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

11 MALIBU MEDIA, LLC,
 12 a California corporation,

Case No. '12CV0362 LAB POR

13
 14 Plaintiff,

15 vs.

COMPLAINT

16 JOHN DOES 1-25,

17
 18 Defendants.

19 Plaintiff, Malibu Media, LLC, sues John Does 1-25, and alleges:

20 **Introduction**

21
 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. Each of the Defendants copied and distributed most of a website
 26 containing 57 movies. This is known as a "siterip." The file containing the subject
 27 website is so large that the Defendants' computers must have worked collaboratively
 28

1 with each other through the process described below for numerous weeks or months
2 to effectuate a complete download and redistribution of the subject website.¹

3 3. Throughout this Complaint the word “Works” refers to 57 movies
4 contained on the subject website.
5

6 4. Through this suit, Plaintiff alleges each Defendant is liable for:

- 7
- 8 • Direct copyright infringement in violation of 17 U.S.C. §§ 106 and 501;
 - 9 and
 - 10 • Contributory copyright infringement.
- 11

12 Jurisdiction And Venue

13 5. This Court has subject matter jurisdiction over this action pursuant to 28
14 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights,
15 trademarks and unfair competition).
16

17 6. As set forth on Exhibit A, each of the Defendants’ acts of copyright
18 infringement occurred using an Internet Protocol address (“IP address”) traced to a
19 physical address located within this District, and therefore pursuant to Cal. Civ. Proc.
20 Code § 410.10, this Court has personal jurisdiction over each Defendant because
21 each Defendant committed the tortious conduct alleged in this Complaint in the State
22 of California, and (a) each Defendant resides in the State of California, and/or (b)
23
24
25

26 _____
27 ¹ The hit dates listed in the exhibits are not evidence of when a particular Defendant started the download
28 but are merely evidence of when the investigator’s server recorded an IP address sending a particular piece
of data.

1 each Defendant has engaged in continuous and systematic business activity in the
2 State of California.

3 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c),
4 because: (i) a substantial part of the events or omissions giving rise to the claims
5 occurred in this District; and, (ii) a Defendant resides (and therefore can be found) in
6 this District and all of the Defendants reside in this State; additionally, venue is
7 proper in this District pursuant 28 U.S.C. § 1400(a) (venue for copyright cases)
8 because each Defendant or each Defendant's agent resides or may be found in this
9 District.
10
11

12 Parties

13
14 8. Plaintiff is a corporation organized and existing under the laws of the
15 State of California and has its principal place of business located at 31356 Broad
16 Beach Road, Malibu, CA 90265.
17

18 9. Each Defendant is known to Plaintiff only by an IP address.

19 10. An IP address is a number that is assigned by an Internet Service
20 Provider (an "ISP") to devices, such as computers, that are connected to the Internet.
21

22 11. The ISP to which each Defendant subscribes can correlate the
23 Defendant's IP address to the Defendant's true identity.
24

25 Joinder

26 12. Pursuant to Fed. R. Civ. P. 20(a)(2), each of the Defendants was
27 properly joined because, as set forth in more detail below, Plaintiff asserts that: (a)
28

1 each of the Defendants is jointly and severally liable for the infringing activities of
2 each of the other Defendants, and (b) the infringement complained of herein by each
3 of the Defendants was part of a series of transactions, involving the exact same
4 torrent file containing of Plaintiff's copyrighted Works, and was accomplished by the
5 Defendants acting in concert with each other, and (c) there are common questions of
6 law and fact; indeed, the claims against each of the Defendants are identical and each
7 of the Defendants used the BitTorrent protocol to infringe Plaintiff's copyrighted
8 Works.
9 Works.

10 **Factual Background**

11 I. Plaintiff Owns the Copyright to the Motion Pictures

12
13 13. Plaintiff's Works are subject to copyright protection pursuant to 17
14 U.S.C. §§ 104(b)(1)-(3) because one or more of the authors is a national or
15 domiciliary of a treaty party; the Works were first published in a foreign nation that
16 is a treaty party; and the Works qualify as a sound recording that was first fixed in
17 the territory of a treaty party.

18
19 14. Registering the copyrights is not a condition precedent to bringing this
20 action under 17 U.S.C. § 411 (a) because the subject copyrights are not "United
21 States Work(s)" within the meaning of that statute. Instead, the Works underlying
22 the copyrights were created and/or published within the territory of a treaty party.

23
24 15. Within the time limits prescribed by 17 U.S.C. § 412, Plaintiff
25 Registered 11 of the 57 movies contained on the subject website with the United

1 States Copyright Office. A copy of each of the Registrations is attached as
2 Composite Exhibit B along with a list of the titles of the other 46 works.

3 II. Defendants Used BitTorrent To Infringe Plaintiff's Copyright

4
5 16. BitTorrent is one of the most common peer-to-peer file sharing
6 protocols (in other words, set of computer rules) used for distributing large amounts
7 of data; indeed, it has been estimated that users using the BitTorrent protocol on the
8 internet account for over a quarter of all internet traffic. The creators and user's of
9 BitTorrent developed their own lexicon for use when talking about BitTorrent; a
10 copy of the BitTorrent vocabulary list posted on www.Wikipedia.org is attached as
11 Exhibit C.
12

13
14 17. The BitTorrent protocol's popularity stems from its ability to distribute
15 a large file without creating a heavy load on the source computer and network. In
16 short, to reduce the load on the source computer, rather than downloading a file from
17 a single source computer (one computer directly connected to another), the
18 BitTorrent protocol allows users to join a "swarm" of host computers to download
19 and upload from each other simultaneously (one computer connected to numerous
20 computers).
21
22

23 A. Each Defendant Installed a BitTorrent Client onto his or her Computer

24 18. Each Defendant installed a BitTorrent Client onto his or her computer.

25
26 19. A BitTorrent "Client" is a software program that implements the
27 BitTorrent protocol. There are numerous such software programs including μ Torrent
28

1 and Vuze, both of which can be directly downloaded from the internet. See
2 www.utorrent.com and <http://new.vuze-downloads.com/>.

3 20. Once installed on a computer, the BitTorrent "Client" serves as the
4 user's interface during the process of uploading and downloading data using the
5 BitTorrent protocol.
6

7 *B. The Initial Seed, Torrent, Hash and Tracker*
8

9 21. A BitTorrent user that wants to upload a new file, known as an "initial
10 seeder," starts by creating a "torrent" descriptor file using the Client he or she
11 installed onto his or her computer.
12

13 22. The Client takes the target computer file, the "initial seed," here the
14 subject website containing the copyrighted Works, and divides it into groups of bits
15 known as "pieces."
16

17 23. The Client then gives each one of the computer file's pieces, in this
18 case, pieces of the copyrighted Works, a random and unique alphanumeric identifier
19 known as a "hash" and records these hash identifiers in the torrent file.
20

21 24. When another peer later receives a particular piece, the hash identifier
22 for that piece is compared to the hash identifier recorded in the torrent file for that
23 piece to test that the piece is error-free. In this way, the hash identifier works like an
24 electronic fingerprint to identify the source and origin of the piece and that the piece
25 is authentic and uncorrupted.
26

27 25. Torrent files also have an "announce" section, which specifies the URL
28

1 (Uniform Resource Locator) of a "tracker," and an "info" section, containing
2 (suggested) names for the files, their lengths, the piece length used, and the hash
3 identifier for each piece, all of which are used by Clients on peer computers to verify
4 the integrity of the data they receive.
5

6 26. The "tracker" is a computer or set of computers that a torrent file
7 specifies and to which the torrent file provides peers with the URL address(es).
8

9 27. The tracker computer or computers direct a peer user's computer to
10 other peer user's computers that have particular pieces of the file, here the
11 copyrighted Works, on them and facilitates the exchange of data among the
12 computers.
13

14 28. Depending on the BitTorrent Client, a tracker can either be a dedicated
15 computer (centralized tracking) or each peer can act as a tracker (decentralized
16 tracking).
17

18 C. Torrent Sites

19 29. "Torrent sites" are websites that index torrent files that are currently
20 being made available for copying and distribution by people using the BitTorrent
21 protocol. There are numerous torrent websites, including www.TorrentZap.com,
22 www.Btscene.com, www.ExtraTorrent.com, and www.piratebay.org.
23
24

25 30. Upon information and belief, each Defendant went to a torrent site to
26 upload and download Plaintiff's copyrighted Works.
27
28

1 D. Uploading and Downloading Works Through a BitTorrent Swarm

2 31. Once the initial seeder has created a torrent and uploaded it onto a
3 torrent site then other peers begin to download and upload the computer file to which
4 the torrent is linked (here the copyrighted Works) using the BitTorrent protocol and
5 BitTorrent Client that the peers installed on their computers.

6
7 32. The BitTorrent protocol causes the initial seed's computer to send
8 different pieces of the computer file, here the copyrighted Works, to the peers
9 seeking to download the computer file.

10
11 33. Once a peer receives a piece of the computer file, here a piece of the
12 Copyrighted Works, it starts transmitting that piece to the other peers.

13
14 34. In this way, all of the peers and seeders are working together in what is
15 called a "swarm."

16
17 35. Here, each Defendant peer member participated in the same swarm and
18 directly interacted and communicated with other members of that swarm through
19 digital handshakes, the passing along of computer instructions, uploading and
20 downloading, and by other types of transmissions. A print out of a computer screen
21 illustrating the type of interactions between and among peers and seeders in a typical
22 swarm is attached as Exhibit D.

23
24
25 36. In this way, and by way of example only, one initial seeder can create a
26 torrent that breaks a movie up into hundreds or thousands of pieces saved in the form
27 of a computer file, like the Works here, upload the torrent onto a torrent site, and
28

1 deliver a different piece of the copyrighted work to each of the peers. The recipient
2 peers then automatically begin delivering the piece they just received to the other
3 peers in the same swarm.
4

5 37. Once a peer, here a Defendant, has downloaded the full file, the
6 BitTorrent Client reassembles the pieces and the peer is able to view the movie.

7 *E. Plaintiff's Computer Investigators Identified Each of the Defendants' IP*
8 *Addresses as Participants in a Swarm That Was Distributing Plaintiff's*
9 *Copyrighted Works*

10 38. Plaintiff retained IPP, Limited ("IPP") to identify the IP addresses that
11 are being used by those people that are using the BitTorrent protocol and the internet
12 to reproduce, distribute, display or perform Plaintiffs' copyrighted works.
13

14 39. IPP used forensic software named INTERNATIONAL IPTRACKER
15 v1.2.1 and related technology enabling the scanning of peer-to-peer networks for the
16 presence of infringing transactions.
17

18 40. IPP extracted the resulting data emanating from the investigation,
19 reviewed the evidence logs, and isolated the transactions and the IP addresses
20 associated therewith for the file identified by the SHA-1 hash value of
21 121AC0B46088E7C235A23D4379BE65A1840E9B77 (the "Unique Hash
22 Number").
23

24
25 41. The IP addresses, Unique Hash Number and hit dates contained on
26 Exhibit A accurately reflect what is contained in the evidence logs, and show:

27 (A) Each Defendant had copied a piece of Plaintiff's copyrighted Works
28

1 identified by the Unique Hash Number; and

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

3 42. Through each of the transactions, each of the Defendant's computers
4 used their identified IP addresses to connect to the investigative server from a
5 computer in this District in order to transmit a full copy, or a portion thereof, of a
6 digital media file identified by the Unique Hash Number.
7

8 43. IPP's agent analyzed each BitTorrent "piece" distributed by each IP
9 address listed on Exhibit A and verified that re-assembly of the pieces using a
10 BitTorrent Client results in a fully playable digital motion picture of the Works.
11

12 44. IPP's agent viewed the Works side-by-side with the digital media file
13 that correlates to the Unique Hash Number and determined that they were identical,
14 strikingly similar or substantially similar.
15

16
17 **Miscellaneous**

18 45. All conditions precedent to bringing this action have occurred or been
19 waived.
20

21 46. Plaintiff retained counsel to represent it in this matter and is obligated to
22 pay said counsel a reasonable fee for its services.
23

24 **COUNT I**
Contributory Infringement Against Does 1-25

25 47. The allegations contained in paragraphs 1-46 are hereby re-alleged as if
26 fully set forth herein.
27

1 48. Plaintiff is the owner of the copyrights for the Works, each of which
2 contains an original work of authorship.

3 49. By using the BitTorrent protocol and a BitTorrent Client and the
4 processes described above, each Defendant copied the constituent elements of the
5 Works that are original.
6

7 50. Plaintiff did not authorize, permit or consent to Defendants' copying of
8 its Works.
9

10 51. As a result of the foregoing, each Defendant violated Plaintiff's
11 exclusive right to:

12 (A) Reproduce the Works in copies, in violation of 17 U.S.C. §§ 106(1) and
13 501;
14

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

19 (C) Perform the copyrighted Works, in violation of 17 U.S.C. §§ 106(4)
20 and 501, by showing the Works' images in any sequence and/or by making the
21 sounds accompanying the Works audible and transmitting said performance of the
22 Works, by means of a device or process, to members of the public capable of
23 receiving the display (as set forth in 17 U.S.C. § 101's definitions of "perform" and
24 "publically" perform); and
25

26 (D) Display the copyrighted Works, in violation of 17 U.S.C. §§ 106(5) and
27
28

1 501, by showing individual images of the Works nonsequentially and transmitting
2 said display of the Works by means of a device or process to members of the public
3 capable of receiving the display (as set forth in 17 U.S.C. § 101's definition of
4 "publically" display).
5

6 52. Each of the Defendants' infringements was committed "willfully"
7 within the meaning of 17 U.S.C. § 504(c)(2).
8

9 53. Plaintiff has suffered actual damages that were proximately caused by
10 each of the Defendants including lost sales, price erosion and a diminution of the
11 value of its copyrights.
12

13 WHEREFORE, Plaintiff respectfully requests that the Court:

14 (A) Permanently enjoin each Defendant and all other persons who are in
15 active concert or participation with each Defendant from continuing to infringe
16 Plaintiff's copyrighted Works;
17

18 (B) Order that each Defendant delete and permanently remove the torrent
19 file relating to Plaintiff's copyrighted Works from each of the computers under each
20 such Defendant's possession, custody or control;
21

22 (C) Order that each Defendant delete and permanently remove the copy of
23 the Works each Defendant has on the computers under Defendant's possession,
24 custody or control;
25

26 (D) Award Plaintiff statutory damages in the amount of \$150,000 per
27 Defendant, per registered Work infringed, pursuant to 17 U.S.C. § 504-(a) and (c),
28

1 whichever is greater;

2 (E) Award Plaintiff its actual damages and any additional profits of the
3 Defendant pursuant to 17 U.S.C. § 504-(a)-(b);

4
5 (F) Award Plaintiff its reasonable attorneys' fees and costs pursuant to 17
6 U.S.C. § 505; and

7 (G) Grant Plaintiff any other and further relief this Court deems just and
8
9 proper.

10 **COUNT II**
11 **Contributory Infringement Against Does 1-25**

12 54. The allegations contained in paragraphs 1-46 are hereby re-alleged as if
13 fully set forth herein.

14
15 55. Plaintiff is the owner of the Works, each of which contains an original
16 work of authorship.

17
18 56. By using the BitTorrent protocol and a BitTorrent Client and the
19 processes described above, each Defendant copied the constituent elements of each
20 of the Works that are original.

21
22 57. By participating in the BitTorrent swarm with the other Defendants,
23 each Defendant induced, caused or materially contributed to the infringing conduct
24 of each other Defendant.

25
26 58. Plaintiff did not authorize, permit or consent to Defendants' inducing,
27 causing or materially contributing to the infringing conduct of each other Defendant.

1 59. Each Defendant knew or should have known that other BitTorrent users,
2 here the other Defendants, would become members of a swarm with Defendant.

3 60. Each Defendant knew or should have known that other BitTorrent users
4 in a swarm with it, here the other Defendants, were directly infringing Plaintiff's
5 copyrighted Works by copying constituent elements of the Works that are original.
6

7 61. Indeed, each Defendant directly participated in and therefore materially
8 contributed to each other Defendant's infringing activities.
9

10 62. Each of the Defendants' contributory infringements were committed
11 "willfully" within the meaning of 17 U.S.C. § 504(c)(2).
12

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

17 WHEREFORE, Plaintiff respectfully requests that the Court:

18 (A) Permanently enjoin each Defendant and all other persons who are in
19 active concert or participation with each Defendant from continuing to infringe
20 Plaintiff's copyrighted Works;
21

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

26 (C) Order that each Defendant delete and permanently remove the copy of
27 the Works each Defendant has on the computers under Defendant's possession,
28

1 custody or control;

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

4 (E) Award Plaintiff statutory damages in the amount of \$150,000 per
5 Defendant, per registered Work infringed, pursuant to 17 U.S.C. § 504-(a) and (c),
6 whichever is greater;

7 (F) Award Plaintiff its actual damages and any additional profits of the
8 Defendant pursuant to 17 U.S.C. § 504-(a)-(b);

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

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

14 **DEMAND FOR A JURY TRIAL**

15 Plaintiff hereby demands a trial by jury on all issues so triable.

16 Respectfully submitted,

17
18 By: /s/ Adam M. Silverstein
19 Adam M. Silverstein (197638)
20 CAVALLUZZI & CAVALLUZZI
21 9200 Sunset Boulevard, Suite 807
22 Los Angeles, California 90069
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27

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 1-25

(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)

'12CV0362 LAB POR

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 Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

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

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