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6

7
8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA, LAS VEGAS DIVISION

10 LIBERTY MEDIA HOLDINGS, LLC

Case No.

11 Plaintiff,

COMPLAINT

12 vs.

- 13 (1) DIRECT COPYRIGHT INFRINGEMENT – 17 U.S.C. § 501
- 14 (2) CONTRIBUTORY COPYRIGHT INFRINGEMENT
- 15 (3) CIVIL CONSPIRACY
- 16 (4) NEGLIGENCE

14 SWARM OF NOVEMBER 15 to
15 DECEMBER 9, 2010,
SHARING HASH FILE
16 AE340D0560129AFEE8D78CE07F2394C7
B5BC9C05; AND DOES 1 through 13,

17 Defendants.
18

19
20 Plaintiff, Liberty Media Holdings (hereinafter “Liberty” or the “Plaintiff”) files this
21 complaint against multiple unknown Defendants and alleges as follows:

22 **I. NATURE OF THE CASE**

23 1. Plaintiff is the registered owner of the copyright to a motion picture, “Down on
24 the Farm” (hereinafter the “Motion Picture”). A true and correct copy of the Certificate of
25 Registration for the Motion Picture is attached hereto as Exhibit 1.

26 2. Defendants, whose true identities are currently unknown, acted in a collective and
27 interdependent manner in the unlawful reproduction and distribution of Plaintiff’s Motion
28 Picture using BitTorrent file transfer protocol.

1 **III. THE PARTIES**

2 **A. The Plaintiff, Liberty Media Holdings, LLC**

3 9. Liberty is a California LLC with a mailing address of 302 Washington Street,
4 Suite 321, San Diego, CA 92103.

5 **B. The Defendants**

6 10. The true names and capacities, whether individual, corporate, associate or
7 otherwise, of defendants John Does 1-13 are unknown to Plaintiff, who therefore sues said
8 Defendants by such fictitious names. Plaintiff knows each Defendant only by the Internet
9 Protocol (“IP”) address assigned to the account used by the Defendant by the account holder’s
10 Internet Service Provider (“ISP”) on the date and at the time at which the infringing activity of
11 each Defendant was observed. The IP address used by each Defendant thus far identified,
12 together with the date and time at which his or her infringing activity was observed is listed
13 below.

14 11. Plaintiff intends to subpoena the ISPs that issued the Defendants’ IP addresses in
15 order to learn the identity of the account holders for the below IP addresses. In most cases, the
16 account holder will be the proper defendant in this case. However, further discovery may be
17 necessary in some circumstances in order to be certain of the identity of the proper defendant.

18 12. The Defendants are a group of BitTorrent users or peers whose computers are
19 collectively interconnected for the sharing of a particular unique file, otherwise known as a
20 “swarm”. The particular file a BitTorrent swarm is associated with has a unique “hash” (a file
21 identifier generated by an algorithm developed and implemented by the National Security
22 Agency). The hash value in this case is identified as
23 AE340D0560129AFEE8D78CE07F2394C7B5BC9C05 (hereinafter the “AE3 Hash”).

24 13. Plaintiff is informed and believes, and based thereon alleges, that each of the
25 Defendants was and is the agent of the other Defendants, acting within the purpose and scope of
26 said agency. Plaintiff is further informed and believes and based thereon alleges that each of the
27 Defendants authorized and ratified the conduct herein alleged of each of the other Defendants.

1 14. Plaintiff believes that information obtained in discovery will lead to the
2 identification of each Defendants' true names and permit the Plaintiff to amend this Complaint to
3 state the same. Plaintiff further believes that the information obtained in discovery may lead to
4 the identification of additional infringing parties to be added to this Complaint as defendants.
5 Plaintiff will amend this Complaint to include their proper names and capacities when they have
6 been determined. Plaintiff is informed and believes, and based thereon alleges, that each of the
7 fictitiously named Defendants participated in and are responsible for the acts described in this
8 Complaint and damage resulting therefrom.

9 15. Plaintiff alleges on information and belief that each of the Defendants named
10 herein performed, participated in, or abetted in some manner, the acts alleged herein,
11 proximately caused the damages alleged and are liable to Plaintiff for the damages and relief
12 sought herein.

13 16. Each of the fictitiously named defendants engaged in their copyright infringement
14 scheme together. They all shared and republished the same Motion Picture, and thus collectively
15 participated in the same swarm sharing the AE3 Hash on the exact same dates, from November
16 15 to December 9, 2010.

17 17. The torrent swarm in this case is not an actual entity, but is rather made up
18 thousands of individuals, located in various jurisdictions, acting in concert with each other, to
19 achieve the common goal of infringing upon the Plaintiff's copyrights both by illegally
20 duplicating the Plaintiff's Motion Picture and illegally distributing the Plaintiff's Motion Picture.

21 18. While other members of the swarm have and will be sued in other jurisdictions,
22 each of the IP addresses noted in this Complaint has specifically been traced to an address
23 located within this jurisdiction. Additionally, the John Doe Defendants named in this Complaint
24 all reside in this jurisdiction, the complained of actions occurred here, and the Defendants have
25 sufficient contacts with this jurisdiction such that they could reasonably expect to be haled into
26 this Court.

27 **Defendant Doe 1**

28 19. Defendant Doe 1 is unknown, but used the following IP address: 70.173.232.133.

1 20. Doe 1 used this IP address to illegally republish and illegally distribute copies of
2 the Plaintiff's copyrighted Motion Picture through the use of the AE3 Hash to an unknown
3 number of other individuals over the Internet.

4 21. The infringing activity took place on November 15, 2010 at 7:26:01 p.m. UTC.

5 22. As Doe 1 was the first one detected as having distributed the Motion Picture, Doe
6 1 is, on information and belief, the initial propagator of the AE3 Hash in the Bit Torrent swarm
7 of November 15, 2010.

8 **Defendant Doe 2**

9 23. Defendant Doe 2 is unknown, but used the following IP address: 70.173.174.137.

10 24. Doe 2 used this IP address to illegally republish and illegally distribute the
11 Plaintiff's copyrighted Motion Picture through the use of the AE3 Hash to an unknown number
12 of other individuals over the Internet.

13 25. The infringing activity took place on November 15, 2010 at 10:49:36 p.m. UTC, 2
14 hours, 23 minutes and 35 seconds after Doe 1.

15 **Defendant Doe 3**

16 26. Defendant Doe 3 is unknown, but used the following IP address: 72.193.64.89.

17 27. Doe 3 used this IP address to illegally republish and illegally distribute the
18 Plaintiff's copyrighted Motion Picture through the use of the AE3 Hash to an unknown number
19 of other individuals over the Internet.

20 28. The infringing activity took place on November 16, 2010 at 9:47:52 a.m. UTC, 10
21 hours, 58 minutes and 16 seconds after Doe 2.

22 **Defendant Doe 4**

23 29. Defendant Doe 4 is unknown, but used the following IP address: 70/180.182.163.

24 30. Doe 4 used this IP address to illegally republish and illegally distribute the
25 Plaintiff's copyrighted Motion Picture through the use of the AE3 Hash to an unknown number
26 of other individuals over the Internet.

27 31. The infringing activity took place on November 16, 2010 at 4:26:19 p.m. UTC, 6
28 hours, 38 minutes and 27 seconds after Doe 3.

Defendant Doe 5

32. Defendant Doe 5 is unknown, but used the following IP address: 70.173.153.197.

33. Doe 5 used this IP address to illegally republish and illegally distribute the Plaintiff's copyrighted Motion Picture through the use of the AE3 Hash to an unknown number of other individuals over the Internet.

34. The infringing activity took place on November 16, 2010 at 5:52:35 p.m. UTC, 1 hour, 26 minutes and 16 seconds after Doe 4.

Defendant Doe 6

35. Defendant Doe 6 is unknown, but used the following IP address: 70.170.72.92.

36. Doe 6 used this IP address to illegally republish and illegally distribute the Plaintiff's copyrighted Motion Picture through the use of the AE3 Hash to an unknown number of other individuals over the Internet.

37. The infringing activity took place on November 17, 2010 at 1:03:52 a.m. UTC, 7 hours, 11 minutes and 17 seconds after Doe 5.

Defendant Doe 7

38. Defendant Doe 7 is unknown, but used the following IP address: 68.104.108.190.

39. Doe 7 used this IP address to illegally republish and illegally distribute the Plaintiff's copyrighted Motion Picture through the use of the AE3 Hash to an unknown number of other individuals over the Internet.

40. The infringing activity took place on November 18, 2010 at 8:18:23 a.m. UTC, 7 hours, 14 minutes and 31 seconds after Doe 6.

Defendant Doe 8

41. Defendant Doe 8 is unknown, but used the following IP address: 70.173.129.212.

42. Doe 8 used this IP address to illegally republish and illegally distribute the Plaintiff's copyrighted Motion Picture through the use of the AE3 Hash to an unknown number of other individuals over the Internet.

43. The infringing activity took place on November 23, 2010 at 04:27:56 a.m. UTC, 4 days, 20 hours, 9 minutes and 33 seconds after Doe 7.

1 **Defendant Doe 9**

2 44. Defendant Doe 9 is unknown, but used the following IP address: 70.173.244.69.

3 45. Doe 9 used this IP address to illegally republish and illegally distribute the
4 Plaintiff's copyrighted Motion Picture through the use of the AE3 Hash to an unknown number
5 of other individuals over the Internet.

6 46. The infringing activity took place on November 24, 2010 at 5:10:10 a.m. UTC, 1
7 day, 42 minutes and 14 seconds after Doe 8.

8 **Defendant Doe 10**

9 47. Defendant Doe 10 is unknown, but used the following IP address: 184.76.85.7.

10 48. Doe 10 used this IP address to illegally republish and illegally distribute the
11 Plaintiff's copyrighted Motion Picture through the use of the AE3 Hash to an unknown number
12 of other individuals over the Internet.

13 49. The infringing activity took place on November 28, 2010 at 11:34:32 p.m. UTC, 4
14 days, 18 hours, 23 minutes and 22 seconds after Doe 9.

15 **Defendant Doe 11**

16 50. Defendant Doe 11 is unknown, but used the following IP address:
17 75.142.247.222.

18 51. Doe 11 used this IP address to illegally republish and illegally distribute the
19 Plaintiff's copyrighted Motion Picture through the use of the AE3 Hash to an unknown number
20 of other individuals over the Internet.

21 52. The infringing activity took place on November 29, 2010 at 12:36:51 a.m. UTC, 1
22 hour, 2 minutes and 19 seconds after Doe 10.

23 **Defendant Doe 12**

24 53. Defendant Doe 12 is unknown, but used the following IP address: 70.173.10.114.

25 54. Doe 12 used this IP address to illegally republish and illegally distribute the
26 Plaintiff's copyrighted Motion Picture through the use of the AE3 Hash to an unknown number
27 of other individuals over the Internet.

1 55. The infringing activity took place on December 1, 2010 at 5:37:07 p.m. UTC, 16
2 hours, 58 minutes and 16 seconds after Doe 11.

3 **Defendant Doe 13**

4 56. Defendant Doe 13 is unknown, but used the following IP address: 68.104.67.88.

5 57. Doe 13 used this IP address to illegally republish and illegally distribute the
6 Plaintiff's copyrighted Motion Picture through the use of the AE3 Hash to an unknown number
7 of other individuals over the Internet.

8 58. The infringing activity took place on December 9, 2010 at 4:40:50 a.m. UTC, 7
9 days, 11 hours, 3 minutes and 43 seconds after Doe 12.

10 **IV. COPYRIGHT AND BITTORRENT**

11 59. BitTorrent is a peer-to-peer file sharing protocol used for distributing and sharing
12 data on the Internet, including files containing digital versions of motion pictures. Rather than
13 downloading a file from a single source, the BitTorrent protocol allows users to join a "swarm,"
14 or group, of hosts to download and upload from each other simultaneously. The process works
15 as follows:

16 a. First, users download a torrent file onto their computer. This file contains a
17 unique hash code known as the SHA-1 hash – which is a unique identifier
18 generated by a mathematical algorithm developed by the National Security
19 Agency. This torrent file contains a “roadmap” to the IP addresses of other
20 users who are sharing the media file identified by the unique hash value, as
21 well as specifics about the media file. The media file could be any large file,
22 such as a digital motion picture or music file.

23 b. Second, the user opens the torrent file with a BitTorrent program, also known
24 as a BitTorrent “client” application, which is capable of reading the roadmap
25 encoded in the torrent file. This client program, after reading the roadmap,
26 connects “uploaders” of the file (i.e. those that are distributing the content)
27 with “downloaders” of the file (i.e. those that are copying the content).
28 During this process, the client reaches out to one or more “trackers” that are

1 identified on the roadmap. A tracker is an Internet server application that
2 records the IP addresses associated with users who are currently sharing any
3 number of media files identified by their unique hash values and then directs a
4 BitTorrent user's computer to other users who have the particular file each
5 user is seeking to download.

6 60. For a BitTorrent user, this process is quite simple. When a BitTorrent user seeks
7 to download a motion picture, he or she merely opens the appropriate torrent file, which may be
8 found online on any number of torrent search engine websites, using a BitTorrent client
9 application.

10 61. Because BitTorrent client software generally lacks the ability to search for
11 torrents, end-users use search engines or other websites that contain indices of torrent files to
12 find files being made available by other BitTorrent users. These torrent files do not contain
13 audio or visual media, but instruct the user's BitTorrent client where to go and how to obtain the
14 desired file.

15 62. The downloading user's BitTorrent client then extracts a list containing one or
16 more tracker locations, which it then uses to connect to at least one tracker that will identify IP
17 addresses where the file is available. Each IP address identifies an uploading user who is
18 currently running a BitTorrent client on his or her computer and who is currently offering the
19 desired motion picture file for download. The downloading user's BitTorrent software then
20 begins downloading the motion picture file without any further effort from the user, by
21 communicating with the BitTorrent client programs running on the uploading users' computers.

22 63. The life cycle of a file shared using BitTorrent begins with just one individual –
23 the initial propagator, sometimes called a “seed” user or “seeder.” The initial propagator
24 intentionally elects to share a file with a torrent swarm. The original file, in this case, contains
25 Plaintiff's entire copyrighted work.

26 64. Other members of the swarm connect to the seed to download the file, wherein
27 the download creates an exact digital copy of Plaintiff's copyrighted work on the downloaders'
28 computers. As additional thieves request the same file, each additional thief joins the collective

1 swarm, and each new thief receives the same or different pieces of the file from each other thief
2 in the swarm who has already downloaded any part of the file. Eventually, once the initial
3 propagator has distributed each piece of the file to at least one other thief, so that together the
4 pieces downloaded by members of the swarm comprises the whole motion picture when
5 reassembled, the initial propagator may leave the swarm, and the remaining thieves can still
6 obtain a full copy of the motion picture by exchanging the pieces of the motion picture that each
7 one has.

8 65. Files downloaded in this method are received in hundreds or even thousands of
9 individual pieces. Each piece that is downloaded is immediately thereafter made available for
10 distribution to other users seeking the same complete file. The effect of this technology makes
11 every downloader also an uploader of the content. This means that every user who has a copy of
12 the infringing material in a swarm may also be a source for later downloaders of that material.

13 66. In the BitTorrent world, there is honor among thieves. Those who merely
14 download files, without publishing and sharing files, are derisively called “leechers.”

15 67. Being a leecher is not only a negative due to the pejorative terminology, but
16 leechers are also punished by the torrent swarm.

17 68. BitTorrent’s protocol stalls the downloads of leechers, in an effort to preserve
18 network speed for the more prolific copyright infringers. The sharing of files as users receive
19 them, then, is inherent in BitTorrent’s use for the protocol to be of any utility to the end user.

20 69. This distributed nature of BitTorrent leads to a rapid viral sharing of a file
21 throughout the collective peer users. As more peers join the collective swarm, the frequency of
22 successful downloads also increases. Because of the nature of BitTorrent protocol, any seed peer
23 that has downloaded a file prior to the time that a subsequent peer downloads the same file is
24 automatically a source for the subsequent peer, so long as that first peer is online at the time the
25 subsequent peer requests download of the file from the swarm. Because of the nature of the
26 collective swarm downloads as articulated above, every infringer is – and by necessity together –
27 simultaneously both stealing the Plaintiff’s copyrighted material and redistributing it.

28

1 70. Plaintiff has recorded each Defendant named herein actually publishing the
2 Motion Picture via BitTorrent.

3 71. Plaintiff's Motion Picture is easily discernable as a professional work. Plaintiff
4 created the works using professional performers, directors, cinematographers, lighting
5 technicians, set designers and editors. Plaintiff created each work with professional-grade
6 cameras, lighting, and editing equipment.

7 72. Each of Plaintiff's works is marked with Plaintiff's trademark (CORBIN
8 FISHER[®]), a copyright notice, a warning that unauthorized copying is illegal and will be
9 prosecuted, and a statement as required by 18 U.S.C. § 2257 that age verification records for all
10 individuals appearing in the works are maintained at corporate offices in San Diego, California.

11 73. At various times, Plaintiff discovered and documented its copyrighted work being
12 publicly distributed by Does 1-95 by and through the BitTorrent network.

13 74. Defendants, without authorization, copied and distributed audiovisual works
14 owned by and registered to Plaintiff in violation of 17 U.S.C. §§ 106(1) and (3).

15 **V. DEFENDANTS ARE MEMBERS OF A SINGLE BITTORRENT SWARM**

16 75. Defendants are peer members who have all collectively participated in the same
17 peer-to-peer (hereinafter, "P2P") network swarm that was utilized to unlawfully infringe upon
18 Plaintiff's exclusive rights in its copyrighted film without permission.

19 76. Defendants initiated their infringement by searching for and obtaining a torrent
20 file containing information sufficient to locate and download Plaintiff's copyrighted Motion
21 Picture. Thereafter, each Defendant opened the torrent file using a BitTorrent client application
22 that was specifically developed to read such files.

23 77. The unique file identifier generated by an algorithm developed by the National
24 Security Agency associated with the instant action is the AE3 Hash. Each Defendant is a
25 member of the same collective swarm associated with the AE3 Hash, and each acted collectively,
26 and in concert, in effectuating the illegal and unauthorized sharing of Plaintiff's copyrighted
27 work.

28

1 78. Each Defendant owns or otherwise has control of a different computer
2 collectively connected to the Internet that contained – or possibly still contains – a torrent file
3 identifying Plaintiff’s copyrighted work. Each computer also contained or still contains
4 Plaintiff’s copyright work, which was downloaded using the information encoded in that torrent
5 file.

6 79. Because some IP addresses are “dynamic” (i.e., a single computer could be
7 assigned a different IP address on different dates or times), or that persons have access to and
8 often use more than one computer, it is possible that various John Does named in this Complaint
9 could actually be the same person.

10 80. All of the defendants republished and duplicated the Plaintiff’s Motion Picture.
11 Moreover, they did not only replicate the same motion picture, but all of the defendants, as
12 members of the same swarm, republished, duplicated, and replicated the precise same copy and
13 same AE3 Hash version of the Motion Picture, thus demonstrating that all of the defendants
14 shared and replicated the same motion picture with one another, thus linking them all together in
15 a massive conspiracy and concerted effort to deprive the Plaintiff of its exclusive rights in the
16 Motion Picture under the Copyright Act.

17 81. Defendant peers each utilized a torrent file to upload and download Plaintiff’s
18 copyrighted film without permission through use of the BitTorrent file transfer protocol.

19 82. Each Defendant peer, consistent with using a BitTorrent P2P network, obtained a
20 torrent file containing sufficient information to locate and download a copy of Plaintiff’s Motion
21 Picture.

22 83. After each Defendant peer downloaded a torrent containing information
23 concerning sources of Plaintiff’s copyrighted Motion Picture, each Defendant used that
24 information to connect to other Defendants for the purpose of sharing Plaintiff’s copyrighted
25 work with other members of the BitTorrent collective network.

26 84. Plaintiff’s copyrighted Motion Picture was then uploaded and downloaded
27 through a single swarm collective among the various Defendants in concert – all members
28 sharing the same exact video, using the same exact hash identifier.

1 85. Once connected to the BitTorrent swarm sharing Plaintiff's copyrighted Motion
2 Picture, the Defendant peers shared the Motion Picture between each other by trading small
3 portions of the file containing a digital copy of the Motion Picture. More precisely, the
4 BitTorrent network divided the original copyrighted work into many small pieces and distributed
5 these pieces throughout the swarm until each of the collectively participating Defendants in the
6 swarm had a partial or complete infringing copy of the Motion Picture.

7 86. Based on this information, Defendants all participated in the same collective
8 swarm, infringing upon Plaintiff's exclusive rights in its work by uploading (distributing) and
9 downloading (reproducing) Plaintiff's copyrighted film, and through their actions each
10 Defendant assisted each and every other Defendant, each members of the P2P network swarm, to
11 illegally download Plaintiff's copyrighted work.

12 **VI. FIRST CAUSE OF ACTION**

13 **(Copyright Infringement 17 U.S.C. § 501)**

14 87. The Plaintiff re-alleges and incorporates by reference the allegations contained in
15 each paragraph above.

16 88. Plaintiff is, and at all relevant times has been, the copyright owner of the
17 copyrighted work infringed upon by all Defendants, "Down on the Farm." Exh. 1.

18 89. Among the exclusive rights granted to each Plaintiff under the Copyright Act are
19 the exclusive rights to reproduce the Motion Picture and to distribute it – rights which
20 Defendants maliciously and intentionally infringed upon.

21 90. Plaintiff is informed and believes, and on that basis alleges, that Defendants
22 without the permission or consent of Plaintiff, have used, and continue to use, the BitTorrent file
23 transfer protocol to distribute the Motion Picture to the public, and/or make the Motion Picture
24 available for distribution to others, including other BitTorrent users. In doing so, Defendants
25 have violated Plaintiff's exclusive rights of reproduction and distribution. Defendants' actions
26 constitute infringement of Plaintiff's copyrights and exclusive rights under the Copyright Act.

27 91. Plaintiff is informed and believes and on that basis alleges that the foregoing acts
28 of infringement were willful and intentional.

1 uploading the copyrighted work, you will receive only the exact parts of a singular hash, not a
2 compilation of available pieces from multiple hashes.

3 97. Each of the Defendants published the precise same “hash” file, described in
4 Paragraph 13, to the BitTorrent network.

5 98. Each Defendant downloaded, uploaded and distributed the Motion Picture to each
6 other, in concert with one another and through use of the exact same protocol.

7 99. Because it is the exact same motion picture, using the exact same hash, in the
8 same general timeframe, the transaction of events at issue in this Complaint is common to all
9 Defendants, thus rendering the Defendants properly joined in this action.

10 100. BitTorrent users upload infringing works in concert in order to gain access and
11 ability to download other infringing copyrighted works.

12 101. As each of the thousands of people who illegally downloaded the movie accessed
13 this illegal publication, they derived portions of their illegal replication of the file from multiple
14 persons, including but not limited to the Defendants named in this action.

15 102. The Defendants knew of the infringement, were conscious of their own
16 infringement, and the Defendants were conscious of the fact that multiple other persons
17 derivatively downloaded the file containing the Plaintiff’s Motion Picture.

18 103. The infringement by other BitTorrent users could not have occurred but for the
19 Defendant’s participation in uploading the Plaintiffs protected work. As such, the Defendants
20 participation in the infringing activities of others is substantial.

21 104. The Defendants each profited from this contributory infringement by way of
22 being granted access to a greater library of other infringing works, some of which belonged to
23 the Plaintiff and some of which belonged to other copyright owners.

24 **VIII. THIRD CAUSE OF ACTION**

25 **(CIVIL CONSPIRACY)**

26 105. Plaintiff re-alleges and incorporates by reference the allegations contained in each
27 paragraph above.

1 106. Without authorization, each of the Doe Defendants uploaded and distributed
2 Plaintiff's copyrighted works by and through the BitTorrent file transfer protocol.

3 107. The BitTorrent file transfer protocol is used almost exclusively to locate,
4 reproduce, and distribute infringing content.

5 108. Plaintiff is informed and believes and based thereon alleges that the material made
6 available by and through the BitTorrent file transfer protocol includes a substantial amount of
7 obviously unauthorized material including, for example, first run feature films prior to DVD or
8 even box office release.

9 109. In order to access and use the BitTorrent file transfer protocol, a user must first
10 download special software called a BitTorrent client.

11 110. The center of the conspiracy is the scheme to traffic in infringing content. If
12 authorities remove any of the BitTorrent trackers from service, the others may continue to
13 operate.

14 111. The purpose of the BitTorrent file transfer protocol (i.e., for certain participants to
15 identify themselves as a source for a file hash to one or more trackers and thereby facilitate the
16 reproduction and distribution of infringing copies of copyrighted works between a network of
17 coconspirators) is apparent to any user who downloads a BitTorrent client and uses the client for
18 that purpose.

19 112. Once a user identifies and selects the infringing content he wants to download, he
20 or she can then use the BitTorrent client to locate that file, or any portion thereof, on the
21 computers of other users offering the file for distribution and then transfer the infringing file to
22 his or her computer.

23 113. The transfer of infringing files cannot occur without the existence and assistance
24 of the participant users, including the Defendants named herein, who supply the infringing
25 content.

26 114. Plaintiff is informed and believes and based thereon alleges that each of the
27 Defendants downloaded a BitTorrent client for the purpose of conspiring with other BitTorrent
28 users to reproduce and distribute movies in violation of copyright laws.

1 115. Plaintiff is informed and believes and based thereon alleges that at the time each
2 Doe Defendant downloaded a BitTorrent client, he or she knew the client would provide access
3 to infringing movies made available by other users and would allow the Defendant to provide
4 infringing movies to other BitTorrent users.

5 116. Plaintiff is informed and believes, and based thereon alleges, that at the time each
6 Doe Defendant downloaded a BitTorrent client, he or she intended to access a network of other
7 BitTorrent users for the purpose of reproducing and exchanging infringing copies of movies in
8 violation of copyright laws.

9 117. Plaintiff is informed and believes, and based thereon alleges, that BitTorrent
10 clients reward users for making content available to others by enabling faster download speeds
11 for those who make content available.

12 118. In addition to the infringing files containing digital copies of Plaintiff's movies,
13 each identified Doe Defendant without authorization offered large amounts of infringing content
14 belonging to other copyright holders for others to download, knowing the infringing nature of the
15 content they offered.

16 119. Plaintiff is informed and believes and based thereon alleges that each Defendant
17 without authorization offered large amounts of infringing content to others, knowing that other
18 BitTorrent users would download the infringing content and further distribute it in exchange for
19 still more infringing content.

20 120. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
21 distributed infringing movies in anticipation of receiving copies of infringing movies in return,
22 including Plaintiff's copyrighted Motion Picture.

23 121. Each Doe Defendant knew or should have known that the infringing content the
24 Defendant downloaded to his computer came from the computers of other users, who made the
25 content available to him or her, as well as others in the same network of BitTorrent users, in
26 violation of copyright laws.

27 122. Each Doe Defendant understood the nature of the conspiracy to violate copyrights
28 and agreed to join the conspiracy by downloading a BitTorrent client with the intention of using

1 that BitTorrent client to knowingly download, reproduce, and distribute infringing files with
2 coconspirators.

3 123. Each Defendant engaged in an unlawful act in furtherance of the conspiracy when
4 he, without authorization, used a BitTorrent client to download, reproduce, and distribute copies
5 of Plaintiff's copyright registered works.

6 124. Defendants, all and each of them, conspired with the other Defendants by
7 agreeing to provide infringing reproductions of various copyright protected works, including
8 Plaintiff's works, in exchange for infringing reproductions of other copyright protected works,
9 including Plaintiff's works.

10 125. Each Defendant took affirmative steps to advance the conspiracy by unlawfully
11 and without authorization reproducing Plaintiff's copyrighted works and distributing those works
12 to coconspirators by and through the BitTorrent file transfer protocol in anticipation of receiving
13 other infringing copies of copyright protected works in exchange.

14 126. The Defendants' conspiracy with others to unlawfully reproduce and distribute
15 infringing copies of its works by and through the BitTorrent file transfer protocol caused Plaintiff
16 harm in an amount to be determined at trial.

17 127. Each Defendant is jointly and severally liable for the harm Plaintiff suffered as a
18 result of the Defendants participation in the conspiracy to violate copyright laws.

19 **IX. FOURTH CAUSE OF ACTION**

20 **(NEGLIGENCE)**

21 128. Plaintiff re-alleges and incorporates by reference the allegations contained in each
22 paragraph above.

23 129. In the alternative, if the Defendants did not use the Plaintiff's copyrighted work,
24 publish the Plaintiff's copyrighted work, or conspire upload and distribute Plaintiff's copyrighted
25 work to their co-conspirators, then instead the Defendants accessed, or controlled access, to the
26 Internet connection used in performing the unauthorized copying and sharing of Plaintiff's
27 Motion Picture described above.

1 130. Defendants failed to adequately secure their Internet access, whether accessible
2 only through their computer when physically connected to an Internet router, or accessible to
3 many computers by use of a wireless router, and failed to prevent its use for this unlawful
4 purpose.

5 131. Reasonable Internet users take steps to secure their Internet access accounts to
6 prevent the use of such accounts for nefarious and illegal purposes. As such, Defendants' failure
7 to secure their Internet access accounts, and thereby prevent such illegal uses thereof, constitutes
8 a breach of the ordinary care that reasonable persons exercise in using an Internet access account.

9 132. Upon information and belief, Plaintiff alleges that Defendants' failure to secure
10 their Internet access allowed for the copying and sharing of Plaintiff's Motion Picture by use of
11 the BitTorrent protocol on Defendants' respective Internet connections, and interfering with
12 Plaintiff's exclusive rights in the copyrighted work.

13 133. By virtue of this unsecured access, Defendants negligently allowed the use of
14 their Internet access accounts to perform the above-described copying and sharing of Plaintiff's
15 copyrighted Motion Picture.

16 134. Had Defendants taken reasonable care in securing access to their Internet
17 connections, such infringements as those described above would not have occurred by the use of
18 their Internet access accounts.

19 135. Defendants' negligent actions allowed others to unlawfully copy and share
20 Plaintiff's copyrighted Motion Picture, proximately causing financial harm to Plaintiff and
21 unlawfully interfering with Plaintiff's exclusive rights in the Motion Picture.

22 **PLAINTIFF'S REQUEST FOR RELIEF**

23 1. For an injunction providing:

24 Defendant shall be and hereby is enjoined from directly or indirectly
25 infringing upon the Plaintiff's copyrights in the Motion Picture or any other
26 works, whether now in existence or later created, that are owned or controlled
27 by Plaintiff (or any parent, subsidiary, or affiliate of Plaintiff), including
28 without limitation by using the Internet or any online media distribution system

1 to reproduce (i.e., download) any of Plaintiff's works, to distribute (i.e., upload)
2 any of Plaintiff's works, or to make any of Plaintiff's works available for
3 distribution to the public, except pursuant to a lawful license or with the
4 Plaintiff's express consent. Defendant also shall destroy all copies of
5 Plaintiff's works that Defendant has downloaded onto any computer hard drive
6 or server and shall destroy all copies of those downloaded works transferred
7 onto any physical medium or device in Defendant's possession, custody, or
8 control.

9 2. For damages for each infringement of each copyrighted work pursuant to 17
10 U.S.C. § 504. These damages may be actual or statutory, but if statutory damages are elected,
11 the Defendants' acts were willful in nature, justifying an award of up to \$150,000 per
12 infringement, and Plaintiff reserves the right to make such an election.

13 3. For Plaintiff's costs in this action.

14 4. For Plaintiff's attorneys' fees incurred in bringing this action.

15 5. For such other and further relief, either at law or in equity, general or special, to
16 which the may be entitled.

17
18 Date: April 22, 2011

s/ J. Malcolm DeVoy IV
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