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9

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12  
13  
14 ANCORА TECHNOLOGIES, INC.,  
15  
16 Plaintiff,

17 vs.

18 TCT MOBILE (US) INC., HUIZHOU  
TCL MOBILE COMMUNICATION  
19 CO., LTD., and SHENZHEN TCL  
CREATIVE CLOUD TECHNOLOGY  
20 CO., LTD.,

21 Defendants.

Case No. 8:19-cv-02192-GW-ASx  
(LEAD CASE)

Case No. 2:20-cv-01252-GW-ASx  
(CONSOLIDATED CASE)

**DEFENDANTS' REPLY  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF MOTION TO  
DISMISS THE AMENDED  
COMPLAINT FOR FAILURE  
TO STATE A CLAIM**

Hearing Date: April 20, 2020  
Time: 8:30 AM  
Before: Hon. George H. Wu  
United States Courthouse  
Courtroom 9D, 9th Floor

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## I. INTRODUCTION

In its Opposition (Dkt. No. 39) to TCL’s Motion (Dkt. No. 37-1), Ancora attempts to backfill the numerous and significant holes in the Amended Complaint (Dkt. No. 24). But those holes could not be filled, and the Opposition essentially abandons several legal theories pleaded in the Amended Complaint in an attempt to save other aspects of its case. Ancora no longer claims infringement by TCL for acts of making, selling, offering to sell, or importing. Ancora no longer attempts to maintain a joint infringement claim. Even if this approach of excise-and-explain were a proper way to supplement the pleadings, which it is not, the Opposition still leaves significant questions unanswered as to the nature of its claims, as discussed below. Even with the supplemental explanation of the Opposition, the Amended Complaint fails to provide TCL with “fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

In the Opposition, Ancora argues that TCL’s earlier Declaratory Judgement Complaint (Dkt. No. 1) somehow shows that TCL really does understand the infringement allegations in the Amended Complaint. The opposite is actually true. TCL brought the declaratory judgment action on behalf of the manufacturer and importer of the TCL smartphones. (Declaratory Judgment Complaint at ¶¶ 3–4.) TCL disclaimed infringement by a list of TCL smartphones. (*Id.* at 13.)

But it turns out that TCL’s making and importing of the smartphones—or even apparently its selling or offering to sell them—are not the allegedly infringing activities at all. (*See generally* Opposition (containing no allegation of infringement based on making, selling, offering to sell, or importing).) The Opposition seems to allege that the infringement is constituted by TCL’s “using” of the claimed method. (*See, e.g., id.* at p. 5; *see also id.* at p. 20, n. 4 (explicitly alleging a “use” type of direct infringement).) And the infringing instrumentalities are not the smartphones, but the smartphones in combination with servers. (*See, e.g., id.* at p. 5.) Thus, the Declaratory Judgment Complaint actually demonstrates that TCL has been, and

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