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9  
 10 **UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

11  
 12 MALIBU MEDIA, LLC.,  
 a California corporation,

Case No. '12CV0358 BTM WVG

13  
 14 Plaintiff,

15 vs.

16 JOHN DOES 1-13,

**COMPLAINT**

17  
 18 Defendants.

19  
 20 Plaintiff, Malibu Media, LLC, sues John Does 1-13, and alleges:

21 **Introduction**

22 1. This matter arises under the United States Copyright Act of 1976, as  
 23 amended, 17 U.S.C. §§ 101 et seq. (the "Copyright Act").

24  
 25 2. Through this suit, Plaintiff alleges each Defendant is liable for:

- 26 • Direct copyright infringement in violation of 17 U.S.C. §§ 106 and 501;
- 27 • Contributory copyright infringement;

**Jurisdiction and Venue**

1  
2 3. This Court has subject matter jurisdiction over this action pursuant to 28  
3 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights,  
4 trademarks and unfair competition).  
5

6 4. As set forth on Exhibit A, each of the Defendants' acts of copyright  
7 infringement occurred using an Internet Protocol address ("IP address") traced to a  
8 physical address located within this District, and therefore pursuant to Cal. Civ. Proc.  
9 Code § 410.10, this Court has personal jurisdiction over each Defendant because  
10 each Defendant committed the tortious conduct alleged in this Complaint in the State  
11 of California, and (a) each Defendant resides in the State of California, and/or (b)  
12 each Defendant has engaged in continuous and systematic business activity in the  
13 State of California.  
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16 5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c),  
17 because: (i) a substantial part of the events or omissions giving rise to the claims  
18 occurred in this District; and, (ii) a Defendant resides (and therefore can be found) in  
19 this District and all of the Defendants reside in this State; additionally, venue is  
20 proper in this District pursuant 28 U.S.C. § 1400(a) (venue for copyright cases)  
21 because each Defendant or each Defendant's agent resides or may be found in this  
22 District.  
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25

26 **Parties**

27 6. Plaintiff is a corporation organized and existing under the laws of the  
28

1 State of California and has its principal place of business located at 31356 Broad  
2 Beach Road, Malibu, CA 90265.

3 7. Each Defendant is known to Plaintiff only by an IP address.

4  
5 8. An IP address is a number that is assigned by an Internet Service  
6 Provider (an "ISP") to devices, such as computers, that are connected to the Internet.

7  
8 9. The ISP to which each Defendant subscribes can correlate the  
9 Defendant's IP address to the Defendant's true identity.

10 **Joinder**

11 10. Pursuant to Fed. R. Civ. P. 20(a)(2), each of the Defendants was  
12 properly joined because, as set forth in more detail below, Plaintiff asserts that: (a)  
13 each of the Defendants is jointly and severally liable for the infringing activities of  
14 each of the other Defendants, and (b) the infringement complained of herein by each  
15 of the Defendants was part of the same series of transaction, involving the exact  
16 same piece of Plaintiff's copyrighted Work, and was accomplished by the  
17 Defendants acting in concert with each other, and (c) there are common questions of  
18 law and fact; indeed, the claims against each of the Defendants are identical and each  
19 of the Defendants used the BitTorrent protocol to infringe Plaintiff's copyrighted  
20 Work.  
21  
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25 **Factual Background**

26 I. Plaintiff Owns the Copyright to a Motion Picture

27 11. Plaintiff is the owner of United States Copyright Registration Number  
28

1 PA0001762412 (the "Registration") for the motion picture entitled "Veronica Wet  
2 Orgasm" (the "Work").

3 12. The Work was registered on or about November 23, 2011.

4  
5 13. A copy of an internet screen shot from the U.S. Copyright Office's  
6 website evidencing, among other things, Plaintiff's ownership of the Registration and  
7 the registration date is attached as Exhibit B.

8  
9 II. Defendants Used BitTorrent To Infringe Plaintiff's Copyright

10 14. BitTorrent is one of the most common peer-to-peer file sharing  
11 protocols (in other words, set of computer rules) used for distributing large amounts  
12 of data; indeed, it has been estimated that users using the BitTorrent protocol on the  
13 internet account for over a quarter of all internet traffic. The creators and users of  
14 BitTorrent developed their own lexicon for use when talking about BitTorrent; a  
15 copy of the BitTorrent vocabulary list posted on [www.Wikipedia.org](http://www.Wikipedia.org) is attached as  
16 Exhibit C.  
17  
18

19 15. The BitTorrent protocol's popularity stems from its ability to distribute  
20 a large file without creating a heavy load on the source computer and network. In  
21 short, to reduce the load on the source computer, rather than downloading a file from  
22 a single source computer (one computer directly connected to another), the  
23 BitTorrent protocol allows users to join a "swarm" of host computers to download  
24 and upload from each other simultaneously (one computer connected to numerous  
25 computers).  
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1           A.     Each Defendant Installed a BitTorrent Client onto his or her Computer

2           16.    Each Defendant installed a BitTorrent Client onto his or her computer.

3           17.    A BitTorrent “Client” is a software program that implements the  
4 BitTorrent protocol. There are numerous such software programs including  $\mu$ Torrent  
5 and Vuze, both of which can be directly downloaded from the internet. See  
6 [www.utorrent.com](http://www.utorrent.com) and <http://new.vuze-downloads.com/>.  
7

8           18.    Once installed on a computer, the BitTorrent “Client” serves as the  
9 user’s interface during the process of uploading and downloading data using the  
10 BitTorrent protocol.  
11

12           B.     The Initial Seed, Torrent, Hash and Tracker

13           19.    A BitTorrent user that wants to upload a new file, known as an “initial  
14 seeder,” starts by creating a “torrent” descriptor file using the Client he or she  
15 installed onto his or her computer.  
16

17           20.    The Client takes the target computer file, the “initial seed,” here the  
18 copyrighted Work, and divides it into identically sized groups of bits known as  
19 “pieces.”  
20

21           21.    The Client then gives each one of the computer file’s pieces, in this  
22 case, pieces of the copyrighted Work, a random and unique alphanumeric identifier  
23 known as a “hash” and records these hash identifiers in the torrent file.  
24

25           22.    When another peer later receives a particular piece, the hash identifier  
26 for that piece is compared to the hash identifier recorded in the torrent file for that  
27  
28

1 piece to test that the piece is error-free. In this way, the hash identifier works like an  
2 electronic fingerprint to identify the source and origin of the piece and that the piece  
3 is authentic and uncorrupted.

4  
5 23. Torrent files also have an "announce" section, which specifies the URL  
6 (Uniform Resource Locator) of a "tracker," and an "info" section, containing  
7 (suggested) names for the files, their lengths, the piece length used, and the hash  
8 identifier for each piece, all of which are used by Clients on peer computers to verify  
9 the integrity of the data they receive.

10  
11 24. The "tracker" is a computer or set of computers that a torrent file  
12 specifies and to which the torrent file provides peers with the URL address(es).

13  
14 25. The tracker computer or computers direct a peer user's computer to  
15 other peer user's computers that have particular pieces of the file, here the  
16 copyrighted Work, on them and facilitates the exchange of data among the  
17 computers.

18  
19 26. Depending on the BitTorrent Client, a tracker can either be a dedicated  
20 computer (centralized tracking) or each peer can act as a tracker (decentralized  
21 tracking).

22  
23 C. Torrent Sites

24  
25 27. "Torrent sites" are websites that index torrent files that are currently  
26 being made available for copying and distribution by people using the BitTorrent  
27 protocol. There are numerous torrent websites, including www.TorrentZap.com,

1 www.Btscene.com, and www.ExtraTorrent.com.

2 28. Upon information and belief, each Defendant went to a torrent site to  
3 upload and download Plaintiff's copyrighted Work.  
4

5 *D. Uploading and Downloading a Work Through a BitTorrent Swarm*

6 29. Once the initial seeder has created a torrent and uploaded it onto one or  
7 more torrent sites then other peers begin to download and upload the computer file  
8 to which the torrent is linked (here the copyrighted Work) using the BitTorrent  
9 protocol and BitTorrent Client that the peers installed on their computers.  
10

11 30. The BitTorrent protocol causes the initial seed's computer to send  
12 different pieces of the computer file, here the copyrighted Work, to the peers seeking  
13 to download the computer file.  
14

15 31. Once a peer receives a piece of the computer file, here a piece of the  
16 Copyrighted Work, it starts transmitting that piece to the other peers.  
17

18 32. In this way, all of the peers and seeders are working together in what is  
19 called a "swarm."  
20

21 33. Here, each Defendant peer member participated in the same swarm and  
22 directly interacted and communicated with other members of that swarm through  
23 digital handshakes, the passing along of computer instructions, uploading and  
24 downloading, and by other types of transmissions. A print out of a computer screen  
25 illustrating the type of interactions between and among peers and seeders in a typical  
26 swarm is attached as Exhibit D.  
27  
28

1           34. In this way, and by way of example only, one initial seeder can create a  
2 torrent that breaks a movie up into hundreds or thousands of pieces saved in the form  
3 of a computer file, like the Work here, upload the torrent onto a torrent site, and  
4 deliver a different piece of the copyrighted Work to each of the peers. The recipient  
5 peers then automatically begin delivering the piece they just received to the other  
6 peers in the same swarm.  
7

8  
9           35. Once a peer, here a Defendant, has downloaded the full file, the  
10 BitTorrent Client reassembles the pieces and the peer is able to view the movie.  
11 Also, once a peer has downloaded the full file, that peer becomes known as “an  
12 additional seed” because it continues to distribute the torrent file, here the  
13 copyrighted Work.  
14

15           *E. Plaintiff's Computer Investigators Identified Each of the Defendants' IP*  
16           *Addresses as Participants in a Swarm That Was Distributing Plaintiff's*  
17           *Copyrighted Work*

18           36. Plaintiff retained IPP, Limited (“IPP”) to identify the IP addresses that  
19 are being used by those people that are using the BitTorrent protocol and the internet  
20 to reproduce, distribute, display or perform Plaintiffs' copyrighted works.  
21

22           37. IPP used forensic software named INTERNATIONAL IPTRACKER  
23 v1.2.1 and related technology enabling the scanning of peer-to-peer networks for the  
24 presence of infringing transactions.  
25

26           38. IPP extracted the resulting data emanating from the investigation,  
27 reviewed the evidence logs, and isolated the transactions and the IP addresses  
28



1 associated therewith for the file identified by the SHA-1 hash value of  
2 59448198C43090645093E37289900D8EBB4D4D04, (the “Unique Hash Number”).

3 39. The IP addresses, Unique Hash Number and hit dates contained on  
4 Exhibit A accurately reflect what is contained in the evidence logs, and show:  
5

6 (A) Each Defendant had copied a piece of Plaintiff’s copyrighted Work  
7 identified by the Unique Hash Number; and  
8

9 (B) Therefore, each Defendant was part of the same series of transactions.

10 40. Through each of the transactions, each of the Defendant’s computers  
11 used their identified IP addresses to connect to the investigative server from a  
12 computer in this District in order to transmit a full copy, or a portion thereof, of a  
13 digital media file identified by the Unique Hash Number.  
14

15 41. IPP’s agent analyzed each BitTorrent “piece” distributed by each IP  
16 address listed on Exhibit A and verified that re-assembly of the pieces using a  
17 BitTorrent Client results in a fully playable digital motion picture of the Work.  
18

19 42. IPP’s agent viewed the Work side-by-side with the digital media file  
20 that correlates to the Unique Hash Number and determined that they were identical,  
21 strikingly similar or substantially similar.  
22

23 **Miscellaneous**

24 43. All conditions precedent to bringing this action have occurred or been  
25 waived.  
26

27 44. Plaintiff retained counsel to represent it in this matter and is obligated to  
28

1 pay said counsel a reasonable fee for its services.

2 **COUNT I**  
3 **Direct Infringement Against Does 1-13**

4 45. The allegations contained in paragraphs 1-45 are hereby re-alleged as if  
5 fully set forth herein.

6 46. Plaintiff is the owner of the Registration for the Work which contains an  
7 original work of authorship.

8 47. By using the BitTorrent protocol and a BitTorrent Client and the  
9 processes described above, each Defendant copied the constituent elements of the  
10 registered Work that are original.

11 48. Plaintiff did not authorize, permit or consent to Defendants' copying of  
12 its Work.

13 49. As a result of the foregoing, each Defendant violated Plaintiff's  
14 exclusive right to:

15 (A) Reproduce the Work in copies, in violation of 17 U.S.C. §§ 106(1) and  
16 501;

17 (B) Redistribute copies of the Work to the public by sale or other transfer of  
18 ownership, or by rental, lease or lending, in violation of 17 U.S.C. §§ 106(3) and  
19 501;

20 (C) Perform the copyrighted Work, in violation of 17 U.S.C. §§ 106(4) and  
21 501, by showing the Work's images in any sequence and/or by making the sounds  
22

1 accompanying the Work audible and transmitting said performance of the Work, by  
2 means of a device or process, to members of the public capable of receiving the  
3 display (as set forth in 17 U.S.C. § 101's definitions of "perform" and "publically"  
4 perform); and  
5

6 (D) Display the copyrighted Work, in violation of 17 U.S.C. §§ 106(5) and  
7 501, by showing individual images of the Work nonsequentially and transmitting  
8 said display of the Work by means of a device or process to members of the public  
9 capable of receiving the display (as set forth in 17 U.S.C. § 101's definition of  
10 "publically" display).  
11

12  
13 50. Each of the Defendants' infringements was committed "willfully"  
14 within the meaning of 17 U.S.C. § 504(c)(2).

15  
16 51. Plaintiff has suffered actual damages that were proximately caused by  
17 each of the Defendants including lost sales, price erosion and a diminution of the  
18 value of its copyright.

19 WHEREFORE, Plaintiff respectfully requests that the Court:  
20

21 (A) Permanently enjoin each Defendant and all other persons who are in  
22 active concert or participation with each Defendant from continuing to infringe  
23 Plaintiff's copyrighted Work;  
24

25 (B) Order that each Defendant delete and permanently remove the torrent  
26 file relating to Plaintiff's copyrighted Work from each of the computers under each  
27 such Defendant's possession, custody or control;  
28

1 (C) Order that each Defendant delete and permanently remove the copy of  
2 the Work each Defendant has on the computers under Defendant's possession,  
3 custody or control;

4  
5 (D) Award Plaintiff either its actual damages and any additional profits of  
6 the Defendant pursuant to 17 U.S.C. § 504-(a)-(b); or statutory damages in the  
7 amount of \$150,000 per Defendant pursuant to 17 U.S.C. § 504-(a) and (c),  
8 whichever is greater;

9  
10 (E) Award Plaintiff its reasonable attorneys' fees and costs pursuant to 17  
11 U.S.C. § 505; and

12  
13 (F) Grant Plaintiff any other and further relief this Court deems just and  
14 proper.

15  
16 **COUNT II**  
**Contributory Infringement Against Does 1-13**

17  
18 52. The allegations contained in paragraphs 1-45 are hereby re-alleged as if  
19 fully set forth herein.

20  
21 53. Plaintiff is the owner of the Registration for the Work which contains an  
22 original work of authorship.

23  
24 54. By using the BitTorrent protocol and a BitTorrent Client and the  
25 processes described above, each Defendant copied the constituent elements of the  
26 registered Work that are original.

27  
28 55. By participating in the BitTorrent swarm with the other Defendants,

1 each Defendant induced, caused or materially contributed to the infringing conduct  
2 of each other Defendant.

3 56. Plaintiff did not authorize, permit or consent to Defendants' inducing,  
4 causing or materially contributing to the infringing conduct of each other Defendant.  
5

6 57. Each Defendant knew or should have known that other BitTorrent users,  
7 here the other Defendants, would become members of a swarm with Defendant.  
8

9 58. Each Defendant knew or should have known that other BitTorrent users  
10 in a swarm with it, here the other Defendants, were directly infringing Plaintiff's  
11 copyrighted Work by copying constituent elements of the Work that are original.  
12

13 59. Indeed, each Defendant directly participated in and therefore materially  
14 contributed to each other Defendant's infringing activities.

15 60. Each of the Defendants' contributory infringements were committed  
16 "willfully" within the meaning of 17 U.S.C. § 504(c)(2).  
17

18 61. Plaintiff has suffered actual damages that were proximately caused by  
19 each of the Defendants including lost sales, price erosion, and a diminution of the  
20 value of its copyright.  
21

22 WHEREFORE, Plaintiff respectfully requests that the Court:

23 (A) Permanently enjoin each Defendant and all other persons who are in  
24 active concert or participation with each Defendant from continuing to infringe  
25 Plaintiff's copyrighted Work;  
26

27 (B) Order that each Defendant delete and permanently remove the torrent  
28

1 file relating to Plaintiff's copyrighted Work from each of the computers under each  
2 such Defendant's possession, custody or control;

3 (C) Order that each Defendant delete and permanently remove the copy of  
4 the Work each Defendant has on the computers under Defendant's possession,  
5 custody or control;

7 (D) Find that each Defendant is jointly and severally liable for the direct  
8 infringement of each other Defendant;

10 (E) Award Plaintiff either its actual damages and any additional profits  
11 made by each Defendant pursuant to 17 U.S.C. § 504-(a)-(b); or statutory damages in  
12 the amount of \$150,000 per Defendant pursuant to 17 U.S.C. § 504-(a) and (c),  
13 whichever is greater;

15 (F) Award Plaintiff its reasonable attorneys' fees and costs pursuant to 17  
16 U.S.C. § 505; and

18 (G) Grant Plaintiff any other and further relief this Court deems just and  
19 proper.

21 **DEMAND FOR A JURY TRIAL**

22 Plaintiff hereby demands a trial by jury on all issues so triable.  
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Respectfully submitted,

By: /s/ Adam M. Silverstein  
Adam M. Silverstein (197638)  
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
MALIBU MEDIA, LLC

DEFENDANTS
JOHN DOES 1-13

(b) County of Residence of First Listed Plaintiff Los Angeles County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Diego County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Cavalluzzi & Cavalluzzi, 9200 Sunset Boulevard, Suite 807, Los Angeles, CA, (310)246-2601

Attorneys (If Known)

'12CV0358 BTM WVG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country. Includes sub-columns for Incorporated or Principal Place of Business.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, and OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

17 U.S.C. Section 106

Brief description of cause:

Copyright Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ 150,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE