

II. JURISDICTION AND VENUE

2. This action arises under the copyright laws of the United States, Title 17 of the United States Code. The Court's jurisdiction over this action is proper under 17 U.S.C. § 101, *et seq.*, 28 U.S.C. § 1331, § 1332, and § 1338.

3. Personal jurisdiction exists generally over Defendants because they have sufficient minimum contacts with the State of Texas and this District as a result of business conducted within the State of Texas and within this District. Personal jurisdiction also exists specifically over Defendants because of Defendants' actively reproduced, adapted, distributed, performed, displayed, and marketed the infringing works, directly and/or indirectly in this District and Division, and placed their infringing works into the stream of commerce with the intent or knowledge that they would be received and consumed by persons within this District.

4. Venue is proper in this Court under 28 U.S.C. §§ 1391, as well as 28 U.S.C. § 1400(a), for the reasons set forth herein. Furthermore, venue is proper because Plaintiff's copyrighted materials were physically drawn and created in the Eastern District of Texas. Venue is also proper because Defendants' actively reproduced, adapted, distributed, sold, performed, displayed, and marketed the infringing works, directly and/or indirectly in this District and Division, as more fully described below.

III. THE PARTIES

5. **Plaintiff Kevin Bennett Atkinson** is an individual residing in New Boston, Texas 75570. Mr. Atkinson is a professional illustrator and comic book author who has built a considerable body of work. Mr. Atkinson has done and continues to do business and create fictional works, including comic books, under the name Rogue Satellite Comics. Along with

Christopher Reilly (deceased), Mr. Atkinson created and owns the copyrighted works that are the subject of this litigation.

6. **Defendant Netflix, Inc.** is a foreign corporation authorized to and conducting business in the State of Texas by providing streaming video and entertainment content nationwide. Defendant performs and provides these services with the intent and knowledge that they will be distributed to consumers nationwide, including consumers within this District. Defendant Netflix, Inc. may be served with process through its registered agent CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136

7. **Defendant Netflix Studios, LLC** is a Delaware limited liability company that conducts business nationwide through its creation and distribution of entertainment content. Defendant performs and provides these services with the intent and knowledge that they will be distributed to consumers nationwide, including consumers within this District. Defendant Netflix Studios may be served with process through its registered agent The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801.

8. **Defendant Dark Horse Comics, LLC**, is a foreign limited liability company with its principal place of business in Milwaukie, Oregon. It produces, sells, and distributes graphic novels and comic books nationwide, including within this District. Defendant performs and provides these products with the intent and knowledge that they will be distributed to consumers nationwide, including consumers within this District. It may be served via its registered agent Incorporating Services, Ltd., 3500 S. Dupont Hwy, Dover, Delaware 19901.

9. **Defendant Dark Horse Entertainment, Inc.** is a foreign corporation that licenses, produces, sells, and distributes graphic novels, comic books, and similar content nationwide, including within this District. Defendant performs and provides these products with the intent and

knowledge that they will be distributed to consumers nationwide, including consumers within this District. It may be served via its registered agent CT Corporation System, 28 Liberty St., New York, New York 10005.

10. **Defendant Universal Content Productions, LLC** is a foreign limited liability company. It was formerly known as Universal Cable Productions, LLC, and it claims copyright ownership and authorship of the episodes at issue in this case and that have been streamed to users within this State and Division. On information and belief, Defendant Universal Content produces, sells, and distributes video streaming products nationwide, including within this District. Defendant performs and provides these products with the intent and knowledge that they will be distributed to consumers nationwide, including consumers within this District. It may be served with process through its registered agent, Enterprise Corporate Services LLC, 1201 N Market Street, Suite 1000, Wilmington, DE 19801.

11. **Defendant Gerard Way** is an individual and on information and belief he resides in California and may be served with process at his primary address 1857 Campus Road, Los Angeles, California 90041 or wherever he may be found.

IV. BACKGROUND

12. The preceding paragraphs are incorporated herein by reference as if fully stated herein.

13. Plaintiff brings this action as the owner of the copyrights discussed below including the comics published under the Rogue Satellite Comics name and including the character “Kingfish.”

14. Around 1994, Plaintiff began creating a series of fictional comic books under the name Rogue Satellite Comics. The first issue, Rogue Satellite Comics #1, was published and

distributed around August of 1996. The copyright for Rogue Satellite Comics #1 is registered to Plaintiff Atkinson, doing business as Rogue Satellite Comics. It bears a copyright registration number of VA 1-756-782. A true and correct copy of the Certificate of Registration for Rogue Satellite Comics #1 is attached as **Exhibit A**.

15. Around 1996, Plaintiff created Rogue Satellite Comics #2, which was published and distributed in or around November of 1996. The copyright for Rogue Satellite Comics #2 is registered to Plaintiff Atkinson, doing business as Rogue Satellite Comics. It bears a copyright registration number of VA 1-756-787. A true and correct copy of the Certificate of Registration for Rogue Satellite Comics #2 is attached as **Exhibit B**.

16. Around 1996, Plaintiff created Rogue Satellite Comics #3, which was published and distributed around March of 1997. The copyright for Rogue Satellite Comics #3 is registered to Plaintiff Atkinson, doing business as Rogue Satellite Comics. It bears a copyright registration number of VA 1-756-789. A true and correct copy of the Certificate of Registration for Rogue Satellite Comics #3 is attached as **Exhibit C**.

17. Around 1997, Plaintiff created Rogue Satellite Comics #4, also known as the “Special Issue.” It was published and distributed around July of 1997. The copyright for Rogue Satellite Comics #4 (Special Issue) is registered to Plaintiff Atkinson, doing business as Rogue Satellite Comics. It bears a copyright registration number of VA 1-756-792. A true and correct copy of the Certificate of Registration for Rogue Satellite Comics #4 (Special Issue) is attached as **Exhibit D**.

18. Around 1998, Plaintiff created Rogue Satellite Comics #5 and #6, which were first published and distributed around 2006 as part of Rogue Satellite Comics: Crossroads to Lambada. Rogue Satellite Comics: Crossroads to Lambada is a compilation that includes Rogue Satellite

Comics #1, #2, #3, #4, #5, and #6. The copyright for Rogue Satellite Comics: Crossroads to Lambada is registered to Plaintiff Atkinson, doing business as Rogue Satellite Comics. It bears a copyright registration number of VA 1-762-835. A true and correct copy of the Certificate of Registration for Rogue Satellite Comics: Crossroads to Lambada is attached as **Exhibit E**.

19. Around 2009, Plaintiff created Rogue Satellite Comics: Acme City. It was first published and distributed around 2009 as part of Rogue Satellite Comics: The Complete Collection. Rogue Satellite Comics: The Complete Collection is a compilation that includes Rogue Satellite Comics #1, #2, #3, #4, #5, #6, and Rogue Satellite Comics: Acme City. The copyright for Rogue Satellite Comics: The Complete Collection is registered to Plaintiff Atkinson, doing business as Rogue Satellite Comics. It bears a copyright registration number of VA 1-762-836. A true and correct copy of the Certificate of Registration for Rogue Satellite Comics: The Complete Collection is attached as **Exhibit F**.

20. The registered works that are primarily at issue in this suit are Rogue Satellite Comics #2, Rogue Satellite Comics #3, Rogue Satellite Comics #4 (Special Issue), Rogue Satellite Comics: Crossroads to Lambada, and Rogue Satellite Comics: The Complete Collection (“the Copyrighted Works at Issue”).

21. Rogue Satellite Comics #2 and #3 (**Exhibits B and C**) were published by Slave Labor Graphics. Rogue Satellite Comics #4 (Special Issue) (**Exhibit D**) was published by Modern Comics. Rogue Satellite Comics: Crossroads to Lambada (**Exhibit E**) was published by Patchwork Press. Rogue Satellite Comics: The Complete Collection (**Exhibit F**) was published by TumbleTap.

22. As early as 1996, Plaintiff created the character Kingfish, who appears in each of “the Copyrighted Works at Issue”. Kingfish is a villain in the Rogue Satellite Comics’ books and

is characterized by his highly unique and unusual physical appearance. For example only and without limitation, Kingfish is a fish with long, flowing fins; he sits inside a glass, bell-jar-shaped container atop a humanoid body with a speaker near the front base of the jar. The fish swims in a clear fluid and is not physically connected to anything inside the container. The character and physical appearance of Kingfish are copyrightable works under United States Code law, and all copyrights to the character and physical appearance of Kingfish are owned by Plaintiff.

23. On information and belief, Defendant Way was an aspiring comic book author at or around the time of the publication of each of the Copyrighted Works at Issue. Given the small size of the commercial comic book world and Defendant Way's involvement in it, Plaintiff contends that at all times from the date of first publication of the Copyrighted Works at Issue Defendant Way had access to the Copyrighted Works at Issue which were published at various times from 1996 to 2009.

24. Similarly, Defendant Dark Horse is a publisher of comics and is very familiar with the other publishers of comic books such as those who published the Copyrighted Works at Issue. Given its involvement and presence in the industry, Plaintiff contends that Defendant Dark Horse had access to the Copyrighted Works at Issue at or around the time of their initial publication.

25. Additionally, Plaintiff Atkinson often distributed copies of the Copyrighted Works at Issue to various persons within the comic book industry. By way of example only and without limitation, on or around January 2009 Kevin Atkinson sent copies of the Copyrighted Works at Issue to various companies in the comic book and movie industries and posted photos of the character Kingfish on his Facebook page.

26. Plaintiff asserts copyright infringement through Defendants' production and distribution of the comic book titled, "The Umbrella Academy" and the Netflix series of the same

name. Plaintiff specifically asserts copyright infringement through Defendants' use of many scenes and features from the Copyrighted Works at Issue, including but without limitation, the character that Defendant's call A.J. Carmichael based on the significant, substantial, and striking similarity between the Copyrighted Works at Issue and Defendants' infringing works.

27. For example, and without limitation, the A.J. Carmichael character is a villain in Defendants' infringing works called, "The Umbrella Academy" and is characterized by his highly unique and unusual physical appearance as a fish with flowing fins, he is contained in a glass bell-jar-shaped fish tank comprising the head of a humanoid body. In Defendant Way and Dark Horse's comic book, A.J. Carmichael wears a flowing coat, a bowler hat atop the glass tank, and is a fish with flowing fins that are not physically connected to anything inside the tank or to any part of the body of the character. In both the comic book and the video series, the character A.J. Carmichael is a fish with flowing fins that is contained in a bell-shaped jar atop a humanoid body, it appears to speak from a speaker located at the front base of the bell-jar, and it is the leader of the antagonist organization in the story.

28. Given the striking similarities between the video series and the Copyrighted Works at Issue, Plaintiff contends that all Defendants had access to the Copyrighted Works at Issue before creation of the infringing works.

29. The original *Umbrella Academy* comic series was allegedly created by Defendant Way and first published in 2008 by Defendant Dark Horse Comics, LLC.

30. The character A.J. Carmichael did not appear in the comic series until the *Umbrella Academy: Dallas*, issue 3, which was published on January 28, 2009; and appeared again in *Umbrella Academy: Dallas*, issue 6, which was published around May 13, 2009. This was at or around the time Plaintiff's work "Rogue Satellite Comics: Acme City" was published.

31. On information and belief, all Defendants worked together to convert the comic book series to a video series, and Defendants Netflix and Universal Content jointly carried out the work necessary to create the video streaming series titled “The Umbrella Academy” with the intent that it be broadcast, streamed, provided, and sold nationwide including to consumers within this District.

32. The Netflix series was published by Defendants Netflix and Universal Content Production, LLC around February 2019 and the A.J. Carmichael character appeared for the first time in Season 2, episode 2, “The Frankel Footage,” and again in episode 7, “Oga for Oga.”

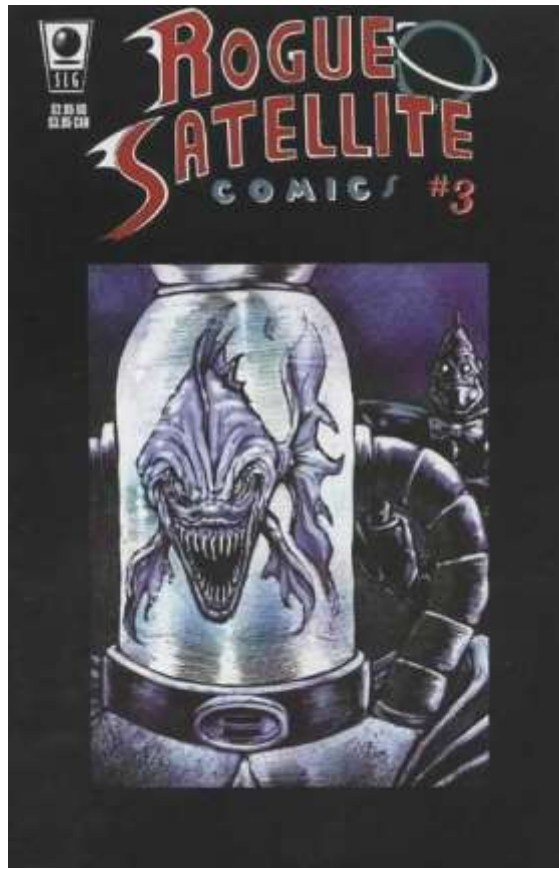
33. There United States Copyright Office website catalog reports several copyright claims over various works related to *The Umbrella Academy*. The earliest date of recordation listed for any such works is July 30, 2009—well after Plaintiff’s creation of the Copyrighted Works at Issue.

34. In addition to other striking similarities and without limitation, Plaintiff contends that Defendants’ character A.J. Carmichael and portions of “The Umbrella Academy” story line are substantially and strikingly similar to the Copyrighted Works at Issue. Both utilize a highly unique and unusual fish as an antagonist, a blond supporting character, and other similar characters and story lines. The following images are included as examples of striking similarities and are not intended to limit Plaintiff’s claims in any way.

35. The following are examples of the Kingfish character from the Copyrighted Works at Issue:



36.



37.



38.

39. One example of Defendants infringing character, A.J. Carmichael from the comic book by Defendants Dark Horse and Way:



40.

41. One example of Defendants' infringing character A.J. Carmichael from the streaming video series by Defendants:



42.

V. COPYRIGHT INFRINGEMENT

43. The preceding paragraphs are incorporated herein by reference as if fully stated herein.

44. Plaintiff is the original author of the Copyrighted Works at Issue.

45. All of the Copyrighted Works at Issue were registered with the Copyright Office at least before infringement involving Defendants Netflix and Universal Content began.

46. Plaintiff has the exclusive right to prepare copies or derivatives of the Copyright Works at Issue and Defendants creation, distribution, and broadcast of copies and derivatives of

the Copyrighted Works at Issue have infringed and continue to infringe the Copyrighted Works at Issue.

47. Upon information and belief, Defendants' production, distribution, use, and exploitation of the comic book, *The Umbrella Academy: Dallas*, and the streaming video series of the same name knowingly and willfully infringed and will continue to infringe the Copyrighted Works at Issue.

48. In the alternative, one or more of Defendants have or have had a direct financial interest in the infringement of the Copyrighted Works at Issue but have failed and continue to fail to prevent other Defendant's infringement of Plaintiff's copyrights. Such Defendants are therefore liable for vicarious infringement of Plaintiff's copyrights in in Rogue Satellite Comics and the character of Kingfish.

49. Defendants are each jointly and severally liable for all of their profits attributable to the infringements, under 17 U.S.C. section 504.

VI. DAMAGES

50. The preceding paragraphs are incorporated herein by reference as if fully stated herein.

51. Plaintiff seeks recovery of the following damages from each Defendant:

- a. Any and all income, gains, profits, and advantages obtained by Defendants as a result of the wrongful acts alleged herein;
- b. The maximum statutory damages in the amount of \$30,000.00 per instance of infringement, and/or \$150,000.00 per instance of willful infringement;
- c. Such other amount as may be proper;
- d. Attorneys' fees and full costs;

- e. Pre- and post-judgment interest at the maximum allowable rate; and
- f. Such other and further relief and remedies for which the Court may deem just and proper, including punitive damages.

VII. JURY TRIAL DEMAND

52. Plaintiff hereby request a trial by jury on each claim for relief alleged in this Complaint.

Dated: June 7, 2021.

Respectfully submitted,

/s/ Derek Gilliland

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