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The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

\_\_\_\_\_  
ELF-MAN, LLC, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Eric Cariveau, an individual; )  
Sharon White, an individual; )  
Leon Kimmerling, an individual; )  
Josh Morrison, an individual; )  
Jason Couture, an individual; )  
Aaron Coy, an individual; )  
Michael Soper, an individual; )  
Jonathan Kirby, an individual; )  
David Ullom, an individual; )  
Essen Lee, an individual; )  
Michele L. Neuman, an individual; )  
Kyle White, an individual; )  
Shannon Dixson, an individual; )  
Shelly Scanlan, an individual; )  
Becky Peloquin, an individual; )  
Steven Peloquin, an individual; )  
Jerry Graff, an individual; )  
Vandy Graff, an individual; DOES )  
1-11; DOES 13-16; DOES 18-23; )  
DOES 25-48; DOES 50-52; DOES )  
54-71; DOES 73-86; DOES 89-91; )  
DOE 94; DOES 97-125; DOES )  
127-134; DOES 136-145; DOES )

Case No.: 2:13-CV-00507-RSL  
FIRST AMENDED COMPLAINT  
COPYRIGHT INFRINGEMENT  
DEMAND FOR JURY TRIAL

FIRST AMENDED COMPLAINT  
(2:13-CV-507-RSL) – Page 1

The VanderMay Law Firm PC  
2021 S. Jones Blvd.  
Las Vegas, Nevada 89146  
(702) 358-9300

1 147-148; and DOES 150-152, )  
2 Defendants. )  
3 \_\_\_\_\_ )

4 Plaintiff Elf-Man, LLC, a limited liability company (“Elf-Man” / “Plaintiff”), pursuant to  
5 F.R.Civ.P. 15(a)(1)(A) hereby submits its first amended complaint and alleges as follows:

6 **INTRODUCTION**

7 1. Plaintiff Elf-Man produced a novel family oriented comedy motion picture regarding an  
8 Elf left by Santa to help a family come together and learn about Christmas.

9 2. In the production of a motion picture there are countless expenses and labors, many of  
10 which are not evident in the final project. Such expenses and labors include writers, staff persons,  
11 construction workers and others who are often union based employees working for a median  
12 salary.

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

16 4. The end product that many consumers see is a few hours in a theater, or possibly a DVD  
17 product that once production is complete has a nominal cost on a per-viewing experience.  
18 However, this is misleading to the true costs of the motion picture as the costs to view a  
19 completed motion picture or produce a single DVD are nominal compared to what is often years  
20 of work by thousands of people leading up to the end product.

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

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

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

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

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

15 10. In this case each of the Defendants has participated, either directly or indirectly or by  
16 facilitating the conduct of others, in illegally copying and distributing Plaintiff's motion picture  
17 via BitTorrent.

18 **JURISDICTION AND VENUE**

19 11. This is a suit for copyright infringement and contributory copyright infringement under the  
20 United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. ("The Copyright  
21 Act").

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

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

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**PARTIES**

**THE PLAINTIFF**

14. Plaintiff Elf-Man, LLC is a limited liability company with principal offices in Frederick, Maryland, that produced the motion picture at issue in this matter.

**The Rights of the Plaintiff**

15. The motion picture in this case, titled *Elf-Man*, has been registered with the United States Copyright Office by the author, Elf-Man, LLC, Registration No. PA 1-823-286.

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

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

18. Under the Copyright Act, Elf-Man, LLC is the proprietor of all right, title, and interest in the motion picture, including the right to sue for past infringement.

19. Under the Copyright Act, Elf-Man, LLC also controls the exclusive rights to reproduce the motion picture and to distribute the motion picture to the public.

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

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

**THE DEFENDANTS**

**In General**

22. Defendants have each played at least one of the following roles in connection with the use of BitTorrent to unlawfully download Plaintiff's motion picture: 1) some or all Defendants are a

1 group of BitTorrent users or peers whose computers are collectively interconnected and used for  
2 illegally copying and distributing Plaintiff's motion picture; 2) some or all Defendants contributed  
3 to the infringement of Plaintiff's copyrights by others; and 3) some or all Defendants permitted,  
4 facilitated and/or promoted the use of the internet access identified by their IP address for the  
5 infringing of Plaintiff's exclusive rights under The Copyright Act by others.

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

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

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

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

17 **Identification of the Named Defendants**

18 27. Internet Service Provider ("ISP") Comcast Cable Holdings, Inc. ("Comcast"), upon  
19 information and belief, assigned Internet Protocol ("IP") address 98.247.218.136 to Defendant  
20 Eric Cariveau for a period of time, including but not limited to on 12/5/2012 at 5:10:28 AM UTC.

21 28. At all times material, Defendant Eric Cariveau resided in Auburn, Washington.

22 29. Defendant Eric Cariveau's IP address of 98.247.218.136 was observed infringing  
23 Plaintiff's motion picture on 12/5/2012 at 5:10:28 AM UTC.

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1 30. ISP Comcast, upon information and belief, assigned IP address 98.246.85.142 to  
2 Defendant Sharon White for a period of time, including but not limited to on 12/3/12 at 5:18:23  
3 AM UTC.

4 31. At all times material, Defendant Sharon White resided in Washougal, Washington.

5 32. Defendant Sharon White's IP address of 98.246.85.142 was observed infringing Plaintiff's  
6 motion picture on 12/3/12 at 5:18:23 AM UTC.

7 33. ISP Comcast, upon information and belief, assigned IP address 71.227.240.130 to  
8 Defendant Leon Kimmerling for a period of time, including but not limited to on 12/02/12 at  
9 2:15:47 PM UTC.

10 34. At all times material, Defendant Leon Kimmerling resided in Lakewood, Washington.

11 35. Defendant Leon Kimmerling's IP address of 71.227.240.130 was observed infringing  
12 Plaintiff's motion picture on 12/02/12 at 2:15:47 PM UTC.

13 36. ISP Comcast, upon information and belief, assigned IP address 71.227.168.185 to  
14 Defendant Josh Morrison for a period of time, including but not limited to on 12/17/12 at 1:45:57  
15 AM UTC.

16 37. At all times material, Defendant Josh Morrison resided in Seattle, Washington.

17 38. Defendant Josh Morrison's IP address of 71.227.168.185 was observed infringing  
18 Plaintiff's motion picture on 12/17/12 at 1:45:57 AM UTC.

19 39. ISP CenturyLink, upon information and belief, assigned IP address 71.34.102.150 to  
20 Defendant Jason Couture for a period of time, including but not limited to on 12/14/12 at  
21 11:55:36 PM UTC.

22 40. At all times material, Defendant Jason Couture resided in Vancouver, Washington.

23 41. Defendant Jason Couture's IP address of 71.34.102.150 was observed infringing  
24 Plaintiff's motion picture on 12/14/12 at 11:55:36 PM UTC.

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1 42. ISP Comcast, upon information and belief, assigned IP address 67.171.248.243 to  
2 Defendant Aaron Coy for a period of time, including but not limited to on 12/21/12 at 3:30:42  
3 AM UTC.

4 43. At all times material, Defendant Aaron Coy resided in Vancouver, Washington.

5 44. Defendant Aaron Coy's IP address of 67.171.248.243 was observed infringing Plaintiff's  
6 motion picture on 12/21/12 at 3:30:42 AM UTC.

7 45. ISP Click! Network, upon information and belief, assigned IP address 131.191.60.99 to  
8 Defendant Michael Soper for a period of time, including but not limited to on 12/21/2012 at  
9 03:27:11 PM UTC.

10 46. At all times material, Defendant Michael Soper resided in Tacoma, Washington.

11 47. Defendant Michael Soper's IP address of 131.191.60.99 was observed infringing  
12 Plaintiff's motion picture on 12/21/2012 at 03:27:11 PM UTC.

13 48. ISP Comcast, upon information and belief, assigned IP address 50.135.195.227 to  
14 Defendant Jonathan Kirby for a period of time, including but not limited to on 2/1/2013 at  
15 10:22:38 PM UTC.

16 49. At all times material, Defendant Jonathan Kirby resided in Maple Valley, Washington.

17 50. Defendant Jonathan Kirby's IP address of 50.135.195.227 was observed infringing  
18 Plaintiff's motion picture on 2/1/2013 at 10:22:38 PM UTC.

19 51. ISP Comcast, upon information and belief, assigned IP address 67.189.9.135 to Defendant  
20 David Ullom for a period of time, including but not limited to on 12/02/2012 at 2:52:41 AM  
21 UTC.

22 52. At all times material, Defendant David Ullom resided in Ridgefield, Washington.

23 53. Defendant David Ullom's IP address of 67.189.9.135 was observed infringing Plaintiff's  
24 motion picture on 12/02/2012 at 2:52:41 AM UTC.

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1 54. ISP Comcast, upon information and belief, assigned IP address 174.61.149.83 to  
2 Defendant Essen Lee for a period of time, including but not limited to on 1/20/2013 at 8:17:27  
3 PM UTC.

4 55. At all times material, Defendant Essen Lee resided in Issaquah, Washington.

5 56. Defendant Essen Lee's IP address of 174.61.149.83 was observed infringing Plaintiff's  
6 motion picture on 1/20/2013 at 8:17:27 PM UTC.

7 57. ISP Comcast, upon information and belief, assigned IP address 98.237.208.110 to  
8 Defendant Michele L. Neuman for a period of time, including but not limited to on 1/08/2013 at  
9 6:13:18 AM UTC.

10 58. At all times material, Defendant Michele L. Neuman resided in Burien, Washington.

11 59. Defendant Michele L. Neuman's IP address of 98.237.208.110 was observed infringing  
12 Plaintiff's motion picture on 1/08/2013 at 6:13:18 AM UTC.

13 60. ISP Comcast, upon information and belief, assigned IP address 50.135.165.207 to  
14 Defendant Kyle White for a period of time, including but not limited to on 12/13/2012 at 4:43:09  
15 PM UTC.

16 61. At all times material, Defendant Kyle White resided in Centralia, Washington.

17 62. Defendant Kyle White's IP address of 50.135.165.207 was observed infringing Plaintiff's  
18 motion picture on 12/13/2012 at 4:43:09 PM UTC.

19 63. ISP Comcast, upon information and belief, assigned IP address 24.16.106.37 to Defendant  
20 Shannon Dixson for a period of time, including but not limited to on 12/11/2012 at 6:32:00 PM  
21 UTC.

22 64. At all times material, Defendant Shannon Dixson resided in Kent, Washington.

23 65. Defendant Shannon Dixson's IP address of 24.16.106.37 was observed infringing  
24 Plaintiff's motion picture on 12/11/2012 at 6:32:00 PM UTC.

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1 66. ISP Comcast, upon information and belief, assigned IP address 67.168.23.220 to  
2 Defendant Shelly Scanlan for a period of time, including but not limited to on 12/11/2012 at  
3 4:08:41 PM UTC.

4 67. At all times material, Defendant Shelly Scanlan resided in Monroe, Washington.

5 68. Defendant Shelly Scanlan's IP address of 67.168.23.220 was observed infringing  
6 Plaintiff's motion picture on 12/11/2012 at 4:08:41 PM UTC.

7 69. ISP Comcast, upon information and belief, assigned IP address 71.231.131.32 to  
8 Defendants Becky and Steven Peloquin for a period of time, including but not limited to on  
9 12/12/2012 at 4:02:04 AM UTC.

10 70. At all times material, Defendants Becky and Steven Peloquin resided in Monroe,  
11 Washington.

12 71. Defendants Becky and Steven Peloquin's IP address of 71.231.131.32 was observed  
13 infringing Plaintiff's motion picture on 12/12/2012 at 4:02:04 AM UTC.

14 72. ISP Comcast, upon information and belief, assigned IP address 67.183.126.251 to  
15 Defendants Jerry and Vandy Graff for a period of time, including but not limited to on 12/11/12 at  
16 8:02:34 AM UTC.

17 73. At all times material, Defendants Jerry and Vandy Graff resided in Rochester,  
18 Washington.

19 74. Defendants Jerry and Vandy Graff's IP address of 67.183.126.251 was observed infringing  
20 Plaintiff's motion picture on 12/11/12 at 8:02:34 AM UTC.

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

22 75. Plaintiff has not named in this amended complaint the persons identified as Does 1-11,  
23 Does 13-16, Does 18-23, Does 25-48, Does 50-52, Does 54-71, Does 73-86, Does 89-91, Doe 94,  
24 Does 97-125, Does 127-134, Does 136-145, Does 147-148, and Does 150-152. With respect to  
25 these Defendants, prior to the Court's deadline for naming Defendants and effecting service

1 Plaintiff intends to file notices of dismissal with respect to some and to file a motion concerning  
2 the remaining unnamed Defendants.

3 **JOINDER**

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

7 77. All of the Defendants have collectively acted through BitTorrent to illegally download and  
8 distribute Plaintiff's motion picture, or have contributed to and/or facilitated such conduct by  
9 others, each damaging Plaintiff.

10 78. As such, Plaintiff's rights to relief, as stated below, ultimately arise out of the same series  
11 of transactions and occurrences.

12 79. This action also raises substantial questions of law and fact common to all Defendants.

13 80. Permissive joinder in the instant case is to permit a more efficient management of  
14 Plaintiff's claims against the several Defendants and to reduce the costs to Plaintiff and  
15 Defendants and to reduce the costs and burdens on the Court.

16 81. Notice is provided, that on being specifically identified and on request from an identified  
17 Defendant, Plaintiff agrees to sever any Defendant that claims prejudice in being joined in this  
18 matter and to proceed against each such Defendant individually.

19 **FACTS COMMON TO ALL CLAIMS**

20 **IP Addresses**

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

25 ////

1 83. To identify the source and destination of any piece of information, an ISP assigns an IP  
2 address to each user which allows data to flow to and from each user of the internet.

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

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

9 86. Internet piracy and the use of the internet to conduct illegal activity are commonly known.  
10 As such both through the license granted to a user from their ISP to obtain an IP address and  
11 through common knowledge, Defendants were on notice of the need to limit the use of their IP  
12 address to legal and authorized activity.

13 **Peer-to-Peer Internet Piracy Via BitTorrent**

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

23 88. Defendants, either directly or indirectly, utilized an interactive peer-to-peer file transfer  
24 technology protocol to copy Plaintiff’s motion picture.

25 ////

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

5 90. The particular peer-to-peer protocol at issue in this suit is the BitTorrent protocol.

6 91. Defendants and each of them directly or indirectly used BitTorrent in a collective and  
7 often interdependent manner via the internet in the unlawful reproduction and distribution of  
8 Plaintiff's copyrighted motion picture.

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

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

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

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

25 ////

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

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

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

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

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

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

25 ////

1 102. A Distributed Hash Table is a sort of world-wide telephone book, which uses each file's  
2 "hash" to locate sources for the requested media or content. Thus, users are able to access a  
3 partial list of other users with the media or content they want rather than being filtered through a  
4 central computer called a tracker. By allowing users to rely on individual computers for  
5 information, this not only reduces the load on the central tracker, but also means that every client  
6 that is sharing this media or content is also helping to hold this worldwide network together.

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

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

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

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

25 ////

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

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

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

15 **Conduct of Defendants**

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

19 111. This conduct was illegal and in violation of Defendants' license and terms of access to the  
20 internet through their ISP.

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

23 113. This case involves a single swarm in which numerous Defendants, either directly or  
24 indirectly, engaged in mass copyright infringement of Plaintiff's motion picture.

25 ////

1 114. Each Defendant’s IP address was used to illegally upload and share Plaintiff’s motion  
2 picture within the swarm.

3 115. Upon information and belief, each Defendant whose conduct constitutes direct  
4 infringement was a willing and knowing participant in the swarm at issue and engaged in such  
5 participation for the purpose of infringing Plaintiff’s copyright.

6 116. By participating in a swarm, each Defendant whose conduct constitutes direct  
7 infringement participated in the exact same or nearly identical transaction, occurrence, or series of  
8 transactions or occurrences as the other Defendants.

9 117. Upon information and belief, many Defendants also acted in concert with others, including  
10 other Defendants by participating in a Peer Exchange.

11 118. Upon information and belief, many Defendants also acted in concert with other  
12 Defendants and swarm members and by linking together globally through use of a Distributed  
13 Hash Table.

14 119. Each Defendant’s conduct is effectively a collective enterprise constituting substantially  
15 similar or identical facts.

16 **Exemplar Defendant**

17 120. For example, IP address 98.247.218.136, which ISP Comcast has identified as having been  
18 assigned to Defendant Eric Cariveau at the time of the subject infringement, was used to initiate  
19 the infringing conduct alleged herein by first intentionally logging into one of the many BitTorrent  
20 client repositories known for their large index of copyrighted movies, television shows, software  
21 and adult videos. Said IP address was then used to intentionally obtain a torrent file identified by  
22 a “hash” or SHA1: 33E6C4D563C276F29A7A48502C6640191DE3DD72, in this specific  
23 instance which is for Plaintiff’s motion picture, from the index and intentionally loaded that  
24 torrent file into a computer program designed to read such files.

25 ////



1 121. With the torrent file intentionally loaded from said IP address, the user's BitTorrent  
2 program used the BitTorrent protocol to initiate connections with hundreds of other users  
3 possessing and uploading or sharing copies of the digital media described in SHA1:  
4 33E6C4D563C276F29A7A48502C6640191DE3DD72, namely, Plaintiff's motion picture,  
5 including with, upon information and belief, other Defendants. As the motion picture was copied  
6 via said IP address piece by piece, these downloaded pieces of Plaintiff's motion picture were then  
7 immediately available to all other Defendants for those Defendants' uses from this direct  
8 infringer's computer.

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

16 **CLAIMS FOR RELIEF STATED IN THE ALTERNATIVE**

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

19 **FIRST CLAIM FOR RELIEF**

20 **COPYRIGHT INFRINGEMENT**

21 123. Plaintiff repeats and realleges each of the allegations above.

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

25 ////

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

5 126. Defendants' actions constitute infringement of Plaintiff's exclusive rights under The  
6 Copyright Act.

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

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

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

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

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

19 **SECOND CLAIM FOR RELIEF**

20 **CONTRIBUTORY INFRINGEMENT**

21 132. Plaintiff repeats and realleges each of the allegations 1 - 122 above.

22 133. Defendants have, without the permission or consent of Plaintiff, contributed to the  
23 infringement of Plaintiff's copyrights by other Defendants and other swarm members.

24 ////

25 ////

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

4 135. Defendants' conduct has been willful, intentional, in disregard of and indifferent to  
5 Plaintiff's rights.

6 136. As a direct and proximate result of Defendants' conduct, Plaintiff's exclusive rights under  
7 17 U.S.C. § 106 have been violated.

8 137. Plaintiff is entitled to damages pursuant to 17 U.S.C. § 504 and attorney fees and costs  
9 pursuant to 17 U.S.C. § 505.

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

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

16 **THIRD CLAIM FOR RELIEF**

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

18 **Indirect Infringement of Copyright**

19 140. Plaintiff repeats and realleges each of the allegations 1 - 122 above.

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

23 142. Defendants, and each of them, are liable as indirect or secondary infringers.

24 143. Defendants, and each of them, failed to secure, police and protect the use of their internet  
25 service against illegal conduct, including the downloading and sharing of Plaintiff's motion

1 picture by others.

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

5 145. Defendants' conduct has been willful, intentional, in disregard of and indifferent to  
6 Plaintiff's rights.

7 146. As a direct and proximate result of Defendants' conduct, Plaintiff's exclusive rights under  
8 17 U.S.C. § 106 have been violated.

9 147. Plaintiff is entitled to damages pursuant to 17 U.S.C. § 504 and attorney fees and costs  
10 pursuant to 17 U.S.C. § 505.

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

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

17 **DAMAGES**

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

22 **Notice of Further Claims**

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

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

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

10 153. Similarly, as discovery proceeds Plaintiff may move to amend its complaint to name  
 11 additional direct infringers of its copyrighted work.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as  
 14 follows:

15 A. On all Claims for Relief:

- 16 1. For entry of permanent injunctions enjoining each Defendant from directly,
- 17 contributorily or indirectly infringing Plaintiff's rights in Plaintiff's motion picture, including
- 18 without limitation by using the internet to reproduce or copy Plaintiff's motion picture, to
- 19 distribute Plaintiff's motion picture, or to make Plaintiff's motion picture available for distribution
- 20 to the public, except pursuant to a lawful license or with the express authority of Plaintiff, and
- 21 further directing Defendants to destroy all unauthorized copies of Plaintiff's motion picture and
- 22 for such other;
- 23 2. Plaintiff's reasonable costs and attorney fees pursuant to 17 U.S.C. § 505; and
- 24 3. Any further relief as the Court deems proper;

25 ////

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

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

6 **DEMAND FOR JURY TRIAL**

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

9 DATED: October 3, 2013

Respectfully submitted,

The VanderMay Law Firm

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