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4  
5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON  
7

8  
9 THE THOMPSONS FILM, LLC, )  
10 Plaintiff, )

Case No.: 2:13-CV-00126-TOR

11 v. )

FIRST AMENDED COMPLAINT

12 Brandon Walters, an individual; )  
13 Brandon Lesniak, an individual; )  
14 Roger Morris, an individual; )  
15 Monty Wickenhagen, an individual; )  
16 Ross Kappen, an individual; )  
17 Ken West, an individual; )  
18 Wayne Long, an individual; )  
19 Elizabeth Ortiz, an individual; )  
20 Doug Boe, an individual; )  
21 Rhonda Boe, an individual; )  
22 Cody Engelke, an individual; )  
23 Joyce Romey, an individual; )  
24 Michael Herndon, an individual; )  
25 Anthony Hayes, an individual; )  
26 Juan Urena, an individual; )  
27 Carry L. Haynes, an individual; )  
28 Saleena Horton, an individual; )  
Joe Robb, an individual; )  
Robert Kisselburg, an individual; )  
Tyler Farmer, an individual; )  
Anthony Ades, an individual; )  
Vikki Maxwell, an individual; )  
William Athias, an individual; )  
DOE 24, DOE 27, DOE 29, )  
and DOE 33, )

COPYRIGHT INFRINGEMENT

DEMAND FOR JURY TRIAL

Defendants.

26 / / / /

1 Plaintiff The Thompsons, LLC, a limited liability company (“The  
2 Thompsons” / “Plaintiff”), pursuant to F.R.Civ.P. 15(a)(1)(A) hereby submits its  
3 first amended complaint and alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiff comprises a venture of independent film producers who have  
6 worked on notable films featured at events such as the Sundance Film Festival.

7 2. In 2011, Plaintiff produced the original feature length film, *The Thompsons*,  
8 as a sequel to the 2006 multi-award winning independent film *The Hamiltons*.

9 3. Shortly after the release of *The Thompsons*, the film began to be illegally  
10 copied and distributed through various means, costing Plaintiff sales and  
11 distributions.

12 4. Illegal file sharing or pirating is particularly harmful to smaller and  
13 independent film producers such as Plaintiff in that they often lack the marketing  
14 and distribution strength of major studios. With a small or independent producer  
15 any loss in market due to illegal activity has a significant impact.

16 5. In the production of a motion picture there are countless expenses and  
17 labors, many of which are not evident in the final project. Such expenses and  
18 labors include writers, staff persons, construction workers and others who are often  
19 union based employees working for a median salary.

20 6. Indeed, the final product produced, which may be less than two hours long,  
21 is often sourced from hundreds of days and tens of thousands of hours of labor,  
22 followed by near countless hours of post-production until the final product is ready  
23 for viewing in a theater or at home.

24 7. The end product that many consumers see is a few hours in a theater, or  
25 possibly a DVD product that once production is complete has a nominal cost on a  
26 per-viewing experience. However, this is misleading to the true costs of the motion  
27

1 picture as the costs to view a completed motion picture or produce a single DVD  
2 are nominal compared to what is often years of work by thousands of people  
3 leading up to the end product.

4 8. Added to this is that the only people publicly seen related to the end product,  
5 movie stars and those that are known to be affiliated with motion pictures, such as  
6 directors and other persons of note, are all generally the highest compensated  
7 persons involved with the production of the work leading to the common  
8 misunderstanding that people involved in motion pictures are already wealthy.

9 9. When the perception that those affiliated with a motion picture are already  
10 wealthy, and the end product, such as a DVD only costs very little to make, a  
11 reality disconnect often builds in the minds of much of the public, namely that  
12 those associated with a motion picture do not need any more money.

13 10. When this reality disconnect meets with the ready availability of pirated  
14 copies of motion pictures and the ease at which they can be illegally copied and  
15 downloaded at an almost anonymous level, many people feel justified in their  
16 pirating or theft of motion pictures.

17 11. The result is that despite the industry's efforts to capitalize on internet  
18 technology and reduce costs to end viewers through legitimate and legal means of  
19 online viewing such as through Netflix™, Hulu™, and Amazon Prime™, there are  
20 still those that use this technology to steal motion pictures and undermine the  
21 efforts of creators through their illegal copying and distribution of motion pictures.

22 12. A common means of illegally copying and distributing content on the  
23 internet is through the use of a peer-to-peer network such as BitTorrent.

24 13. In this case each of the Defendants has participated, either directly or  
25 indirectly or by facilitating the conduct of others, in illegally copying and  
26 distributing Plaintiff's motion picture via BitTorrent.

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28 FIRST AMENDED COMPLAINT – Page 3

1 **JURISDICTION AND VENUE**

2 14. This is a suit for copyright infringement and contributory copyright  
3 infringement under the United States Copyright Act of 1976, as amended, 17  
4 U.S.C. §§ 101 et seq. (“The Copyright Act”).

5 15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and  
6 1338(a).

7 16. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) and 28  
8 U.S.C. § 1400(a).

9 **PARTIES**

10 **THE PLAINTIFF**

11 17. Plaintiff The Thompsons, LLC is a limited liability company with principal  
12 offices in Los Angeles, California, that produced the motion picture at issue in this  
13 matter.

14 **The Rights of the Plaintiff**

15 18. The motion picture in this case, titled *The Thompsons*, has been registered  
16 with the United States Copyright Office by the author, The Thompsons Film, LLC,  
17 Registration No. PAu 3-651-594.

18 19. The motion picture contains wholly original material that is copyrightable  
19 subject matter under the laws of the United States.

20 20. The motion picture is currently offered for sale in commerce.

21 21. Under the Copyright Act, The Thompsons, LLC is the proprietor of all right,  
22 title, and interest in the motion picture, including the right to sue for past  
23 infringement.

24 22. Under the Copyright Act, The Thompsons, LLC also controls the exclusive  
25 rights to reproduce the motion picture and to distribute the motion picture to the  
26 public.

1 23. Plaintiff's motion picture is easily discernible as a professional work as it  
2 was created using professional performers, directors, cinematographers, lighting  
3 technicians, set designers and editors and with professional-grade cameras, lighting  
4 and editing equipment.

5 24. Defendants have notice of Plaintiff's rights through general publication and  
6 advertising and more specifically as identified in the content of the motion picture,  
7 advertising associated with the motion picture, and all packaging and copies, each  
8 of which bore a proper copyright notice.

9 **THE DEFENDANTS**

10 **In General**

11 25. Defendants have each played at least one of the following roles in  
12 connection with the use of BitTorrent to unlawfully download Plaintiff's motion  
13 picture: 1) some or all Defendants are a group of BitTorrent users or peers whose  
14 computers are collectively interconnected and used for illegally copying and  
15 distributing Plaintiff's motion picture; 2) some or all Defendants contributed to the  
16 infringement of Plaintiff's copyrights by others; and 3) some or all Defendants  
17 permitted, facilitated and/or promoted the use of the internet access identified by  
18 their IP address for the infringing of Plaintiff's exclusive rights under The  
19 Copyright Act by others.

20 26. Defendants and each of them have illegally and without authorization from  
21 Plaintiff copied, downloaded, shared and uploaded Plaintiff's motion picture using  
22 the BitTorrent system, and/or contributed to or permitted, facilitated or promoted  
23 such conduct by others.

24 27. Defendants and each of them have been identified as directly, indirectly or  
25 contributorily infringing Plaintiff's copyrights in this district.

26 ////

1 28. Defendants have been identified in the instant case by a specific Internet  
2 Protocol or IP address and a "hash" (a file identifier generated by an algorithm  
3 developed and implemented by the National Security Agency).

4 29. Under the BitTorrent protocol each file has a unique "hash" tied to a specific  
5 file. In the instant case, all hashes identified on Exhibit 1 to Plaintiff's initial  
6 complaint have been confirmed as being for an unauthorized copy of Plaintiff's  
7 motion picture.

### 8 **Identification of the Named Defendants**

9 30. Internet Service Provider ("ISP") Charter Communications, upon  
10 information and belief, assigned Internet Protocol ("IP") address 66.189.197.53 to  
11 Defendant Brandon Walters for a period of time, including but not limited to  
12 02/19/2013 at 03:58:28 p.m.

13 31. At all times material, Defendant Brandon Walters resided in Kennewick,  
14 Washington.

15 32. Defendant Brandon Walter's IP address of 66.189.197.53 was observed  
16 infringing Plaintiff's motion picture at 03:58:28 p.m. on 02/19/2013.

17 33. ISP Charter Communications, upon information and belief, assigned IP  
18 address 71.94.178.243 to Brandon Lesniak for a period of time, including but not  
19 limited to 02/18/2013 at 06:33:13 p.m.

20 34. At all times material, Defendant Brandon Lesniak resided in Yakima,  
21 Washington.

22 35. Defendant Brandon Lesniak's IP address of 71.94.178.243 was observed  
23 infringing Plaintiff's motion picture at 06:33:13 p.m. on 02/18/2013.

24 36. ISP Charter Communications, upon information and belief, assigned IP  
25 address 96.39.200.108 to Monty Wickenhagen for a period of time, including but  
26 not limited to 02/10/2013 at 05:52:34 a.m.

1 37. At all times material, Defendant Monty Wickenhagen resided in Wenatchee,  
2 Washington.

3 38. Defendant Monty Wickenhagen's IP address of 96.39.200.108 was observed  
4 infringing Plaintiff's motion picture at 05:52:34 a.m. on 02/10/2013.

5 39. ISP Comcast Cable Holdings, LLC ("Comcast"), upon information and  
6 belief, assigned IP address 67.165.123.174 to Defendant Ross Kappen for a period  
7 of time, including but not limited to 05:13:04 p.m. on 02/07/2013.

8 40. At all times material, Defendant Ross Kappen resided in Spokane,  
9 Washington.

10 41. Defendant Ross Kappen's IP address of 67.165.123.174 was observed  
11 infringing Plaintiff's motion picture at 05:13:04 p.m. on 02/07/2013.

12 42. ISP Charter Communications, upon information and belief, assigned IP  
13 address 68.118.223.207 to Ken West for a period of time, including but not limited  
14 to 02/05/2013 at 01:36:40 p.m.

15 43. At all times material, Defendant Ken West resided in Richland, Washington.

16 44. Defendant Ken West's IP address of 68.118.223.207 was observed  
17 infringing Plaintiff's motion picture at 01:36:40 p.m. on 02/05/2013.

18 45. ISP Comcast, upon information and belief, assigned IP address  
19 67.185.121.154 to Wayne Long for a period of time, including but not limited to  
20 02/02/2013 at 07:28:35 a.m.

21 46. At all times material, Defendant Wayne Long resided in Spokane,  
22 Washington.

23 47. Defendant Wayne Long's IP address of 67.185.121.154 was observed  
24 infringing plaintiff's motion picture at 07:28:35 a.m. on 02/02/2013.

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1 48. ISP Charter Communications, upon information and belief, assigned IP  
2 address 75.142.65.204 to Elizabeth Ortiz for a period of time, including but not  
3 limited to 01/23/2013 at 05:31:06 a.m.

4 49. At all times material, Defendant Elizabeth Ortiz resided in Kennewick,  
5 Washington.

6 50. Defendant Elizabeth Ortiz's IP address of 75.142.65.204 was observed  
7 infringing Plaintiff's motion picture at 05:31:06 a.m. on 01/23/2013.

8 51. ISP Fairpoint Communications, upon information and belief, assigned IP  
9 address 66.243.232.12 to Doug and Rhonda Boe for a period of time, including but  
10 not limited to 01/12/2013 at 08:03:10 p.m.

11 52. At all times material, Defendants Doug and Rhonda Boe resided in  
12 Ellensburg, Washington.

13 53. Defendants Doug and Rhonda Boe's IP address of 66.243.232.12 was  
14 observed infringing Plaintiff's motion picture at 08:03:10 p.m. on 01/12/2013.

15 54. ISP Comcast, upon information and belief, assigned IP address  
16 174.61.168.14 to Cody Engelke for a period of time, including but not limited to  
17 01/11/2013 at 11:58:20 a.m.

18 55. At all times material, Defendant Cody Engelke resided in Spokane,  
19 Washington.

20 56. Defendant Cody Engelke's IP address of 174.61.168.14 was observed  
21 infringing Plaintiff's motion picture at 11:58:20 a.m. on 01/11/2013.

22 57. ISP Comcast, upon information and belief, assigned IP address 67.185.1.86  
23 to Joyce Romey for a period of time, including but not limited to 01/09/2013 at  
24 07:47:15 p.m.

25 58. At all times material, Defendant Joyce Romey resided in Spokane,  
26 Washington.



1 59. Defendant Joyce Romey's IP address of 67.185.1.86 was observed infringing  
2 Plaintiff's motion picture at 07:47:15 p.m. on 01/09/2013.

3 60. ISP Century Link, upon information and belief, assigned IP address  
4 97.119.242.233 to Michael Herndon for a period of time, including but not limited  
5 to 01/08/2013 at 03:10:14 a.m.

6 61. At all times material, Defendant Michael Herndon resided in Spokane,  
7 Washington.

8 62. Defendant Micheal Herndon's IP address of 97.119.242.233 was observed  
9 infringing Plaintiff's motion picture at 03:10:14 a.m. on 01/08/2013.

10 63. ISP Comcast, upon information and belief, assigned IP address  
11 98.225.12.117 to Anthony Hayes for a period of time, including but not limited to  
12 01/07/2013 at 07:09:58 a.m.

13 64. At all times material, Defendant Anthony Hayes resided in Spokane,  
14 Washington.

15 65. Defendant Anthony Hayes' IP address of 98.225.12.117 was observed  
16 infringing Plaintiff's motion picture at 07:09:58 a.m. on 01/07/2013.

17 66. ISP Century Link, upon information and belief, assigned IP address  
18 71.213.252.111 to Carry L. Haynes for a period of time, including but not limited  
19 to 01/05/2013 at 10:05:02 p.m.

20 67. At all times material, Defendant Carry L. Haynes resided in Colfax,  
21 Washington.

22 68. Defendant Carry L. Haynes' IP address of 71.213.252.111 was observed  
23 infringing Plaintiff's motion picture at 10:05:02 p.m. on 01/05/2013.

24 69. ISP CenturyLink, upon information and belief, assigned IP address  
25 97.115.190.164 to Defendant Saleena Horton for a period of time, including but not  
26 limited to 01/03/2013 at 06:44:50 a.m.

1 70. At all times material, Defendant Saleena Horton resided in Spokane,  
2 Washington.

3 71. Defendant Saleena Horton's IP address of 97.115.190.164 was observed  
4 infringing Plaintiff's motion picture at 06:44:50 a.m. on 01/03/2013.

5 72. ISP Comcast, upon information and belief, assigned IP address 67.185.16.71  
6 to Joe Robb for a period of time, including but not limited to 01/02/2013 at  
7 06:19:48 p.m.

8 73. At all times material, Defendant Joe Robb resided in Spokane, Washington.

9 74. Defendant Joe Robb's IP address of 67.185.16.71 was observed infringing  
10 Plaintiff's motion picture at 06:19:48 p.m. on 01/02/2013.

11 75. ISP Charter Communications, upon information and belief, assigned IP  
12 address 96.39.145.129 to Juan Urena for a period of time, including but not limited  
13 to 01/07/2013 at 03:00:44 a.m.

14 76. At all times material, Defendant Juan Urena resided in Pasco, Washington.

15 77. Defendant Juan Urena's IP address of 96.39.145.129 was observed  
16 infringing Plaintiff's motion picture at 03:00:44 a.m. on 01/07/2013.

17 78. ISP Comcast, upon information and belief, assigned IP address  
18 67.185.251.130 to Defendant Robert Kisselburg for a period of time, including but  
19 not limited to 12/30/2012 at 06:18:48 p.m.

20 79. At all times material, Defendant Robert Kisselburg resided in Spokane,  
21 Washington.

22 80. Defendant Robert Kisselburg's IP address of 67.185.251.130 was observed  
23 infringing Plaintiff's motion picture at 06:18:48 p.m. on 12/30/2012.

24 81. ISP Century Link, upon information and belief, assigned IP address  
25 71.213.252.54 to Defendant Tyler Farmer for a period of time, including but not  
26 limited to 12/17/2012 at 08:58:18 a.m.

1 82. At all times material, Defendant Tyler Farmer resided in Spokane,  
2 Washington.

3 83. Defendant Tyler Farmer's IP address of 71.213.252.54 was observed  
4 infringing Plaintiff's motion picture at 08:58:18 a.m. on 12/17/2012.

5 84. ISP Comcast, upon information and belief, assigned IP address  
6 174.61.145.251 to Defendant Anthony Ades for a period of time, including but not  
7 limited to 12/14/2012 at 10:01:07 p.m.

8 85. At all times material, Defendant Anthony Ades resided in Spokane,  
9 Washington.

10 86. Defendant Anthony Ades' IP address of 174.61.145.251 was observed  
11 infringing Plaintiff's motion picture at 10:01:07 p.m. on 12/14/2012.

12 87. ISP Northland Cable Television, upon information and belief, assigned IP  
13 address 64.234.15.68 to Defendant William Athias for a period of time, including  
14 but not limited to 12/05/2012 at 02:51:58 a.m.

15 88. At all times material, Defendant William Athias resided in Soap Lake,  
16 Washington.

17 89. Defendant William Athias' IP address of 64.234.15.68 was observed  
18 infringing Plaintiff's motion picture at 02:51:58 a.m. on 12/05/2012.

19 90. ISP Charter Communications, upon information and belief, assigned IP  
20 address 71.94.160.165 to Defendant Vikki Maxwell for a period of time, including  
21 but not limited to 12/06/2012 at 11:21:58 a.m.

22 91. At all times material, Defendant Vikki Maxwell resided in Kennewick,  
23 Washington.

24 92. Defendant Vikki Maxwell's IP address of 71.94.160.165 was observed  
25 infringing Plaintiff's motion picture at 11:21:58 a.m. on 12/06/2012.

26 ////

1 93. ISP Ptera Wireless, upon information and belief, assigned IP address  
2 69.28.34.2 to Defendant Roger Morris for a period of time, including but not  
3 limited to 02/10/2013 at 10:03:11 p.m.

4 94. At all times material, Defendant Roger Morris resided in Spokane,  
5 Washington.

6 95. Defendant Roger Morris' IP address of 69.28.34.2 was observed infringing  
7 Plaintiff's motion picture at 10:03:11 p.m. on 02/10/2013.

8 **Further Identification of the Remaining Doe Defendants**

9 96. Plaintiff has not named in this amended complaint the persons identified as  
10 Does 24, 27, 29, and 33. With respect these Defendants, Plaintiff is working with  
11 their counsel in an effort to resolve this matter by way of settlement and has not  
12 named those parties to permit settlement discussions to continue, or should  
13 Defendant request, permit them to appear anonymously with leave of the Court.  
14 Plaintiff will either move to file a second amended complaint naming these  
15 Defendants or file notices of dismissals of the claims against them within the next  
16 30 days. Plaintiff is filing notices of dismissal with respect to the remaining Does  
17 named in its initial complaint.

18 **JOINDER**

19 97. Plaintiff acknowledges that joinder in this action under F.R.C.P. 20(a)(2) is  
20 permissive in that Plaintiff's claims arise out of the same occurrences or  
21 transactions, or series of occurrences or transactions and that there are questions of  
22 law and fact common to each of the Defendants.

23 98. All of the Defendants have collectively acted through BitTorrent to illegally  
24 download and distribute Plaintiff's motion picture, or have contributed to and/or  
25 facilitated such conduct by others, each damaging Plaintiff.

26 ////

1 99. As such, Plaintiff's rights to relief, as stated below, ultimately arise out of  
2 the same series of transactions and occurrences.

3 100. This action also raises substantial questions of law and fact common to all  
4 Defendants.

5 101. Permissive joinder in the instant case is to permit a more efficient  
6 management of Plaintiff's claims against the several Defendants and to reduce the  
7 costs to Plaintiff and Defendants and to reduce the costs and burdens on the Court.

8 102. Notice is provided, that on being specifically identified and on request from  
9 an identified Defendant, Plaintiff agrees to sever any Defendant that claims  
10 prejudice in being joined in this matter and to proceed against each such Defendant  
11 individually.

## 12 FACTS COMMON TO ALL CLAIMS

### 13 **IP Addresses**

14 103. To connect to the internet and/or to provide such access to others, each  
15 Defendant was required to contract with an ISP and create an account for service.  
16 It is the ISP that grants each user access to the internet and the ability to send and  
17 receive information, whether in the form of an email, photo or motion picture.

18 104. To identify the source and destination of any piece of information, an ISP  
19 assigns an IP address to each user which allows data to flow to and from each user  
20 of the internet.

21 105. Each IP address is unique, and for any one time an IP address can be traced  
22 back to a specific ISP account holder and user.

23 106. A standard term for any account for service from an ISP is that such service  
24 may not be used for illegal activity. Indeed, many ISPs, such as Comcast, go to  
25 considerable lengths to advise their subscribers of their usage policies, including  
26 the prohibition of using or permitting use of the account to engage in infringing  
27

1 activity.

2 107. Internet piracy and the use of the internet to conduct illegal activity are  
3 commonly known. As such both through the license granted to a user from their  
4 ISP to obtain an IP address and through common knowledge, Defendants were on  
5 notice of the need to limit the use of their IP address to legal and authorized  
6 activity.

### 7 **Peer-to-Peer Internet Piracy Via BitTorrent**

8 108. As noted by Senator Levin in Congressional hearings on peer-to-peer internet  
9 piracy, “In the world of copyright law, taking someone’s intellectual property is a  
10 serious offense, punishable by large fines. In the real world, violations of copyright  
11 law over the Internet are so widespread and easy to accomplish that many participants  
12 seem to consider it equivalent to jaywalking – illegal but no big deal. But it is a big  
13 deal. Under U.S. law, stealing intellectual property is just that – stealing. It hurts  
14 artists, the music industry, the movie industry, and others involved in creative work.  
15 And it is unfortunate that the software being used – called ‘file sharing’ as if it were  
16 simply enabling friends to share recipes, is helping create a generation of Americans  
17 who don’t see the harm.”

18 109. Defendants, either directly or indirectly, utilized an interactive peer-to-peer file  
19 transfer technology protocol to copy Plaintiff’s motion picture.

20 110. Peer-to-peer networks, at least in their most common form, are computer  
21 systems that enable internet users to: 1) make files (including motion pictures) stored  
22 on each user's computer available for copying by other users or peers; 2) search for  
23 files stored on other users' computers; and 3) transfer exact copies of files from one  
24 computer to another via the internet.

25 111. The particular peer-to-peer protocol at issue in this suit is the BitTorrent  
26 protocol.

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1 112. Defendants and each of them directly or indirectly used BitTorrent in a  
2 collective and often interdependent manner via the internet in the unlawful  
3 reproduction and distribution of Plaintiff's copyrighted motion picture.

4 113. To use BitTorrent, a user intentionally downloads a small program that they  
5 install on their computers — the BitTorrent "client" application. The BitTorrent client  
6 is the user's interface during the downloading/uploading process. The client may be  
7 free, supported by advertising, offer upgrades or add on services for a fee, or a  
8 combination of several options.

9 114. A BitTorrent client application typically lacks the ability to search for media  
10 or content files. To find media or content available for download (as made available  
11 by other BitTorrent users), users intentionally visit a "torrent site" using a standard  
12 web browser.

13 115. A torrent site is a website that contains an index of media or content being  
14 made available by other users (generally an extensive listing of movies and television  
15 programs, among other copyrighted content). The torrent site hosts and distributes  
16 small files known as "torrent files." Torrent files do not contain actual media or  
17 content. Torrent files are used to instruct a user's computer where to go and how to  
18 get the desired media or content. Torrent files interact with specific trackers, allowing  
19 the user to download the desired media or content.

20 116. A torrent site is often an advertisement-revenue based or subscription-supported  
21 index of media or content being made available by other users on the network and  
22 maintains a listing of movies and television programs among other copyrighted  
23 content.

24 117. A user then uses the torrent site to connect with other users and exchange  
25 content though the BitTorrent protocol often with many users at the same time.

26 ////

1 118. Internet piracy, and in particular BitTorrent piracy, though known as peer-to-  
2 peer file sharing, is often a for-profit business as many software clients, torrent sites  
3 and networks generate millions of dollars in revenue through sales and advertising.

4 119. Many participants, possibly including some or all of the Defendants, have paid  
5 money to facilitate or permit increased access to content which has been made  
6 available without authorization.

7 120. The torrent file contains a unique hash identifier which is a unique identifier  
8 generated by a mathematical algorithm developed by the National Security Agency.  
9 This torrent file is tagged with the file's unique "hash," which acts as a "roadmap" to  
10 the IP addresses of other users who are sharing the media or content identified by the  
11 unique hash, as well as specifics about the media or content file.

12 121. A BitTorrent tracker manages the distribution of files, connecting uploaders  
13 (those who are distributing content) with downloaders (those who are copying the  
14 content). A tracker directs a BitTorrent user's computer to other users who have a  
15 particular file, and then facilitates the download process from those users. When a  
16 BitTorrent user seeks to download a motion picture or other content, he or she merely  
17 clicks on the appropriate torrent file on a torrent site, and the torrent file instructs the  
18 client software how to connect to a tracker that will identify where the file is available  
19 and begin downloading it. In addition to a tracker, a user can manage file distribution  
20 through a Peer Exchange and/or a Distributed Hash Table.

21 122. A Peer Exchange is a communications protocol built into almost every  
22 BitTorrent protocol which allows users to share files more quickly and efficiently.  
23 Peer Exchange is responsible for helping users find more users that share the same  
24 media or content.

25 123. A Distributed Hash Table is a sort of world-wide telephone book, which uses  
26 each file's "hash" to locate sources for the requested media or content. Thus,



1 users are able to access a partial list of other users with the media or content they want  
2 rather than being filtered through a central computer called a tracker. By allowing  
3 users to rely on individual computers for information, this not only reduces the load  
4 on the central tracker, but also means that every client that is sharing this media or  
5 content is also helping to hold this worldwide network together.

6 124. Files downloaded in this method are downloaded in hundreds of individual  
7 pieces. Each piece that is downloaded is immediately thereafter made available for  
8 distribution to other users seeking the same file. The effect of this technology makes  
9 every downloader also an uploader of the content. This means that every  
10 user who has a copy of the infringing media or content on a torrent network is also a  
11 source for others to download that media or content.

12 125. Thus, each IP address identified by the tracker is an uploading user who is  
13 running a BitTorrent client on his or her computer and who is offering the media or  
14 content for download. Once selected, the downloading user's BitTorrent client then  
15 begins downloading the media or content by communicating with the BitTorrent client  
16 programs running on one or more uploading users' computers.

17 126. The effect of this distributed network of users all downloading and uploading  
18 the same file creates what is commonly known as a "swarm" wherein users operate  
19 collectively to copy and distribute media and content.

20 127. Members of the swarm become interconnected to download files, wherein the  
21 download creates an exact digital copy on the downloaders' computers. As additional  
22 infringers request the same file, each additional infringer joins the collective swarm,  
23 and each new infringer receives pieces of the file from each other infringer in the  
24 swarm who has already downloaded any part of the file.

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1 128. This distributed nature of BitTorrent leads to a rapid viral sharing of media and  
2 content throughout the collective peer users. As more peers join the collective swarm,  
3 the frequency and speed of successful downloads also increases.

4 129. Thus, a Defendant's distribution of even a single unlawful copy of the motion  
5 picture can result in the nearly instantaneous worldwide distribution of that single  
6 copy to an unlimited number of people. In this case, each Defendant's copyright  
7 infringement built upon the prior infringements, in a continuing cascade of  
8 infringement going forward.

9 130. Further, though it is clearly established that the Defendants, either directly or  
10 indirectly, participated in the exact same swarm, possibly directly linking to each  
11 other, the nature of the BitTorrent system is such that the exact same data may be in  
12 multiple swarms at the same time. As such, while a single swarm more directly links  
13 Defendants, the same data, Plaintiff's motion picture, is being transferred in many  
14 swarms, making every identified Defendant a participant in, if not the same transaction  
15 or occurrence, the same series of transactions or occurrences - the BitTorrent exchange  
16 of Plaintiff's motion picture.

### 17 **Conduct of Defendants**

18 131. Plaintiff has recorded each IP address assigned to each Defendant identified  
19 herein as actually copying and publishing Plaintiff's motion picture via BitTorrent, as  
20 Plaintiff's investigator has downloaded the motion picture from each Defendant's IP  
21 identified herein.

22 132. This conduct was illegal and in violation of Defendants' license and terms of  
23 access to the internet through their ISP.

24 133. Each Defendant knew or should have known the infringing conduct observed  
25 by Plaintiff was unlicensed and in violation of plaintiff's copyrights.

26 ///

1 134. This case involves a single swarm in which numerous Defendants, either  
2 directly or indirectly, engaged in mass copyright infringement of Plaintiff's motion  
3 picture.

4 135. Each Defendant's IP address was used to illegally upload and share Plaintiff's  
5 motion picture within the swarm.

6 136. Upon information and belief, each Defendant whose conduct constitutes direct  
7 infringement was a willing and knowing participant in the swarm at issue and engaged  
8 in such participation for the purpose of infringing Plaintiff's copyright.

9 137. By participating in a swarm, each Defendant whose conduct constitutes direct  
10 infringement participated in the exact same or nearly identical transaction, occurrence,  
11 or series of transactions or occurrences as the other Defendants.

12 138. Upon information and belief, many Defendants also acted in concert with  
13 others, including other Defendants by participating in a Peer Exchange.

14 139. Upon information and belief, many Defendants also acted in concert with other  
15 Defendants and swarm members and by linking together globally through use of a  
16 Distributed Hash Table.

17 140. Each Defendant's conduct is effectively a collective enterprise constituting  
18 substantially similar or identical facts.

19 **Exemplar Defendant**

20 141. For example, IP address 69.28.34.2 which ISP Ptera Wireless has identified  
21 as having been assigned to Defendant Roger Morris at the time of the subject  
22 infringement, was used to initiate the infringing conduct alleged herein by first  
23 intentionally logging into one of the many BitTorrent client repositories known for  
24 their large index of copyrighted movies, television shows, software and adult videos.  
25 Said IP address was then used to intentionally obtain a torrent file identified by a  
26 "hash" or SHA1:

1 4C55A9C583CDC447A14CF245BBD9C1F3AAA30C23, in this specific instance  
2 which is for Plaintiff's motion picture from the index and intentionally loaded that  
3 torrent file into a computer program designed to read such files.

4 142. With the torrent file intentionally loaded from said IP address, the user's  
5 BitTorrent program used the BitTorrent protocol to initiate connections with hundreds  
6 of other users possessing and uploading or sharing copies of the digital media  
7 described in SHA1:

8 4C55A9C583CDC447A14CF245BBD9C1F3AAA30C23, namely, Plaintiff's motion  
9 picture, including with, upon information and belief, other Defendants. As the motion  
10 picture was copied via said IP address piece by piece, these downloaded pieces of  
11 Plaintiff's motion picture were then immediately available to all other Defendants for  
12 those Defendants' uses from this direct infringer's computer.

13 143. Each of Defendants' assigned IP addresses were used to perform the same acts  
14 as those described for Defendant Morris's, above. As a result, each of the direct  
15 infringers using these addresses also immediately became an uploader, meaning that  
16 each downloaded piece was immediately available to other users seeking to obtain the  
17 file without degradation in sound or picture quality. It is in this way that each IP  
18 address assigned to Defendants copied and distributed the motion picture at the same  
19 time. Thus, each participant in the BitTorrent swarm was an uploader or distributor  
20 and also a downloader or copier of Plaintiff's motion picture.

## 21 **CLAIMS FOR RELIEF STATED IN THE ALTERNATIVE**

22 Pursuant to F.R.Civ.P. 8(d)(2), Plaintiff sets forth the following claims for relief  
23 in the alternative.

### 24 **FIRST CLAIM FOR RELIEF**

### 25 **COPYRIGHT INFRINGEMENT**

26 144. Plaintiff repeats and realleges each of the allegations above.

1 145. Defendants have, without the permission or consent of Plaintiff, distributed  
2 Plaintiff's motion picture through a public website and any one of various public  
3 BitTorrent trackers, Peer Exchanges, and/or Distributed Hash Tables.

4 146. Plaintiff alleges that each Defendant, without the permission or consent of  
5 Plaintiff, has used, and continues to use, BitTorrent software to download Plaintiff's  
6 motion picture, to distribute the motion picture to the public, including hundreds of  
7 other BitTorrent users, and/or to make the motion picture available for distribution to  
8 others.

9 147. Defendants' actions constitute infringement of Plaintiff's exclusive rights under  
10 The Copyright Act.

11 148. Defendants' conduct has been willful, intentional, in disregard of and indifferent  
12 to Plaintiff's rights.

13 149. As a direct and proximate result of Defendants' conduct, Plaintiff's exclusive  
14 rights under 17 U.S.C. § 106 have been violated.

15 150. Plaintiff is entitled to damages pursuant to 17 U.S.C. § 504 and attorney fees  
16 and costs pursuant to 17 U.S.C. § 505.

17 151. The conduct of each Defendant is causing and, unless enjoined and restrained  
18 by this Court, will continue to cause Plaintiff great and irreparable injury.

19 152. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief  
20 prohibiting each Defendant from further contributing to the infringement of Plaintiff's  
21 copyrights and ordering that each Defendant destroy all copies of Plaintiff's motion  
22 picture made in violation of Plaintiff's rights.

23 **SECOND CLAIM FOR RELIEF**

24 **CONTRIBUTORY INFRINGEMENT**

25 153. Plaintiff repeats and realleges each of the allegations 1 - 143 above.

26 154. Defendants have, without the permission or consent of Plaintiff, contributed to  
27

1 the infringement of Plaintiff's copyrights by other Defendants and other swarm  
2 members.

3 155. By participating in the BitTorrent swarm with other Defendants, each  
4 Defendant induced, caused or materially contributed to the infringement of Plaintiff's  
5 exclusive rights under the Copyright Act by other Defendants and other swarm  
6 members.

7 156. Defendants' conduct has been willful, intentional, in disregard of and indifferent  
8 to Plaintiff's rights.

9 157. As a direct and proximate result of Defendants' conduct, Plaintiff's exclusive  
10 rights under 17 U.S.C. § 106 have been violated.

11 158. Plaintiff is entitled to damages pursuant to 17 U.S.C. § 504 and attorney fees  
12 and costs pursuant to 17 U.S.C. § 505.

13 159. The conduct of each Defendant is causing and, unless enjoined and restrained  
14 by this Court, will continue to cause Plaintiff great and irreparable injury.

15 160. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief  
16 prohibiting each Defendant from further contributing to the infringement of Plaintiff's  
17 copyrights and ordering that each Defendant destroy all copies of Plaintiff's motion  
18 picture made in violation of Plaintiff's rights and take such further steps as are  
19 necessary to prevent further infringement.

20 **THIRD CLAIM FOR RELIEF**

21 **Alternative Statement Pursuant to FRCP 8(d)(2)**

22 **Indirect Infringement of Copyright**

23 161. Plaintiff repeats and realleges each of the allegations 1 - 143 above.

24 162. Defendants obtained internet access through an ISP and permitted, facilitated  
25 and/or promoted the use of the internet access identified with the specific IP address  
26 for the infringing of Plaintiff's exclusive rights under The Copyright Act by others.

27

28 FIRST AMENDED COMPLAINT – Page 22

1 163. Defendants, and each of them, are liable as indirect or secondary infringers.

2 164. Defendants, and each of them, failed to secure, police and protect the use of  
3 their internet service against illegal conduct, including the downloading and sharing  
4 of Plaintiff's motion picture by others.

5 165. Defendants' failure was with notice as illegal conduct is in violation of the  
6 law and in violation of the license for access granted to each Defendant by their ISP  
7 which issued them an IP address to access the internet.

8 166. Defendants' conduct has been willful, intentional, in disregard of and indifferent  
9 to Plaintiff's rights.

10 167. As a direct and proximate result of Defendants' conduct, Plaintiff's exclusive  
11 rights under 17 U.S.C. § 106 have been violated.

12 168. Plaintiff is entitled to damages pursuant to 17 U.S.C. § 504 and attorney fees  
13 and costs pursuant to 17 U.S.C. § 505.

14 169. The conduct of each Defendant is causing and, unless enjoined and restrained  
15 by this Court, will continue to cause Plaintiff great and irreparable injury.

16 170. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief  
17 prohibiting each Defendant from further indirect infringement of Plaintiff's copyrights  
18 and ordering that each Defendant destroy all copies of Plaintiff's motion picture made  
19 in violation of Plaintiff's rights and take such further steps as are necessary to prevent  
20 further indirect infringement.

21 **DAMAGES**

22 171. Plaintiff has been damaged and claims damages of \$30,000.00 from each  
23 Defendant on its First and Second Claims for Relief pursuant to 17 U.S.C. § 504(c)(1)  
24 and, in the alternative, damages on its Third Claim for Relief pursuant to 17 U.S.C. §  
25 504(c)(1) of not more than the statutory minimum of \$750.00.

26 ////

1 **Notice of Further Claims**

2 172. While the relief prayed for by Plaintiff is specific and less than may be allowed  
3 by law, Plaintiff hereby provides notice of the potential damages available under  
4 various laws, such as 17 U.S.C. § 504, which include:

- 5 a. Defendants’ profits;
- 6 b. Plaintiff’s full damages;
- 7 c. Statutory damages of up to \$150,000.00 against each Defendant should there  
8 be a finding of willful conduct;
- 9 d. All costs and attorneys’ fees of this action; and
- 10 e. Broad equitable relief, including the destruction of all infringing articles and  
11 equipment used in the infringement.

12 173. Plaintiff gives notice it may move for permission to amend its complaint so as  
13 to elect the full scope of relief available against each or any Defendant as discovery  
14 proceeds.

15 174. Similarly, as discovery proceeds Plaintiff may move to amend its complaint to  
16 name additional direct infringers of its copyrighted work.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment against Defendants and each of  
19 them as follows:

20 A. On all Claims for Relief:

- 21 1. For entry of permanent injunctions enjoining each Defendant from directly,  
22 contributorily or indirectly infringing Plaintiff's rights in Plaintiff’s motion picture,  
23 including without limitation by using the internet to reproduce or copy Plaintiff's  
24 motion picture, to distribute Plaintiff's motion picture, or to make Plaintiff's motion  
25 picture available for distribution to the public, except pursuant to a lawful license or

26 ////



1 with the express authority of Plaintiff, and further directing Defendants to destroy all  
2 unauthorized copies of Plaintiff's motion picture and for such other;

3 2. Plaintiff's reasonable costs and attorney fees pursuant to 17 U.S.C. § 505;  
4 and

5 3. Any further relief as the Court deems proper;

6 B. On its First and Second Claims for Relief Only, for \$30,000.00 damages  
7 pursuant to 17 U.S.C. § 504;

8 C. On its Third Claim for Relief Only, for statutory damages of not more than  
9 \$750.00 pursuant to 17 U.S.C. § 504 should Defendant be found liable solely for non-  
10 willful infringement under Plaintiff's alternate theory.

11 **DEMAND FOR JURY TRIAL**

12 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands  
13 a trial by jury.

14 DATED: August 30, 2013

15 Respectfully submitted,

16 The VanderMay Law Firm

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