

1 **IN THE UNITED STATES DISTRICT COURT**  
2 **FOR THE DISTRICT OF PUERTO RICO**

3 PPV CONNECTION, INC.

4 Plaintiff

v.

Civil No. 09-1454

5 GILBERTO MELENDEZ, et al

6 Defendants

7  
8 **OPINION & ORDER**

9 The present action was brought by Plaintiff, PPV Connection, Inc. (“PPVC”), against  
10 numerous and unrelated co-defendants. After reviewing the Complaint, this Court ordered  
11 PPVC to show cause why the present action should not be dismissed against all but the first  
12 named co-defendant, for improper joinder. Docket # 7. PPVC duly responded to this Court’s  
13 Order to Show Cause. Docket # 22. After considering PPVC’s response, and the applicable law,  
14 all claims shall be dismissed without prejudice against all co-defendants.

15 **Factual Background**

16 PPVC has joined twenty-two sets of defendants in the present law suit. Including the  
17 above captioned action, over the past five and a half years, PPVC has initiated thirty (30) nearly  
18 identical cases in the District of Puerto Rico, each alleging that multiple sets of defendants  
19 violated PPVC’s “exclusive license to distribute for commercial gain the closed circuit  
20 broadcast of [specified boxing events] to various business establishments throughout Puerto  
21 Rico.” See, e.g., Docket # 1 at ¶ 8. These defendants are alleged to have violated said license  
22 by “willfully intercept[ing] and/or receiv[ing] the interstate communication of [the given boxing  
23 event]” without “payment of the appropriate fee to PPVC.” See, e.g., id. at ¶¶ 14 & 16. In each  
24 case, PPVC thereby seeks recovery pursuant to the Communications Act of 1934, as amended,  
25 47 U.S.C. §§ 553 and 605. See, e.g., id. at ¶1.  
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3 For the most part, these cases have been disposed of through some combination of  
4 settlements (see, e.g., PPV Connection, Inc. v. Colon-Velazquez, No. 06-1793, Docket # 4 &  
5 5), default judgments (see, e.g., PPV Connection, Inc. v. Acevedo, No. 07-1794, Docket # 12),  
6 dismissals for service error (see, e.g., PPV Connection, Inc. v. Hernandez, No. 09-1447, Docket  
7 # 23) and failure to prosecute (see, e.g., PPV Connection, Inc. v. Reyes, No. 08-1193 (D.P.R.  
8 filed Feb. 3, 2009) (order dismissing complaint against thirteen defendants for failure to  
9 prosecute). In one such case, one set of defendants is currently trial ready. PPV Connection, Inc.  
10 v. Lopez, (No. 07-1796) (Docket # 49).

11 With respect to the instant cases, on November 17, 2009, this Court filed an “Order to  
12 Show Cause,” asking PPVC to provide (1) “proof of progress in the claim against [defendants],”  
13 (2) “proof of timely service of the other parties,” and (3) cause as to “why the present action  
14 should not be dismissed for improper joinder under FED.R.CIV.P.20 & 21,” Docket # 9. On  
15 November 30, 2009, the deadline imposed by the Court, Plaintiff PPVC filed its “Motion in  
16 Compliance to Order to Show Cause.” Docket # 25. This Court’s being satisfied with PPVC’s  
17 showing as to (1), (2), and (4) above, it remains for this Court to determine whether this action  
18 should be dismissed for Improper Joinder under FED.R.CIV.P.20 & 21. It should also be noted  
19 that a summons was issued for named co-defendant, Gilberto Meléndez (“Meléndez”), on June  
20 9<sup>th</sup>, 2009, but no proof of process has yet been returned to the Clerk of the Court.<sup>1</sup>

### 21 **Applicable Law & Analysis**

22 Of PPVC’s twenty-nine similar cases besides the above captioned, the joinder issue has  
23 arisen in two, neither of which has settled the question directly. PPV Connection, Inc. v.  
24 Rodriguez, 607 F. Supp. 2d 301, 306 (D.P.R. 2009) (improper joinder as basis for dismissal

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26 <sup>1</sup>Plaintiff has requested dismissal without prejudice of all claims against Meléndez.

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3 declared moot); PPV Connection, Inc. v. Pacheco, No.08-1045 (D.P.R. filed Jan. 11, 2008)  
4 (Report and Recommendation from Magistrate Court on Motion to Dismiss for improper joinder  
5 pending). However, the present case closely parallels Don King Productions, Inc. v. Colon-  
6 Rosario, 561 F.Supp. 2d 189 (D.P.R. 2008), which held joinder improper where (1) there was  
7 no allegation that defendants acted in concert, (2) the only connection between defendants was  
8 that they were alleged to have violated the same federal laws against piracy of cable television,  
9 (3) defendants were likely to present different defenses, and (4) defendants were likely to  
10 confront different evidence. Id. at 192 (D.P.R. 2008).

11       Though, in addition to this Court, two others within the District of Puerto Rico have  
12 addressed the possibility that PPVC's joinder of defendants was improper, in no case has the  
13 question been settled. See Rodriguez, 607 F. Supp. 2d 301 (D.P.R. 2009); Pacheco, No.08-1045.  
14 In Rodriguez and Pacheco, defendants Rivera Rosario and Méndez Piña respectively, each cited  
15 improper joinder as a basis for dismissal. Motion to Dismiss at 4-6, Rodriguez (No. 08-1046)  
16 (Docket # 7); Motion to Dismiss for Improper Joinder under FED.R.CIV.P. 21, Pacheco (No. 08-  
17 1045) (Docket # 26). Both argued that as "[t]here is no allegation that the[] defendants acted in  
18 concert or are jointly liable for anything ... [t]he defendants ... have been improperly joined in  
19 one action." Motion to Dismiss at 4, Rodriguez (No. 08-1046) (Docket # 7); Motion to Dismiss  
20 for Improper Joinder under FED.R.CIV.P. 21 at 1, Pacheco (No. 08-1045) (Docket # 26). In  
21 Rodriguez, Judge Besosa never settled the question, instead ruling it moot since, by that stage  
22 of the litigation, no defendants other than the movants remained. 607 F. Supp. 2d at 306. In  
23 Pacheco, Judge Domínguez referred the issue to Magistrate Court, where no ruling has yet been  
24 determined. Order of Referral, Pacheco, No.08-1045 at Docket # 28.

25       Nevertheless, Don King, which is factually almost indistinguishable from the case at bar,  
26 provides this Court with the necessary guidance on said issue. There, this Court held that Don

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3 King Productions, Inc. (“DKPI”) misjoined thirty-seven (37) defendants in violation of  
4 FED.R.CIV.P. 20, which only allows defendants to “be joined in one action” when:

5 (A) any right to relief is asserted against them jointly, severally, or in the  
6 alternative with respect to or arising out of the same transaction, occurrence, or  
series of transactions or occurrences; and

7 (B) any question of law or fact common to all defendants will arise in the  
action.

8 In Don King, whether the defendants were properly joined hinged upon the “transactional  
9 relatedness” requirement. Don King, 561 F.Supp.2d at 191. The opinion explained that: (1) the  
10 defendants were not alleged to have “acted in concert,” that (2) “[t]he only connection between  
11 them [was] that they each allegedly violated provisions of federal law relating to piracy of cable  
12 television,” and that (3) they were likely to have different defenses and (4) face different  
13 evidence. This Court then found that the alleged “transactions” and “occurrences” lacked the  
14 requisite “relatedness.” Id. at 192.

15 The relevant facts in the instant cases and in Don King are substantially the same.<sup>2</sup> DKPI  
16 alleged to have a “license for the exclusive exhibition of” the “closed-circuit telecast” of three  
17 boxing events: (1) the April 17-18, 2004 match between Chris Byrd and Andrew Golota, (2) the  
18 October 2-3, 2004 match between Felix Tito Trinidad and Ricardo Mayorga, and (3) the  
19 December 14, 2003 match between Bernard Hopkins and Williams Joppy (“DKPI Events”).  
20 Don King, 561 F.Supp.2d at 190. Likewise, PPVC alleges to hold “the exclusive license to  
21 distribute for commercial gain the closed circuit broadcast of [the July 26, 2008 boxing match  
22 between Miguel Cotto and Antonio Margarito]” (“PPVC Event”). Docket # 1 ¶¶ 6 & 8. Both

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24 <sup>2</sup> Indeed, moving for higher damages in PPV Connection, Inc. v. Colon, PPVC argued that “this Honorable District  
25 Court ... has issued default judgments against defendants in cases under 47 U.S.C. §§ 553 and 605 filed by PPVC or Don  
26 King Productions, Inc., *identical to the instant case . . .*” Motion to Alter or Amend Partial Judgment at 11 ¶12, PPV  
Connection, Inc. v. Colon (No. 06-1793) (emphasis added). Though this motion was filed in February of 2007, prior to the  
2008 Don King opinion, PPVC clearly refers to a line of DKPI cases into which the Don King opinion falls and characterizes  
those cases as “identical” to those initiated by PPVC.

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3 entities allege to have been engaged in “contract[ing] with various establishments throughout  
4 Puerto Rico and grant[ing] to such establishments the right to broadcast the Event in exchange  
5 for a fee.” Docket # 1 ¶ 10; Don King, 561 F.Supp.2d at 190 (practically identical language).

6 In both the instant action and in Don King, PPVC and DKPI each charged over twenty  
7 (20) defendants with (1) “willfully intercept[ing] and/or receiv[ing] the interstate  
8 communication of the [closed-circuit telecast of specific boxing events]” (Docket # 1 ¶ 14; Don  
9 King, 561 F.Supp.2d at 190), (2) without paying the requisite fees, and (3) in violation of the  
10 exclusive license rights of each. Docket # 1 ¶ 16; Don King, 561 F.Supp.2d at 190. Moreover,  
11 the strategy of recovery, is identical, and based on the Communications Act of 1934. 47 U.S.C.  
12 §§ 553 and 605.

13 In its “Motion in Compliance of Order to Show Cause,” PPVC seeks to distinguish the  
14 factual situation in the instant cases from that in Don King. Docket # 25 at 6. Though claiming  
15 that the facts “differ[] significantly,” PPVC first points to a procedural distinction—that whereas  
16 in Don King defendants moved for dismissal on the basis of improper joinder, at present “no  
17 defendant is defending him or herself and there is no dismissal or severance request.” Id.  
18 However, that the joinder issue was raised by the bench rather than a defendant has no bearing  
19 on whether the joinder was itself proper. Moreover, FED.R.CIV.P. 21 allows that in the event  
20 of misjoinder, “[o]n motion *or on its own*, the court may, at any time, on just terms, add or drop  
21 a party.” (Emphasis added). As “[t]he language ‘[p]arties may be dropped’ essentially means  
22 that parties may be dismissed,” a court may dismiss parties *sua sponte* upon a finding of  
23 misjoinder. See DirectTV, Inc. v. Boggess, 300 F. Supp. 2d 444, 450 (S.D.W.V. 2004)  
24 (“order[ing] *sua sponte* the dismissal without prejudice of all other defendants in th[e] action  
25 except for the first named defendant”).  
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3 PPVC next seeks to differentiate Don King from the instant cases by highlighting the  
4 fact that the defendants in Don King were charged with cable and satellite signal theft “of three  
5 different and distinct transmissions broadcasted on three different and distinct dates,” namely,  
6 the DKPI Events, whereas the present defendants are all charged with theft relating to the same  
7 boxing event, the PPVC Event. Docket # 25 at 6. Though failing to engage in any explanation  
8 of the how or why this difference may be significant, PPVC must believe that by resting its  
9 claim upon a single event it has tightened the “transactional relatedness” it needs to satisfy  
10 FED.R.CIV.P. 20.

11 However, given this Court’s reasoning in Don King, the fact that in the instant cases all  
12 of the defendants “are alleged to have intercepted the same satellite and/or cable signal of the  
13 same live television broadcast on the evening of August 30, 2008,” rather than three separate  
14 signals of three separate broadcasts on three separate nights, bears little relevance to whether  
15 the transactions and occurrences are sufficiently related to render joinder proper pursuant to  
16 Fed.R.Civ.P. 20. Docket # 25 at 6. That the charges all relate to the PPVC Event does not  
17 change the fact that the defendants are not alleged to have acted in concert, or even to have had  
18 any relationship with each other whatsoever, and hence are likely to avail themselves of  
19 different defenses and to be confronted with different evidence. See Don King, 561 F. Supp.  
20 2d at 192.

21 Moreover, even though PPVC has limited its charges to those relating to a single boxing  
22 event, it remains true that its “claims against the defendants, ‘arise out of different, albeit  
23 similar, facts.’ The only connection between them is that they each allegedly violated provisions  
24 of federal law relating to piracy of cable television.” Id. (Quoting DIRECTTV v. Patel, 2003  
25 WL 22669031, at p. 1 (N.D.III.2003) (unpublished)). Given that the similarities between Don  
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3 King and the instant cases are such that the factual backgrounds are nearly identical the legal  
4 reasoning from the former is directly applicable to the latter.

5 Clearly then, PPVC improperly joined unrelated defendants. That said, the procedural  
6 status of the instant cases is such that should this Court enter the partial judgments and default  
7 judgments requested by PPVC, “no defendants would be actively defending themselves.”  
8 Docket # 25 at 5. Thus this Court might, as urged by PPVC, enter such judgments and consider  
9 the joinder issue moot, as did the Rodriguez court. However, as FED.R.CIV.P. 21 expressly  
10 allows a court to “add or drop a party,” or in other words, to dismiss a party, *sua sponte*, “at any  
11 time, on just terms,” this Court may also dismiss claims against all defendants save the first  
12 named defendant. See Boggess, 300 F. Supp. 2d at 450. Other district courts have issued *sua*  
13 *sponte* dismissals of this nature, and equity in this case dictates a similar course of action. Id.,  
14 F.Supp.2d 444 (S.D. W.V. 2004); Direct TV, Inc. V. Armellino, 216 F.R.D. 240 (E.D.N.Y.  
15 2003).

16 Because this Court finds that all co-defendants, except the first named party (Meléndez),  
17 are improperly joined, it hereby **ORDERES** the dismissal without prejudice of all claims  
18 against said parties. Furthermore, on an administrative note, Plaintiff’s practice of improperly  
19 joining co-defendants has the effect of avoiding court filing fees, which would total near  
20 \$7,000 for this case, and tens of thousands of dollars for the dozens of similar actions filed in  
21 this district over the last five years. Accordingly, Plaintiff is advised that all future claims of this  
22 nature must be instituted separately against individual defendants.

### 23 **Conclusion**

24 In light of the above, and considering the equities involved, this Court will **DISMISS**  
25 **without prejudice** PPVC’s claims against all co-defendants besides Meléndez on the grounds  
26 of improper joinder. Furthermore, at Plaintiff’s request, this Court will also **Dismiss without**

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3 **prejudice** all claims against Meléndez, his wife Jane Doe, and the conjugal partnership between  
4 them. See Docket # 20.

5 **IT IS SO ORDERED.**

6 In San Juan, Puerto Rico, this 19th day of January, 2010.

7 *S/ Salvador E. Casellas*  
8 **SALVADOR E. CASELLAS**  
9 United States District Judge

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