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4 *Attorney for Plaintiff*
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6 IN THE UNITED STATES DISTRICT COURT FOR THE
7
8 SOUTHERN DISTRICT OF CALIFORNIA

9
10 MILLENNIUM TGA, INC.,)

11 Plaintiff,)

v.)

12 TYREE PASCHALL,)

13 Defendant.)
14)
15)

No. '12CV0792 MMAWVG

Judge:
Magistrate:

COMPLAINT

DEMAND FOR JURY TRIAL

16 Plaintiff Millennium TGA, Inc., through its undersigned counsel, hereby files this Complaint
17 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 two of its creative works. Tyree Paschall and his joint
22 tortfeasors, whose names Plaintiff expects to ascertain during discovery, knowingly and illegally,
23 reproduced and distributed Plaintiff's copyrighted creative works, and materially contributed to the
24 infringing conduct by acting in concert via the BitTorrent file sharing protocol and, upon
25 information and belief, continue to do the same. Plaintiff seeks a permanent injunction, statutory or
26 actual damages, award of costs and attorney's fees, and other relief.

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THE PARTIES

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2 1. Defendant Tyree Paschall is an individual who is incarcerated at the Vista Detention
3 Facility in Vista, California. On information and belief, Mr. Paschall is the subject of an active
4 investigation into the murder of a transgender individual.

5 2. Plaintiff Millennium TGA, Inc. is a corporation organized and existing under the laws
6 of the State of Hawaii. Plaintiff is a prominent producer of transgender adult entertainment content.
7 The copyrighted works at issue here are two of these adult videos, “Shemale Yum – Jenna Comes
8 A’Knocking!” and “Shemale Pornstar: Vaniity” (collectively referred to as “the Videos”). Plaintiff is
9 the exclusive holder of the relevant rights with respect to the copyrighted creative works that are the
10 subject of this Complaint.

11 3. The identities of Mr. Paschall’s joint tortfeasors are unknown to Plaintiff. Instead,
12 they are known to Plaintiff only by an Internet Protocol address (“IP address”), which is a number
13 assigned to devices, such as computers, connected to the Internet. In the course of monitoring
14 Internet-based infringement of its copyrighted contents, Plaintiff’s agents observed unlawful
15 reproduction and distribution occurring among the IP addresses listed on Exhibit A, attached hereto,
16 via the BitTorrent protocol. On information and belief, Mr. Paschall used IP addresses
17 98.176.153.159 on August 14, 2011 at 10:43 a.m. (UTC) and IP address 72.197.0.75 at 4:51 a.m.
18 (UTC) on November 16, 2011. The IP addresses of Mr. Paschall’s joint tortfeasors are listed on
19 Exhibit A attached hereto.

20 4. Plaintiff cannot ascertain the identities of Mr. Paschall’s joint tortfeasors without
21 information from their respective Internet Service Providers (“ISPs”).

JURISDICTION AND VENUE

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

4 6. This Court has personal jurisdiction because upon information and belief, Mr.
5 Paschall resides in the State of California.

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

9 **BACKGROUND**

10 8. BitTorrent is a modern file sharing method ("protocol") used for distributing data via
11 the Internet.

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

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

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

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

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

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

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

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

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

14 **ALLEGATIONS COMMON TO ALL COUNTS**

15 18. Plaintiff owns the copyright to the Videos.

16 19. Plaintiff has applied for and received certificates of copyright registration from the
17 United States Copyright Office for "Shemale Yum – Jenna Comes A'Knocking!" (Reg. No.
18 PA0001759869) and Plaintiff has applied for a certificate of copyright registration for "Shemale
19 Pornstar: Vaniity" from the United States Copyright Office, and that application is currently pending
20 (Application No. 1-631393202).

21 20. The torrent file used to access the copyrighted material was named in a manner that
22 would have provided an ordinary individual with notice that the Videos were protected under the
23 copyright laws of the United States.

24 21. Plaintiff employs proprietary P2P network forensic software to perform exhaustive
25 real time monitoring of the BitTorrent-based swarm involved in distributing the Videos. This
26 software is effective in capturing data about the activity of peers in a swarm and their infringing
27 conduct.

1 Mr. Paschall and his joint tortfeasors induced, caused, or materially contributed to each act of
2 infringement by other fellow infringers in the same swarm.

3 39. Mr. Paschall and his joint tortfeasors had actual and constructive knowledge that they
4 were illegally downloading and distributing Plaintiff's Videos without authorization or consent.

5 40. Mr. Paschall and his joint tortfeasors, each and individually, knew or had reason to
6 know that they were engaged in an act consisting of direct infringement of Plaintiff's copyrights.

7 41. Mr. Paschall and his joint tortfeasors, acting with this actual and constructive
8 knowledge, induced, caused, or materially contributed to the actions of their infringing peers seeking
9 to illegally download and distribute Plaintiff's copyrighted Videos which, due to the specific nature
10 of BitTorrent technology, Mr. Paschall and his joint tortfeasors necessarily enabled to accomplish. In
11 particular, Mr. Paschall and his joint tortfeasors exchanged pieces among one another which enabled
12 the recipients to exchange for even more pieces of the infringing file.

13 42. Mr. Paschall's and his joint tortfeasors' acts of infringement have been willful,
14 intentional, and purposeful, in disregard of and indifferent to the rights of Plaintiffs.

15 43. As a result of the contributory infringement of the Videos by Mr. Paschall and his
16 joint tortfeasors, Plaintiff has been damaged, as is more fully alleged in Count I.

17 **JURY DEMAND**

18 44. Plaintiff hereby demands a jury trial in this case.

19 **PRAYER FOR RELIEF**

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

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

24 2) Judgment in favor of the Plaintiff against Mr. Paschall for actual damages or statutory
25 damages pursuant to 17 U.S.C. § 504, at the election of Plaintiff, in an amount to be ascertained at
26 trial;

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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

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

Millennium TGA, Inc.

(b) County of Residence of First Listed Plaintiff Honolulu (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Prenda Law Inc., 38 Miller Avenue, #263, Mill Valley, CA 94941; 415-325-5900

DEFENDANTS

Tyree Paschall

County of Residence of First Listed Defendant San Diego (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'12CV0792 MMAWVG

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: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, 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. 101 et seq.

Brief description of cause: Plaintiff sues Tyree Paschall for violating its copyright through bittorrent sharing.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$ 100,000.00, 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

04/02/2012 /s/ Brett L. Gibbs

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RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE