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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BLIZZARD ENTERTAINMENT, INC., AND
VALVE CORPORATION,

Plaintiffs,

v.

LILITH GAMES (SHANGHAI) CO. LTD.,
AND UCOOL, INC.,

Defendants.

No. 3:15-cv-04084-CRB

**ORDER GRANTING MOTION TO
DISMISS WITH LEAVE TO AMEND**

Video game developers Blizzard Entertainment, Inc. (“Blizzard”) and Valve Corporation (“Valve”) sued Lilith Games (Shanghai) Co. Ltd (“Lilith”) and uCool, Inc. (“uCool”) for copyright infringement under 17 U.S.C. § 101 *et seq.* *See* Compl. (dkt. 1) ¶¶ 30, 39. As copyright holders of well-known video games, Blizzard and Valve (collectively, “Plaintiffs”) allege that Lilith and uCool’s mobile games impermissibly copied the characters, “settings, terrain, background art, and other assets” from Plaintiffs’ numerous video game franchises. *See id.* ¶¶ 9–13, 19–24. uCool, acting independently of its co-defendant, moves to dismiss Plaintiffs’ Second Claim for Relief—that is, their sole claim against uCool—under Federal Rule of Civil Procedure (“FRCP”) 12(b)(6) or, alternatively, moves for a more definite statement under FRCP 12(e). Mot. to Dismiss (dkt. 20) (“MTD”) at 1, 3 n.3. Because Plaintiffs fail to state a plausible claim for copyright infringement, the Court GRANTS uCool’s motion to dismiss WITH LEAVE TO AMEND.

1 **I. BACKGROUND**

2 Blizzard and Valve are well-known video game developers and copyright owners of
3 the popular video game franchises “Warcraft,” “World of Warcraft,” “Warcraft III,”
4 “Starcraft,” “Diablo,” “Defense of the Ancients” or “DotA,” “DotA 2,”¹ and others
5 (collectively, “Warcraft Works”). See Compl., ¶¶ 1, 5–6, 9, 11; Supplemental Report on the
6 Filing or Determination of an Action or Appeal Regarding a Copyright (dkt. 18)
7 (“Supplemental Report”).

8 All of the “Warcraft” games take place in the “Warcraft” universe, which is
9 populated by an enormous variety of distinctive mythical creatures and characters,
10 such as techsavvy goblins, huge winged demons, bovine humanoids known as
11 “Taurens,” serpentine sea creatures known as “Naga,” giant humanoid panda
12 warriors known as “Pandaren,” tall purple-skinned elves known as “Night Elves,”
13 sentient trees known as “Ancients,” and hundreds of others. Many instances of
14 these creatures are distinctive characters in their own right, with names, distinctive
15 physical appearances, clothing, weapons, traits, abilities, and ongoing stories.
16 Each of the characters that populate the “Warcraft” universe and other worlds
17 created by Blizzard represents Blizzard’s copyrightable expression and is subject
18 to copyright protection.

14 Id. ¶ 10. In addition to asserting copyright ownership of the Warcraft Works and the
15 characters therein, Plaintiffs also assert copyright ownership of “a variety of related products
16 and merchandise.” Id. ¶¶ 9–10, 12, 37–38; see also Supplemental Report.

17 In their Complaint filed on September 8, 2015, Plaintiffs allege that mobile video
18 games created by defendants Lilith and uCool—games called “DotA Legends” and “Heroes
19 Charge,” respectively—infringe on Plaintiffs’ copyrights in the Warcraft Works. Id. ¶¶
20 19–22, 30, 39. Plaintiffs contend that Lilith and uCool copied the characters, “settings,
21 terrain, background art, and other assets” in those games. See id. ¶ 22. Before uCool filed
22 this motion, Plaintiffs submitted a report purporting to contain “a comprehensive list of the
23 copyright registrations at issue . . . listing each copyright registration and the corresponding
24 plaintiff [to whom it belongs].” See Supplemental Report (dkt. 18); Opp’n at 5.

25 Although Plaintiffs do not expressly specify any allegedly infringing settings, terrain,
26 and background art, they assert that “almost every one of the hero[] [characters] available in
27

28 ¹ Blizzard owns the copyright in all of the aforementioned video games with the exception of
“Dota 2,” which Valve owns. Compl. ¶¶ 1, 5–6, 9, 12.

1 the Lilith Games,” which were in turn allegedly copied by uCool,² “is a two-dimensional
2 version of a character either from one of Blizzard’s games . . . or from Dota 2.” Id. ¶ 19.
3 Moreover, “dozens of characters from ‘Heroes Charge’ are derived from and substantially
4 similar to Blizzard and Valve’s characters, rendered in cartoonish, two-dimensional form.”
5 Id. at 22. Plaintiffs allege that Lilith’s “DotA Legends” copied Warcraft “spells” (or in-game
6 abilities), special powers, and icons.³ Id. at 20. As to uCool, Plaintiffs allege that “[m]any if
7 not all” of the hand-drawn character portraits that accompany the heroes in “Heroes Charge”
8 “are copied or derived from images of characters in the ‘Warcraft’ universe or ‘Dota 2.’” Id.
9 at 24. Plaintiffs cite three examples of uCool’s characters with allegedly infringing portraits:
10 uCool’s anthropomorphized panda warrior, allegedly derived from Blizzard’s “Chen
11 Stormstout”; uCool’s “Savage One,” allegedly derived from Blizzard’s Naga warrior; and
12 “Emberstar,” allegedly derived from Dota 2’s character “Lima.” Id.

13 Plaintiffs request that the Court grant, among other things, preliminary and permanent
14 injunctions, “monetary relief . . . including actual damages and/or Defendants’ profits, or
15 statutory damages for copyright infringement and willful copyright infringement under 17
16 U.S.C. § 504,” as well as costs and attorneys’ fees pursuant to 17 U.S.C. § 505. See id.
17 Prayer for Relief ¶¶ 1–6.

18 In October 2015, uCool, acting for itself and not its co-defendant, filed this motion to
19 dismiss under FRCP 12(b)(6) and for a more definite statement under FRCP 12(e).

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23 ² In their opposition papers, Plaintiffs’ cite to Lilith Games (Shanghai) Co. v. UCool, Inc., No.
24 15-CV-01267-SC, 2015 WL 5591612 (N.D. Cal. Sept. 23, 2015), an ongoing case between the co-
25 defendants in the instant case. Opp’n at 4. There, the court denied Lilith’s request for a preliminary
26 injunction against uCool because Lilith had not shown a likelihood of irreparable harm. Lilith Games,
2015 WL 5591612, at *13–14. Judge Conti nevertheless determined that uCool’s “Heroes Charge” and
Lilith’s “DotA Legends” were “almost identical from the user’s standpoint, with only minor
modifications.” Id. at *9; see also Compl. ¶ 23 (contending that uCool likely “appropriated the entirety
of Lilith’s characters . . . and re-published them with minor and insubstantial changes.”).

27 ³ Although Plaintiffs do not specifically assert that uCool copied the same aspects of these
28 characters, they allege that “all or nearly all of uCool’s publicly disclosed heroes are copied either from
Blizzard or Valve, and/or copied from the Lilith Games, which copied their heroes from Blizzard and
Valve.” Compl. at 23.

1 **II. LEGAL STANDARD**

2 **A. Motion to Dismiss**

3 A complaint that fails to state a claim upon which relief may be granted is subject to
4 dismissal under Rule 12(b)(6). See Fed. R. Civ. P. 12(b)(6). The dismissal may be based on
5 the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a
6 cognizable legal theory. Conservation Force v. Salazar, 646 F.3d 1240, 1242 (9th Cir. 2011);
7 Johnson v. Riverside Healthcare Sys., 534 F.3d 1116, 1121 (9th Cir. 2008). In ruling on a
8 12(b)(6) motion, the Court accepts “all well-pleaded allegations of material fact” and draws
9 all reasonable inferences in favor of the nonmoving party, but the Court is not “required to
10 accept as true allegations that contradict exhibits attached to the Complaint or matters
11 properly subject to judicial notice, or allegations that are merely conclusory, unwarranted
12 deductions of fact, or unreasonable inferences.” Daniels–Hall v. Nat’l Educ. Ass’n, 629 F.3d
13 992, 998 (9th Cir. 2010).

14 To state a claim for copyright infringement, a complaint must allege “(1) ownership of
15 a valid copyright, and (2) copying of constituent elements of the work that are original.”
16 Rice v. Fox Broad. Co., 330 F.3d 1170, 1174 (9th Cir. 2003) (citing Feist Publ’ns, Inc. v.
17 Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991)). A complaint must plead “enough facts to
18 state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949
19 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is
20 plausible “when the plaintiff pleads factual content that allows the court to draw the
21 reasonable inference that the defendant is liable for the misconduct alleged.” Id.

22 **B. Motion for a More Definite Statement**

23 Under Rule 12(e), “[a] party may move for a more definitive statement of a pleading
24 to which a responsive pleading is allowed but which is so vague or ambiguous that the party
25 cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e). “A Rule 12(e) motion for a
26 more definite statement must be considered in light of the liberal pleading standards set forth
27 in [Rule] 8(a)(2).” Comm. for Immigrant Rights of Sonoma Cty. v. County of Sonoma, 644
28 F. Supp. 2d 1177, 1192 (N.D. Cal. 2009). “A motion for a more definite statement is proper

1 only where the complaint is so vague or ambiguous that the opposing party cannot respond,
2 even with a simple denial, in good faith or without prejudice to himself.” Id. 1192 (internal
3 quotation omitted). The motion should be denied “if the detail sought by a motion for more
4 definite statement is obtainable through discovery.” Beery v. Hitachi Home Elecs. (Am.),
5 157 F.R.D. 477, 480 (C.D. Cal. 1993); see also Bureerong v. Uvawas, 922 F. Supp. 1450,
6 1461 (C.D. Cal. 1996) (citation omitted) (“A motion for a more definite statement attacks
7 unintelligibility in a pleading, not simply mere lack of detail.”).

8 **III. DISCUSSION**

9 uCool argues that the Court should dismiss the Complaint for failure to state a claim
10 or, alternatively, order Plaintiffs to provide a more definite statement. For the following
11 reasons, the Court GRANTS the motion to dismiss WITH LEAVE TO AMEND.

12 **A. Copyright Ownership of Plaintiffs’ Works**

13 To state a claim for copyright infringement a plaintiff must plausibly allege two
14 elements: (1) ownership of a valid copyright, and (2) copying of constituent parts of the work
15 that are original. See Feist, 499 U.S. at 361; Rice, 330 F.3d at 1174; Salt Optics, Inc. v. Jand,
16 Inc., No. SACV 10-0828 DOC, 2010 WL 4961702, at *6 (C.D. Cal. Nov. 19, 2010). With
17 respect to ownership, uCool argues that Plaintiffs fail to identify “a single copyright they
18 claim uCool infringes” or “the owner of any copyright they claim uCool infringes,”
19 particularly the owner of “Dota 2.” MTD at 7. uCool further raises the prospect “that either
20 Blizzard or Valve lack standing to bring suit, because the copyrights at issue might be owned
21 by the other plaintiff.” Id. at 9.

22 These contentions are without merit. Plaintiffs have alleged that they own the
23 copyrights in the Warcraft Works, see Compl. ¶¶ 5–6, 9, 11; see also Supplemental Report,⁴

24
25 ⁴ uCool contends that the Court may not consider Plaintiffs’ Supplemental Report because “this
26 document was not referenced in the complaint.” MTD at 3 n.3. Even so, courts may take judicial notice
27 of “matters of public record” where the facts therein are not subject to “reasonable dispute.” Id. (citing
28 Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001)); Fed. R. Evid. 201; see also Leghorn v.
Wells Fargo Bank, 950 F. Supp 1093, 1106 (N.D. Cal. 2013) (taking judicial notice of a matter of public
record because the party opposing judicial notice made no efforts to dispute the public record itself).
Plaintiffs’ Supplemental Report, a filing with the U.S. Copyright Office, meets this criteria and is thus
judicially noticeable. See id.

1 and that these are the copyrights they generally accuse uCool of infringing, see Compl. ¶ 23
2 (“[A]ll or nearly all of uCool’s publicly disclosed heroes [from ‘Heroes Charge’] are copied
3 either [directly or indirectly] from Blizzard and Valve.”). The Complaint also makes clear
4 that, whereas Valve owns the copyright in “Dota 2,” Blizzard owns the remaining copyrights
5 in the Warcraft Works. Compl. ¶¶ 5–6; see also Opp’n at 5 (emphasis omitted) (asserting
6 that Plaintiffs’ Supplemental Report contains “a comprehensive list of the copyright
7 registrations at issue” in this case⁵). Given Plaintiffs’ allegations that “Heroes Charge”
8 infringes on at least one copyrighted work of Blizzard and of Valve, uCool’s standing
9 argument fails on its own terms. Moreover, contrary to uCool’s assertion that “[t]here is []
10 no way for uCool or the Court to determine from the face of the Complaint what works are at
11 issue,” MTD at 8, Plaintiffs have identified numerous allegedly infringed copyrights and
12 their respective owners, see Compl. ¶¶ 5–6, 9, 11; see also Supplemental Report. The Court
13 thus concludes that Plaintiffs have plausibly alleged “ownership of a valid copyright.” See
14 Feist, 499 U.S. at 361; Rice, 330 F.3d at 1174

15 **B. Copyrightability of Plaintiffs’ Characters**

16 “One aspect of the [Feist] ownership element is the copyrightability of the subject
17 matter and, more particularly, the scope of whatever copyright lies therein.” Brown Bag
18 Software v. Symantec Corp., 960 F.2d 1465, 1476 (9th Cir. 1992)). Moreover, the second
19 Feist prong, regarding copying of constituent elements of an original work, requires plaintiffs
20 to allege “that the works at issue are substantially similar in their protected elements.”
21 Cavalier v. Random House, Inc., 297 F.3d 815, 822 (9th Cir. 2002); see Feist, 499 U.S. at
22 348 (“The mere fact that a work is copyrighted does not mean that every element of the work
23 may be protected. . . . [C]opyright protection may extend only to those components of a work
24 that are original to the author.”).

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27 ⁵ uCool questions the accuracy this statement, and with good reason. See MTD at 4. The
28 Complaint asserts a copyright in one game, “Heroes of the Storm,” that was released nearly one year
after uCool published “Heroes Charge.” Id.; Comp’l ¶ 9. Plaintiffs do not address this issue in their
opposition papers.

1 As part of the Ninth Circuit’s “extrinsic test” for substantial similarity, courts must
2 determine whether any of the allegedly similar features of the works at issue are plausibly
3 protected by copyright. See Apple Computer, Inc. v. Microsoft Corp., 35 F.3d 1435, 1443
4 (9th Cir. 1994); see also Symantec, 960 F.2d at 1476 (“Analytic dissection is relevant not
5 only to the copying element of a copyright infringement claim, but also to the claim’s
6 ownership element.”). This is a question of law. See Cavalier, 297 F.3d at 823. Here, to the
7 extent that Plaintiffs accuse uCool of copying Plaintiffs’ characters as well as “settings,
8 terrain, background art, and other assets,” Plaintiffs must also demonstrate the
9 copyrightability of these elements. Compl. ¶ 20.

10 Characters are not ordinarily entitled to copyright protection. Rice, 330 F.3d at 1175;
11 see also DC Comics v. Towle, 802 F.3d 1012, 1019 (9th Cir. 2015) (“Not every comic book,
12 television, or motion picture character is entitled to copyright protection.”). The Ninth
13 Circuit has held that “copyright protection is available only ‘for characters that are especially
14 distinctive.’ To meet this standard, a character must be ‘sufficiently delineated’ and display
15 ‘consistent, widely identifiable traits.’” Towle, 802 F.3d at 1019 (citation omitted); see also
16 Identity Arts v. Best Buy Enter. Servs. Inc., No. C 05-4656 PJH, 2007 WL 1149155, at *15
17 (N.D. Cal. Apr. 18, 2007) (dismissing for failure to state a claim where complaint was devoid
18 of facts identifying the character “by attribute or demeanor, or any other characteristic that
19 would allow the court to extend copyright protection”). The scenes-à-faire doctrine excludes
20 from copyright protection “‘stock’ characters and plots in dramatic works and ‘now
21 encompasses stereotyped expression, standard or common features in a wide variety of
22 works, including audiovisual works generated by computers.’” Capcom U.S.A., Inc. v. Data
23 E. Corp., No. C 93-3259 WHO, 1994 WL 1751482, at *6 (N.D. Cal. Mar. 16, 1994)
24 (alteration in original) (quoting Apple Comput., Inc. v. Microsoft Corp., 799 F. Supp. 1006,
25 1021 (N.D. Cal. 1992)).

26 Here, Plaintiffs cite DC Comics v. Towle to establish the copyrightability of the
27 Warcraft Works. Towle outlined a three-part test for determining whether a character is
28 entitled to copyright protection: (1) “the character must generally have physical as well as

1 conceptual qualities,” (2) “the character must be sufficiently delineated to be recognizable as
2 the same character whenever it appears . . . [c]onsidering the character as it has appeared in
3 different productions, it must display consistent, identifiable character traits and attributes,
4 although the character need not have a consistent appearance,” and (3) “the character must be
5 especially distinctive and contain some unique elements of expression.” See 802 F.3d at
6 1021 (citations omitted). The court in Towle applied this test and determined that “D.C.
7 [Comics] retained its copyright in the Batmobile character even though its appearance in the
8 1966 and 1989 productions did not directly copy any comic book depiction.” Towle, 802
9 F.3d at 1025; Opp’n at 10. The Ninth Circuit, however, extended copyright protection to the
10 Batmobile “character” only after extensively cataloging the car’s distinctive characteristics:

11 In addition to its status as “a highly-interactive vehicle, equipped with high-tech
12 gadgets and weaponry used to aid Batman in fighting crime,” the Batmobile is
13 almost always bat-like in appearance, with a bat-themed front end, bat wings
14 extending from the top or back of the car, exaggerated fenders, a curved
15 windshield, and bat emblems on the vehicle. This bat-like appearance has been
16 a consistent theme throughout the comic books, television series, and motion
17 picture, even though the precise nature of the bat-like characteristics have changed
18 from time to time.

19 The Batmobile also has consistent character traits and attributes. No matter its
20 specific physical appearance, the Batmobile is a “crime-fighting” car with sleek
21 and powerful characteristics that allow Batman to maneuver quickly while he
22 fights villains. In the comic books, the Batmobile is described as waiting “[l]ike
23 an impatient steed straining at the reins . . . shiver[ing] as its super-charged motor
24 throbs with energy” before it “tears after the fleeing hoodlums” an instant
25 later Furthermore, the Batmobile has an ability to maneuver that far exceeds
26 that of an ordinary car. In the 1966 television series, the Batmobile can perform
27 an “emergency bat turn” via reverse thrust rockets. Likewise, in the 1989 motion
28 picture, the Batmobile can enter “Batmissile” mode, in which the Batmobile sheds
“all material outside [the] central fuselage” and reconfigures its “wheels and axles
to fit through narrow openings.”

Equally important, the Batmobile always contains the most up-to-date weaponry
and technology. At various points in the comic book, the Batmobile contains a
“hot-line phone . . . directly to Commissioner Gordon’s office” maintained within
the dashboard compartment, a “special alarm” that foils the Joker’s attempt to steal
the Batmobile, and even a complete “mobile crime lab” within the vehicle.
Likewise, the Batmobile in the 1966 television series possesses a “Bing-Bong
warning bell,” a mobile Bat-phone, a “Batscope, complete with [a] TV-like
viewing screen on the dash,” and a “Bat-ray.” Similarly, the Batmobile in the
1989 motion picture is equipped with a “pair of forward-facing Browning machine
guns,” “spherical bombs,” “chassis-mounted shinbreakers,” and “side-mounted
disc launchers.”

Towle, 802 F.3d at 1021–22.

1 Here, by contrast, although Plaintiffs allege that “dozens of characters from ‘Heroes
2 Charge’ are derived from and substantially similar to Blizzard and Valve’s characters,” they
3 plead no facts demonstrating that any one of the dozens of characters are plausibly
4 copyrightable. Compl. ¶ 22. Instead, Plaintiffs make conclusory statements that their
5 characters are “distinctive . . . with names, distinctive physical appearances, clothing,
6 weapons, traits, abilities, and ongoing stories.” *Id.* ¶ 10; see also id. (“Each of the characters
7 that populate the ‘Warcraft’ universe and other worlds created by Blizzard represents
8 Blizzard’s copyrightable expression and is subject to copyright protection.”); *id.* ¶ 13 (“Each
9 of the characters that populate the world of Dota 2 represents Valve’s copyrightable
10 expression and is subject to copyright protection.”).

11 Given that the Court need not accept as true conclusory allegations, see Daniels–Hall,
12 629 F.3d at 998, Plaintiffs have failed to meet their burden of alleging—with sufficient
13 detail—copyright ownership in the characters from the Warcraft Works, see Gorski v. The
14 Gymboree Corp., No. 14-CV-01314-LHK, 2014 WL 3533324, at *5 (N.D. Cal. July 16,
15 2014) (“[T]he Court concludes that Gorski has not alleged any protectable elements, [thus]
16 Gorski has not alleged sufficient facts to suggest that Gorski’s designs can pass the extrinsic
17 test for substantial similarity.”). The Court thus GRANTS uCool’s motion to dismiss WITH
18 LEAVE TO AMEND.

19 **C. Failure to Plead a Representative Infringements**

20 uCool contends that Plaintiffs fail to identify the aspects of Plaintiffs’ works that
21 “Heroes Charge” infringes. MTD at 7. The second Feist prong—whether a defendant has
22 copied constituent elements of a protected work—does not require Plaintiffs to specify each
23 and every instance of infringement at the pleadings stage. “To avoid unwieldiness, courts
24 have approved a complaint that simply alleges representative acts of infringement, rather
25 than a comprehensive listing.” 3 M. & D. Nimmer, Nimmer on Copyright § 12.09[A][2]
26 (Rev. Ed.); see also Perfect 10, Inc. v. Cybernet Ventures, Inc., 167 F. Supp. 2d 1114,
27 1120–21 (C.D. Cal. 2001).

28

1 Here, despite their assertions to the contrary, Plaintiffs provide no such representative
2 infringement. Instead, they make only general allegations: “[D]ozens of characters from
3 ‘Heroes Charge’ are derived from and substantially similar to Blizzard and Valve’s
4 characters,” Compl. ¶ 22; “all or nearly all of uCool’s publicly disclosed heroes are copied,”
5 id. ¶ 23; “certain settings, terrain, background art, and other assets . . . infringe protected
6 elements of their games,” id. ¶ 20; and “[m]any, if not all, of these character portraits are
7 copied or derived from images of characters in the ‘Warcraft’ universe or ‘Dota 2,’” id. ¶ 24.

8 As it stands, Plaintiffs’ sweeping allegations fail to apprise uCool or the Court of
9 which “Heroes Charge” characters infringe which characters from which of Blizzard or
10 Valve’s numerous games, “related products and merchandise.”⁶ Id. ¶¶ 9–10; see
11 Supplemental Report (listing more than fifty copyrights). If, as Plaintiffs contend, dozens of
12 characters are at issue—not to mention “settings, terrain, background art, and other
13 assets”—then a plausible claim would require that Plaintiffs submit a representative sampling
14 of infringed content, pleading infringement with the level of detail required by the Ninth
15 Circuit and establishing that the content and characters at issue are copyrightable.

16 Absent such representative acts of infringement, the Court cannot meaningfully
17 evaluate the plausibility of Plaintiffs’ allegations regarding the appropriation of Plaintiffs’
18 copyrighted Warcraft Works content. See Cutler v. Enzymes, Inc., No. C 08-04650 JF (RS),
19 2009 WL 482291, at *3 (N.D. Cal. Feb. 25, 2009) (dismissing for failure to state a claim that
20 is plausible on its face where “the complaint alleges far fewer discrete facts than did the

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22 ⁶ Where Plaintiffs provide a sampling—albeit scant—of allegedly infringed characters, they do
23 so only in the context of allegedly infringing character portraits. See id. ¶ 25 (discussing the portraits
24 of Chen Stormstout,” the “Naga” warrior, and the character “Lina”). The copying of such portraits does
25 little to support Plaintiffs’ principal allegation that uCool appropriated these characters (and “dozens”
26 more) wholesale—i.e., “whether [uCool’s] in-game character models are substantially similar to their
27 analogs in plaintiff’s works.” Opp’n at 12.

28 In their opposition papers, Plaintiffs do allege wholesale copying of only one of their characters,
“Chen Stormstout.” See Opp’n at 14 (“uCool slavishly copied ‘Chen Stormstout’ down to the most
minute detail, including by copying his clothing, weapons, equipment, facial expression, beard, pose,
special powers, and even the shape, color, and details of Chen’s ceramic jug, beer barrel, bamboo staff,
and hat design.”). Such allegations are too little, too late. See Schneider v. California Dep’t of Corr.,
151 F.3d 1194, 1197 n.1 (9th Cir. 1998) (“In determining the propriety of a Rule 12(b)(6) dismissal, a
court may not look beyond the complaint to a plaintiff’s moving papers, such as a memorandum in
opposition to a defendant’s motion to dismiss.”).

1 complaint in Perfect 10”). Consequently, the Court GRANTS uCool’s motion to dismiss
2 WITH LEAVE TO AMEND.

3 **D. Motion for a More Definite Statement**


4 uCool moves for a more definite statement under Rule 12(e) because, it contends, the
5 Complaint provides insufficient “notice of what Plaintiffs claim they own that Heroes Charge
6 allegedly infringes.” MTD at 14–15. uCool petitions the Court to “require that
7 Blizzard/Valve specifically allege which works are at issue, which copyright registrations are
8 at issue, and what aspects of Heroes Charge they allege infringes.” Id. Given that the Court
9 concludes that the Complaint fails to state a claim upon which relief can be granted under
10 Rule 12(b)(6), it need not reach uCool’s Rule 12(e) request. Should Plaintiffs elect to file an
11 amended complaint, they are obliged to cure the deficiencies identified in this Order.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the Court GRANTS uCool’s motion to dismiss WITH
14 LEAVE TO AMEND. Plaintiffs should be allowed an opportunity to add the additional
15 detail required by Ninth Circuit case law to their complaint, thereby plausibly establishing
16 with a representative sampling both the copyrightability of their work and infringement.

17 **IT IS SO ORDERED.**

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19 Dated: December 8, 2015

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22 CHARLES R. BREYER
23 UNITED STATES DISTRICT JUDGE
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