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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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11 PATRICK COLLINS, INC., a
California corporation,

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Plaintiff,

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v.

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JOHN DOES 1 through 11,

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Defendants.

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Case No.

COMPLAINT

1 Plaintiff, Patrick Collins, Inc., sues John Does 1-11, and alleges:

2 **Introduction**

3 1. This matter arises under the United States Copyright Act of 1976, as
4 amended, 17 U.S.C. §§ 101 et seq. (the “Copyright Act”).

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

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

9 **Jurisdiction And Venue**

10 3. This Court has subject matter jurisdiction over this action pursuant to
11 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights,
12 trademarks and unfair competition).

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

21 5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c),
22 because: (i) a substantial part of the events or omissions giving rise to the claims
23 occurred in this District; and, (ii) a Defendant resides (and therefore can be found)
24 in this District and all of the Defendants reside in this State; additionally, venue is
25 proper in this District pursuant 28 U.S.C. § 1400(a) (venue for copyright cases)
26 because each Defendant or each Defendant’s agent resides or may be found in this
27 District.

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Parties

6. Plaintiff is a corporation organized and existing under the laws of the State of California and has its principal place of business located at 8015 Deering Avenue, Canoga Park, CA 91304.

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

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

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

Joinder

10. Pursuant to Fed. R. Civ. P. 20(a)(2), each of the Defendants was properly joined because, as set forth in more detail below, Plaintiff asserts that: (a) each of the Defendants is jointly and severally liable for the infringing activities of each of the other Defendants, and (b) the infringement complained of herein by each of the Defendants was part of a series of transactions, involving the exact same torrent file containing of Plaintiff’s copyrighted Work, and was accomplished by the Defendants acting in concert with each other, and (c) there are common questions of law and fact; indeed, the claims against each of the Defendants are identical and each of the Defendants used the BitTorrent protocol to infringe Plaintiff’s copyrighted Work.

Factual Background

I. Plaintiff Owns The Copyright To The Motion Picture

11. Plaintiff is the owner of United States Copyright Registration Number PA0001770947 (the “Registration”) for the motion picture entitled “Gangbanged #2” (the “Work”).

12. The Work was registered on or about September 27, 2011.

13. A copy of an internet screen shot from the U.S. Copyright Office’s

1 website, evidencing, among other things, Plaintiff's ownership of the Registration
2 and the registration date, is attached as Exhibit B.

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

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

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

18 **A. Each Defendant Installed a BitTorrent Client onto his or her**
19 **Computer**

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

21 17. A BitTorrent "Client" is a software program that implements the
22 BitTorrent protocol. There are numerous such software programs including μ Torrent
23 and Vuze, both of which can be directly downloaded from the internet. See
24 www.utorrent.com and <http://new.vuze-downloads.com/>.

25 18. Once installed on a computer, the BitTorrent "Client" serves as the
26 user's interface during the process of uploading and downloading data using the
27 BitTorrent protocol.

1 **B. The Initial Seed, Torrent, Hash and Tracker**

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

5 20. The Client takes the target computer file, the “initial seed,” here the
6 subject website containing the copyrighted Work, and divides it into groups of bits
7 known as “pieces.”

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

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

16 23. Torrent files also have an "announce" section, which specifies the URL
17 (Uniform Resource Locator) of a “tracker,” and an "info" section, containing
18 (suggested) names for the files, their lengths, the piece length used, and the hash
19 identifier for each piece, all of which are used by Clients on peer computers to
20 verify the integrity of the data they receive.

21 24. The “tracker” is a computer or set of computers that a torrent file
22 specifies and to which the torrent file provides peers with the URL address(es).

23 25. The tracker computer or computers direct a peer user’s computer to
24 other peer user’s computers that have particular pieces of the file, here the
25 copyrighted Work, on them and facilitates the exchange of data among the
26 computers.

27 26. Depending on the BitTorrent Client, a tracker can either be a dedicated
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1 computer (centralized tracking) or each peer can act as a tracker (decentralized
2 tracking).

3 **C. Torrent Sites**

4 27. "Torrent sites" are websites that index torrent files that are currently
5 being made available for copying and distribution by people using the BitTorrent
6 protocol. There are numerous torrent websites, including www.TorrentZap.com,
7 www.Btscene.com, www.ExtraTorrent.com, and www.piratebay.org.

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

10 **D. Uploading and Downloading Works Through a BitTorrent Swarm**

11 29. Once the initial seeder has created a torrent and uploaded it onto a
12 torrent site then other peers begin to download and upload the computer file to
13 which the torrent is linked (here the copyrighted Work) using the BitTorrent
14 protocol and BitTorrent Client that the peers installed on their computers.

15 30. The BitTorrent protocol causes the initial seed's computer to send
16 different pieces of the computer file, here the copyrighted Work, to the peers
17 seeking to download the computer file.

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

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

22 33. Here, each Defendant peer member participated in the same swarm and
23 directly interacted and communicated with other members of that swarm through
24 digital handshakes, the passing along of computer instructions, uploading and
25 downloading, and by other types of transmissions.

26 34. In this way, and by way of example only, one initial seeder can create a
27 torrent that breaks a movie up into hundreds or thousands of pieces saved in the

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1 form of a computer file, like the Work here, upload the torrent onto a torrent site,
2 and deliver a different piece of the copyrighted work to each of the peers. The
3 recipient peers then automatically begin delivering the piece they just received to the
4 other peers in the same swarm.

5 35. 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**
8 **Defendants' IP Addresses as Participants in a Swarm That Was**
9 **Distributing Plaintiff's Copyrighted Work**

10 36. 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 Plaintiff's copyrighted work.

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

16 38. IPP extracted the resulting data emanating from the investigation,
17 reviewed the evidence logs, and isolated the transactions and the IP addresses
18 associated therewith for the file identified by the SHA-1 hash value of
19 8429BA850CC51D121D06D3378BB555EF0410223A (the "Unique Hash
20 Number").

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

23 (A) Each Defendant had copied a piece of Plaintiff's copyrighted Work
24 identified by the Unique Hash Number; and

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

26 40. Through each of the transactions, each of the Defendant's computers
27 used their identified IP addresses to connect to the investigative server from a
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1 computer in this District in order to transmit a full copy, or a portion thereof, of a
2 digital media file identified by the Unique Hash Number.

3 41. IPP's agent analyzed each BitTorrent "piece" distributed by each IP
4 address listed on Exhibit A and verified that re-assembly of the pieces using a
5 BitTorrent Client results in a fully playable digital motion picture of the Work.

6 42. IPP's agent viewed the Work side-by-side with the digital media file
7 that correlates to the Unique Hash Number and determined that they were identical,
8 strikingly similar or substantially similar.

9 **Miscellaneous**

10 43. All conditions precedent to bringing this action have occurred or been
11 waived.

12 44. Plaintiff retained counsel to represent it in this matter and is obligated
13 to pay said counsel a reasonable fee for its services.

14 **COUNT I**

15 **Contributory Infringement Against Does 1-11**

16 45. The allegations contained in paragraphs 1-44 are hereby re-alleged as if
17 fully set forth herein.

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

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

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

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

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

2 (B) Redistribute copies of the Work to the public by sale or other transfer
3 of ownership, or by rental, lease or lending, in violation of 17 U.S.C. §§ 106(3) and
4 501;

5 (C) Perform the copyrighted Work, in violation of 17 U.S.C. §§ 106(4) and
6 501, by showing the Work’s images in any sequence and/or by making the sounds
7 accompanying the Work audible and transmitting said performance of the Work, by
8 means of a device or process, to members of the public capable of receiving the
9 display (as set forth in 17 U.S.C. § 101’s definitions of “perform” and “publically”
10 perform); and

11 (D) Display the copyrighted Work, in violation of 17 U.S.C. §§ 106(5) and
12 501, by showing individual images of the Work nonsequentially and transmitting
13 said display of the Work by means of a device or process to members of the public
14 capable of receiving the display (as set forth in 17 U.S.C. § 101’s definition of
15 “publically” display).

16 50. Each of the Defendants’ infringements was committed “willfully”
17 within the meaning of 17 U.S.C. § 504(c)(2).

18 51. 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 **COUNT II**

22 **Contributory Infringement Against Does 1-11**

23 52. The allegations contained in paragraphs 1-44 are hereby re-alleged as if
24 fully set forth herein.

25 53. Plaintiff is the owner of the Registration for the Work, which contains
26 an original work of authorship.

27 54. By using the BitTorrent protocol and a BitTorrent Client and the
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1 processes described above, each Defendant copied the constituent elements of each
2 of the registered Work that are original.

3 55. By participating in the BitTorrent swarm with the other Defendants,
4 each Defendant induced, caused or materially contributed to the infringing conduct
5 of each other Defendant.

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

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

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

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

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

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 **PRAYER FOR RELIEF**

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 (B) Order that each Defendant delete and permanently remove the torrent
27 file relating to Plaintiff's copyrighted Work from each of the computers under each

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1 such Defendant's possession, custody or control;

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

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

7 (E) Award Plaintiff the greater of: (i) statutory damages in the amount of
8 \$150,000 per Defendant, pursuant to 17 U.S.C. § 504-(a) and (c), or (ii) Plaintiff's
9 actual damages and any additional profits of the Defendant pursuant to 17 U.S.C. §
10 504-(a)-(b);

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

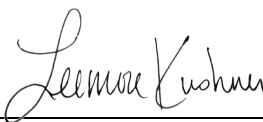
13 (G) Grant Plaintiff any other and further relief this Court deems just and
14 proper.

15 **DEMAND FOR A JURY TRIAL**

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

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18 DATED: MAY 29, 2012

KUSHNER LAW GROUP

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20 By: 
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22 Leemore L. Kushner
23 Attorneys for Plaintiff Patrick Collins, Inc.
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