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5
6 IN THE UNITED STATES DISTRICT COURT FOR THE
7
8 EASTERN DISTRICT OF CALIFORNIA

9
10 FIRST TIME VIDEOS LLC,)
11 Plaintiff,)
v.)
12 JOHN DOE,)
13 Defendant.)
14)

No.

Judge:
Magistrate:

COMPLAINT

DEMAND FOR JURY TRIAL

15
16 Plaintiff First Time Videos LLC, through its undersigned counsel, hereby files this
17 Complaint requesting damages and injunctive relief, and alleges as follows:

18 **NATURE OF THE CASE**

19 1. Plaintiff files this action for copyright infringement under the United States Copyright
20 Act and related common law claims of civil conspiracy and contributory infringement to combat the
21 willful and intentional infringement of one of its creative works. John Doe and his co-conspirators,
22 whose names Plaintiff expects to ascertain during discovery, knowingly and illegally, reproduced
23 and distributed Plaintiff's copyrighted creative work, and materially contributed to the infringing
24 conduct by acting in concert via the BitTorrent file sharing protocol and, upon information and
25 belief, continue to do the same. Plaintiff seeks a permanent injunction, statutory or actual damages,
26 award of costs and attorney's fees, and other relief.

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1 **THE PARTIES**

2 2. Plaintiff First Time Videos LLC is a limited liability company organized and existing
3 under the laws of the State of Nevada. Plaintiff is the exclusive holder of the relevant rights with
4 respect to the copyrighted creative work that is the subject of this Complaint.

5 3. Plaintiff is an investor and producer of adult entertainment content. Plaintiff invests
6 significant capital in producing the content associated with its brand and has produced substantial
7 numbers of videos and photographs. The copyrighted work at issue here is one of these adult videos,
8 “FTV – Shelbie & Felicia” (the “Video”).

9 4. The identities of John Doe and his co-conspirators are unknown to Plaintiff. Instead,
10 they are known to Plaintiff only by an Internet Protocol address (“IP address”), which is a number
11 assigned to devices, such as computers, connected to the Internet. In the course of monitoring
12 Internet-based infringement of its copyrighted content, Plaintiff’s agents observed unlawful
13 reproduction and distribution occurring among the IP addresses listed on Exhibit A and B, attached
14 hereto, via the BitTorrent protocol. Plaintiff cannot ascertain the identities of John Doe or his co-
15 conspirators without information from their respective Internet Service Providers (“ISPs”).

16 **JURISDICTION AND VENUE**

17 5. This Court has subject matter jurisdiction over the copyright infringement claim
18 under 17 U.S.C. §§ 101, *et seq.*, (the Copyright Act), 28 U.S.C. § 1331 (actions arising under the
19 laws of the United States), and 28 U.S.C. § 1338(a) (actions arising under an Act of Congress
20 relating to copyrights). This Court has supplemental jurisdiction over the civil conspiracy claim and
21 the contributory infringement claim under 28 U.S.C. § 1367(a) because they are so related to
22 Plaintiff’s copyright infringement claim, which is within this Court’s original jurisdiction, that these
23 three claims form part of the same case and controversy under Article III of the United States
24 Constitution.

25 6. This Court has personal jurisdiction because upon information and belief, John Doe
26 either resides in or committed copyright infringement in the State of California. Plaintiff used
27 geolocation technology to trace the IP address of John Doe to a point of origin within the State of
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1 California. Geolocation is a method for ascertaining the likely geographic region associated with a
2 given IP address at a given date and time. Although not a litmus test for personal jurisdiction,
3 geolocation suggests that John Doe resides in California.

4 7. Venue is properly founded in this judicial district pursuant to 28 U.S.C. §§ 1391(b)
5 and 1400(a) because John Doe resides in this District, may be found in this District, or a substantial
6 part of the events giving rise to the claims in this action occurred within this District.

7 **BACKGROUND**

8 8. BitTorrent is a modern file sharing method (“protocol”) used for distributing data via
9 the Internet.

10 9. Traditional file transfer protocols involve a central server, which distributes data
11 directly to individual users. This method is prone to collapse when large numbers of users request
12 data from the central server, in which case the server can become overburdened and the rate of data
13 transmission can slow considerably or cease altogether. In addition, the reliability of access to the
14 data stored on a server is largely dependent on the server’s ability to continue functioning for
15 prolonged periods of time under high resource demands.

16 10. Standard peer-to-peer (“P2P”) protocols involve a one-to-one transfer of whole files
17 between a single uploader and single downloader. Although standard P2P protocols solve some of
18 the issues associated with traditional file transfer protocols, these protocols still suffer from such
19 issues as scalability. For example, when a popular file is released (e.g. an illegal copy of the latest
20 blockbuster movie) the initial source of the file performs a one-to-one whole file transfer to a third
21 party, who then performs similar transfers. The one-to-one whole file transfer method can
22 significantly delay the spread of a file across the world because the initial spread is so limited.

23 11. In contrast, the BitTorrent protocol is a decentralized method of distributing data.
24 Instead of relying on a central server to distribute data directly to individual users, the BitTorrent
25 protocol allows individual users to distribute data among themselves. Further, the BitTorrent
26 protocol involves breaking a single large file into many small pieces, which can be transferred much
27 more quickly than a single large file and in turn redistributed much more quickly than a single large
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1 file. Moreover, each peer can download missing pieces of the file from multiple sources—often
2 simultaneously—which causes transfers to be fast and reliable. After downloading a piece, a peer
3 automatically becomes a source for the piece. This distribution method contrasts sharply with a one-
4 to-one whole file transfer method.

5 12. In BitTorrent vernacular, individual downloaders/distributors of a particular file are
6 called peers. The group of peers involved in downloading/distributing a particular file is called a
7 swarm. A server which stores a list of peers in a swarm is called a tracker. A computer program that
8 implements the BitTorrent protocol is called a BitTorrent client. Each swarm is unique to a particular
9 file.

10 13. The BitTorrent protocol operates as follows. First, a user locates a small “torrent” file.
11 This file contains information about the files to be shared and about the tracker, the computer that
12 coordinates the file distribution. Second, the user loads the torrent file into a BitTorrent client, which
13 automatically attempts to connect to the tracker listed in the torrent file. Third, the tracker responds
14 with a list of peers and the BitTorrent client connects to those peers to begin downloading data from
15 and distributing data to the other peers in the swarm. When the download is complete, the BitTorrent
16 client continues distributing data to other peers in the swarm until the user manually disconnects
17 from the swarm or the BitTorrent client otherwise does the same.

18 14. The degree of anonymity provided by the BitTorrent protocol is extremely low.
19 Because the protocol is based on peers connecting to one another, a peer must broadcast identifying
20 information (i.e. an IP address) before it can receive data. Nevertheless, the actual names of peers in
21 a swarm are unknown, as the users are allowed to download and distribute under the cover of their
22 IP addresses.

23 15. The BitTorrent protocol is an extremely popular method for transferring data. The
24 size of swarms for popular files can reach into the tens of thousands of unique peers. A swarm will
25 commonly have peers from many, if not every, state in the United States and several countries
26 around the world. And every peer in the swarm participates in distributing the file to dozens,
27 hundreds, or even thousands of other peers.

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1 16. The BitTorrent protocol is also an extremely popular method for unlawfully copying,
2 reproducing, and distributing files in violation of the copyright laws of the United States. A broad
3 range of copyrighted albums, audiovisual files, photographs, software, and other forms of media are
4 available for illegal reproduction and distribution via the BitTorrent protocol.

5 17. Efforts at combating BitTorrent-based copyright infringement have been stymied by
6 BitTorrent's decentralized nature. Because there are no central servers to enjoin from unlawfully
7 distributing copyrighted content, there is no primary target on which to focus anti-piracy efforts.
8 Indeed, the same decentralization that makes the BitTorrent protocol an extremely robust and
9 efficient means of transferring enormous quantities of data also acts to insulate it from anti-piracy
10 measures. This lawsuit is Plaintiff's only practical means of combating BitTorrent-based
11 infringement of the Video.

12 **ALLEGATIONS COMMON TO ALL COUNTS**

13 18. Plaintiff owns the copyright to the Video.

14 19. Plaintiff has applied for a certificate of copyright registration for the Video from the
15 United States Copyright Office, and that application is currently pending (Application No. 1-
16 710300744). (*See* Exhibit C, Application.)

17 20. The torrent file used to access the copyrighted material was named in a manner that
18 would have provided an ordinary individual with notice that the Video was protected under the
19 copyright laws of the United States.

20 21. Plaintiff employs proprietary peer-to-peer network forensic software to perform
21 exhaustive real time monitoring of the BitTorrent-based swarm involved in distributing the Video.
22 This software is effective in capturing data about the activity of peers in a swarm and their infringing
23 conduct.

24 22. John Doe and his co-conspirators, without Plaintiff's authorization or license,
25 intentionally downloaded a torrent file particular to Plaintiff's Video, purposefully loaded that
26 torrent file into their BitTorrent clients, entered a BitTorrent swarm particular to Plaintiff's Video,
27 and reproduced and distributed the Video to numerous third parties.

1 23. By willfully entering a BitTorrent swarm with the intent to download an unlawful
2 copy of the Plaintiff's Video, John Doe and his co-conspirators, each and individually, automatically
3 became an uploader as well as a downloader. John Doe and his co-conspirators thereby provided
4 pieces of the Video to other infringing peers in the swarm for them to exchange and distribute, with
5 the overarching purpose that the ever-growing swarm will jointly contribute to the complete
6 download of the Video for all individuals that enter the swarm at any given moment.

7 24. Plaintiff observed John Doe's and his co-conspirators' activities in the torrent swarm
8 specific to the Video and created a log identifying John Doe and his co-conspirators by their IP
9 address and the date and time of their unlawful activity. The IP address associated with John Doe is
10 identified on Exhibit A attached hereto. The IP addresses associated with John Doe's co-conspirators
11 are identified on Exhibit B.

12 **COUNT I – COPYRIGHT INFRINGEMENT**

13 25. Plaintiff hereby incorporates by reference each and every allegation contained in the
14 preceding paragraphs as if set forth fully herein.

15 26. John Doe's and his co-conspirators' conduct infringes upon Plaintiff's exclusive
16 rights of reproduction and distribution that are protected under the Copyright Act.

17 27. John Doe's and his co-conspirators' conduct was willful within the meaning of the
18 Copyright Act: intentional, and with indifference to the Plaintiff's rights.

19 28. Plaintiff has been damaged by John Doe's and his co-conspirators' conduct, including
20 but not limited to economic and reputation losses. Plaintiff continues to be damaged by such
21 conduct, and has no adequate remedy at law to compensate the Plaintiff for all of the possible
22 damages stemming from the John Doe's and his co-conspirators' conduct.

23 29. Plaintiff hereby reserves the right, pursuant to 17 U.S.C. § 504(c), to elect to recover
24 statutory damages for each infringement, in lieu of seeking recovery of actual damages.

25 30. As John Doe's and his co-conspirators' infringement was intentional and willful, the
26 Plaintiff is entitled to an award of statutory damages, exemplary damages, attorneys' fees, and the
27 costs of the suit.
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COUNT II – CIVIL CONSPIRACY

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2 31. Plaintiff hereby incorporates by reference each and every allegation contained in the
3 preceding paragraphs as if set forth fully herein.

4 32. In using the peer-to-peer BitTorrent file distribution method, John Doe and his co-
5 conspirators engaged in a concerted action with other yet unnamed individuals to reproduce and
6 distribute Plaintiff’s Video by exchanging pieces of the Video file in the torrent swarm with their
7 peers.

8 33. John Doe and his co-conspirators downloaded a torrent file, opened it using a
9 BitTorrent client, and then entered a torrent swarm comprised of other individuals distributing and
10 reproducing Plaintiff’s Video.

11 34. Participants in the torrent swarm have conspired to provide other individuals with
12 pieces of the Video in exchange for receiving other pieces of the same Video to eventually obtain a
13 complete copy of the file.

14 35. In furtherance of this civil conspiracy, John Doe and his co-conspirators committed
15 overt tortious and unlawful acts by using BitTorrent software to download the Video from and
16 distribute it to others, and were willful participants in this joint activity.

17 36. As a proximate result of this conspiracy, Plaintiff has been damaged, as is more fully
18 alleged above.

COUNT III – CONTRIBUTORY INFRINGEMENT

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20 37. Plaintiff hereby incorporates by reference each and every allegation contained in the
21 preceding paragraphs as if set forth fully herein.

22 38. John Doe and his co-conspirators are liable as contributory copyright infringers for
23 the infringing act of fellow infringers in the swarm identified in this Complaint. John Doe and his
24 co-conspirators enabled, induced, facilitated, and materially contributed to each act of infringement
25 by other fellow infringers in the same swarm.

26 39. John Doe and his co-conspirators had actual and constructive knowledge that they
27 were illegally downloading and distributing Plaintiff’s Video without authorization or consent.

1 40. John Doe and his co-conspirators, each and individually, knew or had reason to know
2 that they were engaged in an act consisting of direct infringement of Plaintiff's copyright.

3 41. John Doe and his co-conspirators, acting with this actual and constructive knowledge,
4 enabled, facilitated, and materially contributed to the actions of their infringing peers seeking to
5 illegally download and distribute Plaintiff's copyrighted Video which, due to the specific nature of
6 BitTorrent technology, John Doe and his co-conspirators necessarily enabled to accomplish.

7 42. Defendants' acts of infringement have been willful, intentional, and purposeful, in
8 disregard of and indifferent to the rights of Plaintiffs.

9 43. As a result of the contributory infringement of the Video by Defendants, Plaintiff has
10 been damaged, as is more fully alleged in Count I.

11 JOINDER OF CO-CONSPIRATORS

12 44. Plaintiff intends to seek leave of the Court to amend this complaint to join John Doe's
13 co-conspirators as defendants in this action pursuant to Fed. R. Civ. P. 20(a)(2).

14 JURY DEMAND

15 45. Plaintiff hereby demands a jury trial in this case.

16 PRAYER FOR RELIEF

17 **WHEREFORE**, Plaintiff respectfully requests Judgment and relief as follows:

18 1) Judgment against John Doe that he has: a) willfully infringed Plaintiff's rights in
19 federally registered copyrights pursuant to 17 U.S.C. § 501; and b) otherwise injured the business
20 reputation and business of Plaintiff by his acts and conduct set forth in this Complaint;

21 2) Judgment in favor of the Plaintiff against John Doe for actual damages or statutory
22 damages pursuant to 17 U.S.C. § 504, at the election of Plaintiff, in an amount to be ascertained at
23 trial;

24 3) Order of impoundment under 17 U.S.C. §§ 503 & 509(a) impounding all infringing
25 copies of Plaintiff's audiovisual works, photographs or other materials, which are in John Doe's
26 possession or under their control;

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1 4) On Count II, an order that John Doe is jointly and severally liable to Plaintiff in the
2 full amount of the Judgment on the basis of a common law claim for civil conspiracy to commit
3 copyright infringement; for an award of compensatory damages in favor of the Plaintiff and against
4 John Doe, jointly and severally, in an amount to be determined at trial;

5 5) On Count III, an order that John Doe is jointly and severally liable to the Plaintiff in
6 the full amount of Judgment on the basis of a common law claim for contributory infringement of
7 copyright; for an award of compensatory damages in favor of the Plaintiff and against John Doe,
8 jointly and severally, in an amount to be determined at trial;

9 6) Judgment in favor of Plaintiff against John Doe awarding the Plaintiff attorneys' fees,
10 litigation expenses (including fees and costs of expert witnesses), and other costs of this action; and

11 7) Judgment in favor of the Plaintiff against John Doe, awarding Plaintiff declaratory
12 and injunctive or other equitable relief as may be just and warranted under the circumstances.
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14 Respectfully Submitted,

15 PRENDA LAW INC.
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DATED: March 12, 2012

17 By: _____ /s/ Brett L. Gibbs _____
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DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a jury trial as provided by FRCP 38(a).

By: /s/ Brett L. Gibbs

Brett L. Gibbs, Esq. (SBN 251000)

Attorney for Plaintiff