1 2 3	Marc J. Randazza, Esq. SBN 269535 Randazza Legal Group 3969 Fourth Avenue, Suite 204 San Diego, CA 92103 888-667-1113 305-437-7662 fax mjr@randazza.com  Attorney for Plaintiff LIBERTY MEDIA HOLDINGS, LLC	
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6	LIBERTT MEDIA HOLDINGS, LLC	
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8	UNITED STATES DISTRICT COURT	
9	SOUTHERN DISTRICT OF CALIFORNIA, SAN DIEGO DIVISION	
10		)
11	Liberty Media Holdings, LLC A California Corporation	Case No. <u>'11CV0651 IEG JMA</u>
12	Plaintiff,	) COMPLAINT
13	VS.	1) Copyright Infringement
14	Cary Tabora	
15	- Cary Tuoona	
16	Defendant.	
17	District Lile A M. 1. AN 11. W. 11.	)
18	, and the second	
19		
20	1. This is a suit for copyright infringement under the U.S. Copyright Act of 1976, as	
21	and appropriate the observation of 1970, as	
22   23	amended, 17 U.S.C §§ 101 et seq. (the Copyright Act). This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a)	
	2. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. §	
24	1400(a).	suant to 28 U.S.C. § 1391(b) and 28 U.S.C. §
25		
26	3. This Court has personal jurisdiction over the Defendant as he has committed	
27	tortious acts within this district and/or aimed his tortious acts toward this district with the	
28	knowledge that the negative consequences thereof would be felt in this jurisdiction.	
	Furthermore, the Defendant contractually consented to jurisdiction in this jurisdiction and venue.	

### THE PARTIES

#### **PLAINTIFF**

- 4. Liberty is a California LLC with a mailing address of 302 Washington Street, Suite 321, San Diego, CA 92103.
- 5. Liberty creates and publishes original works of creative expression in the form of adult entertainment films.
- 6. Liberty operates a number of websites offering monthly memberships in order to gain access to its films.
  - 7. Additionally, a number of Plaintiff's films are available on DVD for purchase.

#### **DEFENDANT**

8. Defendant was identified through his I.P. address as uploading or "seeding" the Plaintiff's copyrighted work, "Down on the Farm," which is available in DVD format only and which has never been licensed to any party for online distribution.

## FIRST CAUSE OF ACTION

# (Copyright Infringement 17 U.S.C. § 501)

- 9. The Plaintiff re-alleges and incorporates by reference as if verbatim contained in each paragraph above.
- 10. Plaintiff is, and at all relevant times has been, the copyright owner of certain copyrighted and audiovisual works, including but are not limited to "Down on the Farm" (the Work), which is the subject of a valid Certificate of Copyright Registration. Exh. 1.
- 11. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce the Works and to distribute them—rights which Defendant maliciously and intentionally infringed upon.
- 12. Plaintiff is informed and believes, and on that basis alleges, that Defendant, without the permission or consent of Plaintiffs, has used, and continued to use, an online media distribution system (Bit Torrent) to distribute the Works to the public, and/or make the Works available for distribution to others.
- 13. In doing so, Defendant has violated Plaintiff's exclusive rights of reproduction and distribution. Defendant's actions constitute infringement of Plaintiff's copyrights and exclusive rights under the Copyright Act.

- 14. Plaintiff is informed and believes and on that basis alleges that the foregoing acts of infringement have been willful and intentional.
- 15. As a result of Defendant's infringement of Plaintiff's copyrights and exclusive rights under the Copyright Act, Plaintiff is entitled to either actual or statutory damages pursuant to 17 U.S.C. § 504(c).
- 16. The conduct of Defendant is causing and will continue to cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in financial terms and such harm will continue unless the Defendant is enjoined from such conduct by the Honorable Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief prohibited Defendant from further infringing Plaintiff's copyrights, and ordering Defendant to destroy all copies of the Works made in violation of Plaintiff's exclusive rights.

## WHEREFORE; PLAINTIFF PRAYS

1. For an injunction providing:

Defendant shall be and hereby is enjoined from directly or indirectly infringing upon the Plaintiff's copyrights in the works, whether now in existence or later created, that are owned or controlled by Plaintiff (or any parent, subsidiary, or affiliate of Plaintiff), including without limitation by using the Internet or any online media distribution system to reproduce (i.e. download) any of Plaintiff's works, to distribute (i.e. upload) any of Plaintiff's works, or to make any of Plaintiff's works available for distribution to the public, except pursuant to a lawful license or with the Plaintiff's express authority. Defendant also shall destroy all copies of Plaintiff's works that Defendant has downloaded onto any computer hard drive or server and shall destroy all copies of those downloaded works transferred onto any physical medium or device in Defendant's possession, custody, or control.

- 2. For damages for each infringement of each copyrighted work pursuant to 17 U.S.C. § 504.
- 3. Since Defendant's actions were willful and malicious in nature, the Plaintiff seeks the maximum statutory damages of \$150,000 per infringement. At this time, that would equal \$150,000, but Plaintiff reserves the right to amend this complaint if, and when, other circumstances of infringement are discovered.
  - 4. For Plaintiff's costs in this action.
  - 5. For Plaintiff's attorney's fees incurred in bringing this action.

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For such other and further relief, either at law or in equity, general or special, to 6. which the may be entitled. Dated: March 31, 2011 Respectfully submitted, s/ Marc Randazza Marc J. Randazza, SBN 269535 Randazza Legal Group 3969 Fourth Avenue Suite 204 San Diego, CA 92103 888-667-1113 305-437-7662 (fax) mjr@randazza.com Attorney for Plaintiff, Liberty Media Holdings 

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

TAIT COAFK SHFFT

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement 1 Filed 03/31/11 Page 5 of 5 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** Liberty Media Holdings, LLC DEFENDANTS Cary Tabora (b) County of Residence of First Listed Plaintiff San Diego County of Residence of First Listed Defendant unknown (EXCEPT IN U.S. PLAINTIFF CASES) (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) Marc Randazza, Randazza Legal Group Attorneys (If Known) 3969 4th Ave., #204, San Diego, CA 92103 '11CV0651 IEG JMA 888-667-1113 II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES(Place an "X" in One Box for Plaintiff (For Diversity Cases Only) and One Box for Defendant) ☐ 1 U.S. Government 🕱 3 Federal Question PTF DEF Plaintiff (U.S. Government Not a Party) Citizen of This State 0 1 Incorporated or Principal Place **3** 4 4 of Business In This State □ 2 U.S. Government Diversity Citizen of Another State □ 2 2 Incorporated and Principal Place 5 5 Defendant of Business In Another State (Indicate Citizenship of Parties in Item III) Citizen or Subject of a  $\square$  3 3 Foreign Nation 0 6 □ 6 Foreign Country IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT FORFEITURE/PENALTY BANKRUPTCY OTHER STATUTES ☐ 110 Insurance PERSONAL INJURY PERSONAL INJURY ☐ 610 Agriculture 400 State Reapportionment 422 Appeal 28 USC 158 ☐ 120 Marine 310 Airplane 362 Personal Injury -☐ 620 Other Food & Drug ☐ 423 Withdrawal 0 410 Antitrust ☐ 130 Miller Act 315 Airplane Product Med. Malpractice ☐ 625 Drug Related Seizure 28 USC 157 О 430 Banks and Banking ☐ 140 Negotiable Instrument Liability 365 Personal Injury of Property 21 USC 881 450 Commerce ☐ 150 Recovery of Overpayment 0 320 Assault, Libel & Product Liability ☐ 630 Liquor Laws PROPERTY RIGHTS 460 Deportation & Enforcement of Judgmen Slander 368 Ashestos Personal 640 R.R. & Truck 🕱 820 Copyrights 470 Racketeer Influenced and ☐ 151 Medicare Act 330 Federal Employers' Injury Product 650 Airline Regs. ☐ 830 Patent Corrupt Organizations ☐ 152 Recovery of Defaulted Liability Liability ☐ 660 Occupational ☐ 840 Trademark 480 Consumer Credit Student Loans 340 Marine PERSONAL PROPERTY Safety/Health 490 Cable/Sat TV (Excl. Veterans) 345 Marine Product 370 Other Fraud ☐ 690 Other 810 Selective Service ☐ 153 Recovery of Overpayment Liability 371 Truth in Lending LABOR SOCIAL SECURITY 850 Securities/Commodities/ of Veteran's Benefits 350 Motor Vehicle ☐ 710 Fair Labor Standards 380 Other Personal ☐ 861 HIA (1395ff) Exchange ☐ 160 Stockholders' Suits 355 Motor Vehicle Property Damage 862 Black Lung (923) 875 Customer Challenge ☐ 190 Other Contract Product Liability 385 Property Damage ☐ 720 Labor/Mgmt. Relations ☐ 863 DIWC/DIWW (405(g)) 12 USC 3410 ☐ 195 Contract Product Liability 360 Other Personal Product Liability ☐ 730 Labor/Mgmt.Reporting ☐ 864 SSID Title XVI 890 Other Statutory Actions ☐ 196 Franchise Injury ☐ 865 RSI (405(g)) & Disclosure Act 891 Agricultural Acts REAL PROPERTY CIVIL RIGHTS PRISONER PETITIONS FEDERAL TAX SUITS ☐ 740 Railway Labor Act 892 Economic Stabilization Act ☐ 210 Land Condemnation 441 Voting П ☐ 790 Other Labor Litigation 510 Motions to Vacate ☐ 870 Taxes (U.S. Plaintiff 893 Environmental Matters ☐ 220 Foreclosure 442 Employment Sentence 791 Empl. Ret. Inc. or Defendant) 894 Energy Allocation Act ☐ 230 Rent Lease & Ejectment 443 Housing/ Habeas Corpus: Security Act ☐ 871 IRS—Third Party ☐ 895 Freedom of Information ☐ 240 Torts to Land Accommodations 530 General 26 USC 7609 Act 245 Tort Product Liability 444 Welfare 535 Death Penalty IMMIGRATION 900Appeal of Fee Determination 290 All Other Real Property 445 Amer. w/Disabilities -540 Mandamus & Other ☐ 462 Naturalization Application Under Equal Access Employment 550 Civil Rights ☐ 463 Habeas Corpus to Justice 446 Amer. w/Disabilities -555 Prison Condition Alien Detainee ☐ 950 Constitutionality of Other 465 Other Immigration State Statutes 440 Other Civil Rights Actions V. ORIGIN (Place an "X" in One Box Only) Appeal to District Transferred from Original Judge from  $\square$  2 Removed from 3 Remanded from ☐ 4 Reinstated or ☐ 5 ☐ 6 Multidistrict another district Proceeding Magistrate State Court Appellate Court Reopened Litigation (specify) Judgment Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): VI. CAUSE OF ACTION Brief description of cause: Copyright Infringement VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION **DEMAND \$** CHECK YES only if demanded in complaint: UNDER F.R.C.P. 23 \$150,000 **COMPLAINT:** JURY DEMAND: 1 Yes Ø No VIII. RELATED CASE(S) (See instructions): IF ANY JUDGE DOCKET NUMBER DATE SIGNATURE OF ATTORNEY OF RECORD 3/31/11 s/ Marc Randazza FOR OFFICE USE ONLY RECEIPT #