Glenn T. Litwak (State Bar No. 91510)
12 glenn@glennlitwak.com
13 **LAW OFFICES OF GLENN T. LITWAK**
14 201 Santa Monica Boulevard, Suite 300
15 Santa Monica, California 90401
16 (T): 310-858-5574
17 (F): 310-207-4180

18 **Attorneys for Defendant Dwayne Anthony Johnson**
19 **d/b/a AllAccessTV and Quality Restreams**

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22 WESTERN DIVISION

23 UNIVERSAL CITY STUDIOS
24 PRODUCTIONS LLLP, ET AL.,

25 Plaintiffs,

26 vs.

27 DWAYNE ANTHONY JOHNSON d/b/a
ALLACCESSTV and QUALITY
RESTREAMS; and DOES 1-20,

Defendants.

Case No. 2:21-cv-09361-AB (MRWx)

**DEFENDANT’S RESPONSE IN
OPPOSITION TO PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION AND EVIDENTIARY
OBJECTIONS TO DECLARATIONS
AND EXHIBITS**

Current Hearing Date:
February 18, 2022, 10:00 a.m.

Proposed Hearing Date:
April 22, 2022, 10:00 a.m.

Judge: Hon. Andre Birotte Jr.

Action Filed: December 2, 2021

Trial Date: None Set

1 Defendant Dwayne Anthony Johnson d/b/a ALLACCESSTV and Quality
2 Restreams (“Defendant”)¹ files this Response in Opposition to Plaintiffs Universal
3 City Studios Productions LLLP (“UCSP”), Universal City Studios LLC (formerly
4 known as Universal City Studios LLLP and Universal City Studios, Inc.) (“UCS”),
5 Universal Television LLC (formerly known as NBC Studios, Inc.) (“UT”),
6 Universal Content Productions LLC (formerly known as Universal Network
7 Television LLC) (“UCP”), DreamWorks Animation LLC (“DreamWorks”), Disney
8 Enterprises, Inc. (“Disney”), Paramount Pictures Corporation (“Paramount”),
9 Amazon Content Services LLC (“Amazon”), Apple Video Programming LLC
10 (“Apple”), Warner Bros. Entertainment Inc. (“Warner Bros.”), Netflix US, LLC
11 (“Netflix”), Columbia Pictures Industries, Inc. (“Columbia”), Screen Gems, Inc.’s
12 (“Screen Gems”) (collectively “Plaintiffs”) Motion for Preliminary Injunction and
13 accompanying declarations, exhibits and proposed order (collectively “Motion”).
14 Dkt. Nos. 14 -17.

15 For the reasons set forth herein, Defendant Johnson opposes Plaintiffs’
16 Motion as there can be no irreparable harm and Plaintiffs are not likely to prevail on
17 the merits of their claims. Plaintiffs’ “evidence” of direct infringement is largely
18 based on the allegation that Dwayne Johnson is doing business as ALLACCESSTV
19 and/or Quality Restreams and that the continuation of Johnson doing such business
20 will cause them irreparable harm. Because there is no evidence that there is even any
21 such activity to enjoin, there can be no irreparable harm to Plaintiffs that would
22 justify an injunction. The requested preliminary injunction must also be denied
23 because Plaintiffs have no evidence whatsoever of the underlying acts of direct
24

25 ¹Defendant cannot and does not respond to the Motion on behalf of: 1) DOES 1-20
26 identified in the style of the case and defined by Plaintiffs as “the individuals or
27 entities, who, along with Dwayne Anthony Johnson, own or operate the infringing
services of AATV and Quality Restreams”; or 2) “all individuals acting in concert
or participation or privity with them, including Defendants’ resellers.”

1 infringement required for their claims of secondary copyright infringement, i.e.,
2 contributory and inducing infringement. Without an attempt to prove the underlying
3 acts, there can simply be no finding that Plaintiffs are likely to prevail on the merits
4 of their secondary infringement claims.

5 Defendant also sets forth below its evidentiary objections to the evidence
6 submitted with the Motion. Defendant objects to the declaration submitted by the
7 Motion Picture Association, as critical information is redacted, the declaration and
8 evidence do not contain indicia of reliability, and the Van Voorn Declaration
9 contains inaccurate, biased opinions. Further, Van Voorn cannot be considered an
10 expert, as his opinions are not those of an independent third party. Defendant also
11 objects to the declaration of Steve Kang of NBCUniversal, which purports to be
12 submitted as evidence on behalf of all Plaintiffs, including ones for whom he is not
13 employed and has not demonstrated any direct knowledge. This leaves the remainder
14 of the non-Universal Plaintiffs with no evidence whatsoever of irreparable harm and
15 Plaintiffs are, therefore, not likely to prevail on the merits.

16 Plaintiffs seek prospective injunctive relief based on inaccurate assertions and
17 legally unsupportable allegations. Defendant respectfully requests that the Court
18 deny Plaintiffs' Motion.

19 **I. ARGUMENTS AND AUTHORITIES**

20 ***A. There are No Ongoing and Threatened Harms to Warrant an***
21 ***Injunction.***

22 Plaintiffs accuse Defendants of two things – violating their rights to publicly
23 perform and reproduce their “Copyrighted Works” as defined in the Complaint. *See*
24 Dkt. No. 1, 1-1. Specifically, Defendant’s alleged public performance is streaming
25 the copyrighted content to end users and Defendant’s alleged reproduction is making
26 copies of the Copyrighted Works to provide content to end users on demand. *See,*
27 *e.g.,* Dkt. No. 1 at 5-6.

1 In support of their “public performance” allegations, Plaintiffs and the Motion
2 Picture Association’s declarant – Van Voorn – state in the Motion that Defendant
3 uses certain Internet domains in “their infringing enterprises.” *See* Dkt. No. 14 at 3.
4 And Plaintiffs claim that Defendant’s “subscribers access infringing content through
5 web-based applications.” But Plaintiffs’ only evidence of this alleged access are
6 screenshots that do not show any URLs whatsoever, i.e., no actual evidence that the
7 websites accused contain the alleged content. This is critical, as without that
8 identifying URL information being shown, there is no way to verify the claims in
9 Plaintiffs’ Motion and in Van Voorn’s Declaration. *See, e.g.*, Dkt. No. 16, Exhibits
10 3-5, 7, 10-12, and 14-21. This “evidence” is not proper as described further below
11 in Defendant’s evidentiary objections to Plaintiffs’ declarations and exhibits and
12 cannot support issuance of a preliminary injunction. Indeed, by way of example
13 only, Van Voorn admits that “aatvpanel.com appears to recently have been taken
14 offline by Defendants.” While there is no support for this statement other than his
15 conclusory allegation about it having been “taken offline by Defendant,” the point
16 is that it is offline. And, as further discussed below, a cursory public search of the
17 landing pages of these domains indicates that none of the alleged infringing domains
18 actually “stream and provide content” or even contain any content at all relating to
19 the Copyrighted Works. Yet Plaintiffs persist in their request that aatvpanel.com and
20 other offline domains (including those not identified in their evidence) are ongoing
21 threats to Plaintiffs. There is simply no evidence for this assertion and no basis for
22 an injunction.

23 Likewise, Plaintiffs have no evidence whatsoever of unauthorized copying of
24 any copyrighted works and only allege that this must be the case based on the Motion
25 Picture Association declarant’s “experience” and “familiarity.” *See, e.g.*, Dkt. No.
26 16, ¶¶ 35, 38; Dkt. No. 14 at 7. The Motion also states that “Defendants currently
27 offer over 600 movie titles and 600 television series,” citing only Paragraph 37 of

1 the Van Voorn Declaration, which contains no evidence or exhibits. These are
2 simply bald assertions by Plaintiffs and the Motion Picture Association.

3 ***B. Plaintiffs are not Likely to Prevail on the Merits of Secondary***
4 ***Infringement Claims.***

5 In order to prove contributory and inducing infringement, there must be an act
6 of direct infringement underlying the secondary infringement. “One infringes
7 contributorily by intentionally inducing or encouraging *direct infringement*, and
8 infringes vicariously by profiting from *direct infringement* while declining to
9 exercise a right to stop or limit it.” *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d
10 1146, 1169 (9th Cir. 2007) (emphasis added) (citing *Metro-Goldwyn-Mayer Studios*
11 *Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930 (2005)). In other words, “[s]econdary
12 liability for copyright infringement does not exist in the absence of direct
13 infringement by a third party.” *Id.*

14 Plaintiffs’ Complaint for Copyright Infringement and the instant Motion
15 relating to secondary infringement are a constantly moving target of allegations in
16 this regard. Plaintiffs shift from the third-party direct infringer being the end user
17 (i.e., the viewer of a stream), and in Plaintiffs’ next breath, the direct infringer is the
18 unknown *source* of a restream of Internet Protocol television (“IPTV”). Or in some
19 instances, Plaintiffs appear to vaguely allege a combination of the two. And
20 Plaintiffs do not provide evidence to show direct infringement by either the end users
21 or the unknown source of a restream. The Ninth Circuit has held that viewing
22 copyrighted material online, without downloading, copying, or retransmitting such
23 material is not copyright infringement. *Perfect 10*, 508 F.3d at 1169. That would
24 remove the end user as a possible direct infringer for purposes of finding Defendant
25 secondarily liable for copyright infringement. And Plaintiffs provide no evidence for
26 the Court or Defendant to assess regarding any direct infringement by the unknown
27 *source* of a restream of IPTV.

1 ***C. The Parties to Whom Plaintiffs’ Proposed Injunction is Directed are***
2 ***Improper.***

3 Plaintiffs’ request for preliminary injunctive relief against “Defendants” as
4 well as additional unknown parties not included within that definition is misdirected
5 and overly broad. Plaintiffs define “Defendants” as “Defendants Dwayne Anthony
6 Johnson (‘Johnson’) d/b/a AllAccessTV (‘AATV’) and Quality Restreams, and the
7 individuals or entities, who, along with Dwayne Anthony Johnson, own or operate
8 the infringing services of AATV and Quality Restreams (collectively with Johnson,
9 ‘Defendants’), and all individuals acting in concert or participation or privity with
10 them, including Defendants’ resellers.” Dkt. No. 14 at 2. As previously noted,
11 Dwayne Johnson cannot and does not respond to the Motion on behalf of DOES 1-
12 20 or the “individuals acting in concert or participation or privity with them,
13 including Defendants’ resellers,” which exceeds Plaintiffs’ own definition of
14 “Defendants.”

15 Dwayne Johnson does not personally have any “officers, agents, servants,
16 employees” for purposes of an injunction. Plaintiffs have no support for their
17 allegation that Dwayne Johnson is doing business as AllAccessTV or Quality
18 Restreams. As such, there are no “officers, agents, servants, employees” of
19 AllAccessTV or Quality Restreams to be enjoined and Plaintiffs have not proved
20 otherwise or demonstrated that they are likely to prevail on the merits in this regard.
21 Also, an injunction against Dwayne Johnson’s “attorneys” is completely
22 unsupported and borders on the absurd. Undersigned counsel, for example, has not
23 been and cannot be accused of infringing any of Plaintiffs’ copyrights. There is no
24 legitimate argument or assertion in this regard and Plaintiffs’ requested injunction
25 as to Dwayne Johnson’s “attorneys” must not be granted.

26 In their overreaching request for injunctive relief, Plaintiffs have also
27 attempted to implicate in this case and in their Motion the rights of an entity called

1 VPN Safe Vault LLC (“VPN Safe Vault”) without making them a party to the case.
2 This is of serious concern. For clarity, VPN Safe Vault *has not been named as a*
3 *defendant in this action*. Plaintiffs are clearly aware of the entity but do not have
4 evidence that VPN Safe Vault is participating in any of the activities that they allege
5 constitute copyright infringement. Further, the balance of hardships element cannot
6 be met by Plaintiffs with respect to VPN Safe Vault (a non-party) and its domains,
7 as an injunction in this regard would be an unlawful restraint on trade as to that
8 entity, which sells VPN access that is not even arguably copyright infringement.
9 Plaintiffs clearly had no good faith basis to make VPN Safe Vault a party to this case
10 and most certainly have no basis for an injunction as to this entity and its domains.

11 The Van Voorn Declaration contains the following conclusory and
12 unsupported statement: “Defendants currently sell AATV subscriptions via the site
13 backoffice.vpnsafevault.com.” Dkt. No. 16, ¶ 19. Van Voorn goes on to declare,
14 with no cited evidentiary support, that: “Currently, Defendants sell AATV
15 subscriptions through backoffice.vpnsafevault.com, a website that is stripped of all
16 AATV branding and designed to appear like it sells VPN software to consumers.
17 However, Defendants are actually selling subscriptions to their AATV service
18 through this site.” *Id.* at ¶ 26. Despite these and the remainder of the allegations
19 about VPN Safe Vault, Van Voorn and Plaintiffs attach no documents supporting
20 this theory or their statements in this regard. The only “evidence” that Plaintiffs have
21 attached to the Van Voorn declaration relating to VPN Safe Vault are screenshots of
22 the VPN Safe Vault website that show users’ ability to pay for and access a virtual
23 private network (“VPN”). A VPN is a computer network that provides online
24 privacy by creating an encrypted connection on the Internet. There is no allegation
25 that any VPN, in and of itself, violates Plaintiffs’ copyrights.

26 VPN Safe Vault is not a party to this case and has not been accused of
27 copyright infringement in any actionable way. Yet Plaintiffs seek to shut down two

1 domains associated with this entity—based on no evidence whatsoever. Such an
2 injunction against VPN Safe Vault would be contrary to the pleadings, evidence, and
3 the law, not the least of which would be significant due process considerations.

4 Plaintiffs’ overly broad request for a preliminary injunction should be denied.

5 **II. EVIDENTIARY OBJECTIONS TO PLAINTIFFS’**
6 **DECLARATIONS AND EXHIBITS**

7 ***A. Objections to the Van Voorn Declaration.***

8 Defendant objects to the declaration submitted by Plaintiffs from the Motion
9 Picture Association in its entirety, as critical information is redacted, the declaration
10 and evidence do not contain indicia of reliability, and the declaration contains
11 inaccurate, biased opinions based on the declarant’s “expertise.” The declarant, Van
12 Voorn, however, cannot be an expert as he is not an independent third-party. He is
13 an investigator with the Motion Picture Association who is not a party to this case
14 but who is admittedly interested in this litigation. *See, e.g.*, Dkt. No. 16, ¶¶ 1-4. Van
15 Voorn himself declares that Plaintiffs are members of a “global coalition of leading
16 stakeholders in the distribution ecosystem committed to protecting the growing legal
17 dissemination of creative content and addressing the challenges of online piracy” ...
18 and that the Motion Picture Association contributes to the work of that initiative.
19 Dkt. No. 16, ¶¶ 1-4. Van Voorn cannot be considered an expert and his “opinions”
20 are not those of an unbiased, independent third party.

21 The Van Voorn Declaration contains assertions based on exhibits and
22 otherwise that are improperly redacted and/or do not establish any kind of
23 timeframe. Defendant objects to Exhibit 1 to the Van Voorn Declaration as it does
24 not indicate any current evidence that Defendant owns the allaccessiptv.com
25 domain. Indeed, the evidence Plaintiffs and Van Voorn submit shows that the
26 registration for this domain had an expiration date of March 23, 2018. *See* Dkt. No.
27 16-1. This does not in any way support Plaintiffs’ request for injunctive relief and

1 undermines their arguments as to “ongoing and threatened harms.” Dkt. No. 14 at 1.
2 Despite the speculation in the Motion and the Van Voorn Declaration, Plaintiffs
3 cannot and do not have any evidence that these domains are owned by Dwayne
4 Johnson. This is a huge issue with Plaintiffs’ request for injunction.

5 Defendant also objects to Exhibit 2 to the Van Voorn Declaration, as it does
6 not contain any evidence of the request made by Van Voorn to Domains by Proxy
7 and also does not contain any date or timeframe whatsoever on the reply from
8 Domains by Proxy. This information has either been withheld (as to the initial
9 request) or not included in the screenshot (as to the reply). *See* Dkt. No. 16-2. Such
10 intentionally incomplete or missing documentation cannot suffice to show a
11 connection between Defendant and this domain and certainly does not support
12 Plaintiffs’ arguments that an injunction is necessary to avoid irreparable harm or
13 “ongoing and threatened harms” on this basis.

14 Defendant objects to the exhibits accompanying the Van Voorn Declaration
15 that are allegedly screenshots of websites that do not show the URL from which they
16 were taken. This is critical information in a case about Internet Protocol television
17 and where Plaintiffs are seeking an injunction based on activities at specific
18 websites. Defendant objects to Exhibits 3-5, 7, 10-12, and 14-21 of the Van Voorn
19 Declaration at least on this basis.

20 Defendant also objects to the numerous inaccuracies included in the Van
21 Voorn Declaration relating to Quality Restreams, for example. Van Voorn states
22 Dwayne Johnson “is the owner of Quality Restreams...” *See, e.g.*, Dkt. No. 16, ¶ 13.
23 Van Voorn goes on to state that “AATV obtains its content from Quality Restreams”
24 and other undocumented and unsupported allegations regarding Quality Restreams.
25 *See, e.g.*, Dkt. No. 16, ¶¶ 40-42. Notably absent from Plaintiffs’ Motion and the Van
26 Voorn Declaration is the fact that the website qualityrestreams.com, which is
27 included in Plaintiffs’ list of “infringing” domains for requested shutdown, actually

1 contains links that redirect to YouTube TV, Hallmark Movies Now, and Hulu.
2 Plaintiffs have offered no evidence that this domain has anything to do with Dwayne
3 Johnson and the easily accessible public website indicates that it does not. Van
4 Voorn goes on to declare that “Quality Restreams uses several disparate domains in
5 order to stream and provide content to IPTV operators, including
6 qualityrestreams.com, qsplaylist.com, qualitystreamz.guru, and qsprovider.com.”
7 Dkt. No. 16, ¶ 41. A cursory public search of the landing pages of these domains
8 indicates that none of them “stream and provide content” at all or even contain any
9 content whatsoever. Defendant asks the Court to take judicial notice of these public
10 facts.

11 Defendant objects to Van Voorn’s assertion in his declaration that: “In order
12 to download and access the AATV Platforms, a subscriber must text message
13 Defendants’ ‘24/7 text support line’ and connect with an AATV tech support agent.”
14 *See* Dkt. No., ¶ 28. There is no identification of the alleged “24/7 text support line”
15 that may have been contacted. There are no screenshots of any text messages
16 provided. Plain and simple, the veracity of this allegation cannot be tested by either
17 Defendant or the Court, it has no evidentiary value, and cannot form the basis for
18 injunctive relief. The same is true for the remainder of the allegations in Paragraph
19 28 of the Van Voorn Declaration. Van Voorn also casually states that certain things
20 are true “regardless of which site users use.” There is no evidence provided, only
21 assertions of an interested witness, and Defendant objects to them accordingly.

22 ***B. Objections to the Kang Declaration.***

23 Defendant also objects to the declaration submitted by Steve Kang of
24 NBCUniversal, which purports to be on behalf of all Plaintiffs, including ones for
25 whom he is not employed and has not established or shown any direct knowledge.
26 Kang states that his knowledge is based on “publicly available sources such as
27 industry publications and the media,” but no such information is cited or provided

1 to show the reliability of any of his alleged “general knowledge” as to the other non-
2 Universal Plaintiffs in this matter. *See* Dkt. No. 15, ¶¶ 1-3, ¶ 9 (regarding other
3 Plaintiffs in this matter”), ¶ 13 (“as with other Plaintiffs”), ¶ 17 (“the relevant
4 copyright holders”), ¶ 18 (“the business of other similarly situated studios”), ¶ 22
5 (citing but not providing public information as to “other Plaintiffs”), ¶ 38 (stating
6 that the harms to other Plaintiffs are “comparably imminent and irreparable”). These
7 are merely examples of the alleged knowledge of the NBCUniversal executive to
8 which Defendant objects as being outside his realm of knowledge and/or without
9 provision of the sources of the alleged knowledge. Non-Universal Plaintiffs must
10 not be permitted to rely on the statements made by a Universal declarant to establish
11 the harm necessary for issuance of the requested injunction.

12 **III. CONCLUSION AND PRAYER**

13 Defendant respectfully prays that the Court deny Plaintiffs’ Motion for
14 Preliminary Injunction on the bases set forth herein.

15 **DATED:** January 28, 2022

Respectfully submitted,

17 *By: /s/ Glenn T. Litwak*
18 Glenn T. Litwak

19 John T. Wilson*
20 Texas Bar No. 24008284
21 Jennifer M. Rynell*
22 Texas Bar No. 24033025
23 *eservice@wilsonlegalgroup.com*
24 **WILSON WHITAKER RYNELL**
25 Wilson Legal Group P.C.
26 16610 Dallas Parkway, Suite 1000
27 Dallas, Texas 75248
(T) 972-248-8080
(F) 972-248-8088
**Pro Hac Vice*
Applications Pending

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

Glenn T. Litwak
State Bar No. 91510
glenn@glennlitwak.com
LAW OFFICES OF GLENN T. LITWAK
201 Santa Monica Boulevard, Suite 300
Santa Monica, California 90401
(T): 310-858-5574
(F): 310-207-4180

**ATTORNEYS FOR DEFENDANT
DWAYNE ANTHONY JOHNSON
d/b/a ALLACCESSTV AND
QUALITY RESTREAMS**

PROOF OF SERVICE BY ELECTRONIC MAIL

I am employed in the County of Dallas, State of Texas. I am over the age of 18 and not a party to the above-referenced action. My business address is Wilson Whitaker Rynell, Wilson Legal Group, P.C., 16610 Dallas Parkway, Suite 1000, Dallas, Texas 75248.

On January 28, 2022, I served the foregoing document(s) described as:

DEFENDANT’S RESPONSE IN OPPOSITION TO PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION AND EVIDENTIARY OBJECTIONS TO DECLARATIONS AND EXHIBITS by forwarding a portable document file to the electronic mail address(es) below:

Elizabeth A. McNamara (Pro Hac Vice)
lizmcnamara@dwt.com
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, 21st Floor
New York, New York 10020
Telephone: (212) 603-6437
Fax: (212) 489-8340

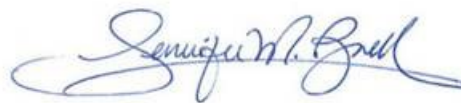
Sean M. Sullivan (CA State Bar No. 229104)
seansullivan@dwt.com
DAVIS WRIGHT TREMAINE LLP
865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
Telephone: (213) 633-6800
Fax: (213) 633-6899

Attorneys for Plaintiffs

FROM ELECTRONIC MAIL ADDRESS jennifer@wilsonlegalgroup.com at 16610 Dallas Parkway, Suite 1000, Dallas, Texas 75248.

Executed on January 28, 2022, at Dallas, Texas.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and I am a member of this bar, an employee of member of the bar at whose direction this service was made, or have been admitted (and/or filed to be admitted) *pro hac vice*.



Jennifer M. Rynell