

1 Maureen C. VanderMay, WSBA No. 16742
The VanderMay Law Firm PC
2 2021 S Jones Blvd.
Las Vegas, Nevada 89146
3 (702) 538-9300

4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
7

8
9 ELF-MAN, LLC,)
10 Plaintiff,)
11 v.)
12 Charles Brown, an individual;)
C. G. Chinque Albright, an)
13 individual;)
Andrew Lint, an individual)
14 Ryan Hintz, an individual;)
Jon Bauer, an individual;)
15 Stephanie Housden, an individual;)
Carlos Rodriguez, an individual;)
16 Shannon Williams, an individual;)
Candace Roberts, an individual;)
17 Robert Luttrell, an individual;)
Jessi Galloway, an individual;)
18 Olga Symonenko, an individual;)
Josephine Geroe, an individual;)
19 Allen Athos, an individual;)
Kurt Ogden, an individual;)
20 Chrisann Ogden, an individual;)
Amanda Simons, an individual;)
21 Stephen Mize, an individual;)
Dean Barnett, an individual; Brenda)
22 Barnett, an individual; Charles)
Solberg, an individual; Ryan)
23 Lamberson, an individual; Melinda)
Brommer, an individual; David Starr,)
24 an individual; Rafael Torres, an)
individual; Racheal Graham, an)
25 individual; Jennifer Boyd, an)

Case No.: 2:13-CV-00115-TOR

FIRST AMENDED COMPLAINT

COPYRIGHT INFRINGEMENT

DEMAND FOR JURY TRIAL

26 ////

1 individual; William Brown, an)
 2 individual; DOE 2, DOE 5,)
 3 DOE 6, and DOE 24,)
 4 Defendants.)

5 Plaintiff Elf-Man, LLC, a limited liability company (“Elf-Man” / “Plaintiff”),
 6 pursuant to F.R.Civ.P. 15(a)(1)(A) hereby submits its first amended complaint and
 7 alleges as follows:

8 **INTRODUCTION**

9 1. Plaintiff Elf-Man produced a novel family oriented comedy motion picture
 10 regarding an Elf left by Santa to help a family come together and learn about
 11 Christmas.

12 2. In the production of a motion picture there are countless expenses and
 13 labors, many of which are not evident in the final project. Such expenses and
 14 labors include writers, staff persons, construction workers and others who are often
 15 union based employees working for a median salary.

16 3. Indeed, the final product produced, which may be less than two hours long,
 17 is often sourced from hundreds of days and tens of thousands of hours of labor,
 18 followed by near countless hours of post-production until the final product is ready
 19 for viewing in a theater or at home.

20 4. The end product that many consumers see is a few hours in a theater, or
 21 possibly a DVD product that once production is complete has a nominal cost on a
 22 per-viewing experience. However, this is misleading to the true costs of the motion
 23 picture as the costs to view a completed motion picture or produce a single DVD
 24 are nominal compared to what is often years of work by thousands of people
 25 leading up to the end product.

26 5. Added to this is that the only people publicly seen related to the end product,
 27 movie stars and those that are known to be affiliated with motion pictures, such as

1 directors and other persons of note, are all generally the highest compensated
2 persons involved with the production of the work leading to the common
3 misunderstanding that people involved in motion pictures are already wealthy.

4 6. When the perception that those affiliated with a motion picture are already
5 wealthy, and the end product, such as a DVD only costs very little to make, a
6 reality disconnect often builds in the minds of much of the public, namely that
7 those associated with a motion picture do not need any more money.

8 7. When this reality disconnect meets with the ready availability of pirated
9 copies of motion pictures and the ease at which they can be illegally copied and
10 downloaded at an almost anonymous level, many people feel justified in their
11 pirating or theft of motion pictures.

12 8. The result is that despite the industry's efforts to capitalize on internet
13 technology and reduce costs to end viewers through legitimate and legal means of
14 online viewing such as through Netflix™, Hulu™, and Amazon Prime™, there are
15 still those that use this technology to steal motion pictures and undermine the
16 efforts of creators through their illegal copying and distribution of motion pictures.

17 9. A common means of illegally copying and distributing content on the
18 internet is through the use of a peer-to-peer network such as BitTorrent.

19 10. In this case each of the Defendants has participated, either directly or
20 indirectly or by facilitating the conduct of others, in illegally copying and
21 distributing Plaintiff's motion picture via BitTorrent.

22 **JURISDICTION AND VENUE**

23 11. This is a suit for copyright infringement and contributory copyright
24 infringement under the United States Copyright Act of 1976, as amended, 17
25 U.S.C. §§ 101 et seq. ("The Copyright Act").

26 ////

1 12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
2 1338(a).

3 13. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) and 28
4 U.S.C. § 1400(a).

5 **PARTIES**

6 **THE PLAINTIFF**

7 14. Plaintiff Elf-Man, LLC is a limited liability company with principal offices
8 in Frederick, Maryland, that produced the motion picture at issue in this matter.

9 **The Rights of the Plaintiff**

10 15. The motion picture in this case, titled *Elf-Man*, has been registered with the
11 United States Copyright Office by the author, Elf-Man, LLC, Registration No. PA
12 1-823-286.

13 16. The motion picture contains wholly original material that is copyrightable
14 subject matter under the laws of the United States.

15 17. The motion picture is currently offered for sale in commerce.

16 18. Under the Copyright Act, Elf-Man, LLC is the proprietor of all right, title,
17 and interest in the motion picture, including the right to sue for past infringement.

18 19. Under the Copyright Act, Elf-Man, LLC also controls the exclusive rights to
19 reproduce the motion picture and to distribute the motion picture to the public.

20 20. Plaintiff's motion picture is easily discernible as a professional work as it
21 was created using professional performers, directors, cinematographers, lighting
22 technicians, set designers and editors and with professional-grade cameras, lighting
23 and editing equipment.

24 ////

25 ////

26 ////

1 21. Defendants have notice of Plaintiff's rights through general publication and
2 advertising and more specifically as identified in the content of the motion picture,
3 advertising associated with the motion picture, and all packaging and copies, each
4 of which bore a proper copyright notice.

5 **THE DEFENDANTS**

6 **In General**

7 22. Defendants have each played at least one of the following roles in
8 connection with the use of BitTorrent to unlawfully download Plaintiff's motion
9 picture: 1) some or all Defendants are a group of BitTorrent users or peers whose
10 computers are collectively interconnected and used for illegally copying and
11 distributing Plaintiff's motion picture; 2) some or all Defendants contributed to the
12 infringement of Plaintiff's copyrights by others; and 3) some or all Defendants
13 permitted, facilitated and/or promoted the use of the internet access identified by
14 their IP address for the infringing of Plaintiff's exclusive rights under The
15 Copyright Act by others.

16 23. Defendants and each of them have illegally and without authorization from
17 Plaintiff copied, downloaded, shared and uploaded Plaintiff's motion picture using
18 the BitTorrent system, and/or contributed to or permitted, facilitated or promoted
19 such conduct by others.

20 24. Defendants and each of them have been identified as directly, indirectly or
21 contributorily infringing Plaintiff's copyrights in this district.

22 25. Defendants have been identified in the instant case by a specific Internet
23 Protocol or IP address and a "hash" (a file identifier generated by an algorithm
24 developed and implemented by the National Security Agency).

25 26. Under the BitTorrent protocol each file has a unique "hash" tied to a specific
26 file. In the instant case, all hashes identified on Exhibit 1 to Plaintiff's initial
27

1 complaint have been confirmed as being for an unauthorized copy of Plaintiff's
2 motion picture.

3 **Identification of the Named Defendants**

4 27. Internet Service Provider (“ISP”) Charter Communications, upon
5 information and belief, assigned Internet Protocol (“IP”) address 71.92.105.212 to
6 Defendant Charles Brown for a period of time, including but not limited to
7 02/17/2013 at 03:18:48 a.m.

8 28. At all times material, Defendant Charles Brown resided in Yakima,
9 Washington.

10 29. Defendant Charles Brown’s IP address of 71.92.105.212 was observed
11 infringing Plaintiff’s motion picture at 03:18:48 a.m. on 02/17/2013.

12 30. ISP Comcast Cable Holdings, Inc. (“Comcast”), upon information and belief,
13 assigned IP address 98.225.30.177 to C.G. Chinque Albright for a period of time,
14 including but not limited to 02/11/2013 at 10:53:31 a.m.

15 31. At all times material, Defendant C. G. Chinque Albright resided in Spokane,
16 Washington.

17 32. Defendant C. G. Chinque Albright’s IP address of 98.225.30.177 was
18 observed infringing Plaintiff’s motion picture at 10:53:31 a.m. on 02/11/2013.

19 33. ISP Charter Communications, upon information and belief, assigned IP
20 address 68.119.15.168 to Andrew Lint for a period of time, including but not
21 limited to 01/15/2013 at 11:11:14 p.m.

22 34. At all times material, Defendant Andrew Lint resided in West Richland,
23 Washington.

24 35. Defendant Andrew Lint’s IP address of 68.119.15.168 was observed
25 infringing Plaintiff’s motion picture at 11:11:14 p.m. on 01/15/2013.

26 / / / /

1 36. ISP Charter Communications, upon information and belief, assigned IP
2 address 68.119.15.128 to Defendant Ryan Hintz for a period of time, including but
3 not limited to 04:34:16 p.m. on 12/20/2012.

4 37. At all times material, Defendant Ryan Hintz resided in West Richland,
5 Washington.

6 38. Defendant Ryan Hintz's IP address of 68.119.15.128 was observed
7 infringing Plaintiff's motion picture at 04:34:16 p.m. on 12/20/2012.

8 39. ISP LocalTel, upon information and belief, assigned IP address 199.36.95.71
9 to Jon Bauer and Stephanie Housden for a period of time, including but not limited
10 to 12/19/2012 at 01:57:43 a.m.

11 40. At all times material, Defendants Jon Bauer and Stephanie Housden resided
12 in Wenatchee, Washington.

13 41. Defendants Jon Bauer and Stephanie Housden's IP address of 199.36.95.71
14 was observed infringing Plaintiff's motion picture at 01:57:43 a.m. on 12/19/2012.

15 42. ISP Embarq Communications, upon information and belief, assigned IP
16 address 67.237.227.124 to Carlos Rodriguez for a period of time, including but not
17 limited to 12/15/2012 at 11:12:25 a.m.

18 43. At all times material, Defendant Carlos Rodriguez resided in Grandview,
19 Washington.

20 44. Defendant Carlos Rodriguez's IP address of 67.237.227.124 was observed
21 infringing plaintiff's motion picture at 11:12:25 a.m. on 12/15/2012.

22 45. ISP CenturyLink, upon information and belief, assigned IP address
23 71.37.130.169 to Shannon Williams for a period of time, including but not limited
24 to 12/14/2012 at 06:33:22 p.m.

25 46. At all times material, Defendant Shannon Williams resided in Yakima,
26 Washington.

1 47. Defendant Shannon William's IP address of 71.37.130.169 was observed
2 infringing Plaintiff's motion picture at 06:33:22 p.m. on 12/14/2012.

3 48. ISP Comcast, upon information and belief, assigned IP address 67.185.38.85
4 to Candace Roberts for a period of time, including but not limited to 12/14/2012 at
5 07:21:29 a.m.

6 49. At all times material, Defendant Candace Roberts resided in Spokane
7 Washington.

8 50. Defendant Candace Roberts' IP address of 67.185.38.85 was observed
9 infringing Plaintiff's motion picture at 07:21:29 a.m. on 12/14/2012.

10 51. ISP CenturyLink, upon information and belief, assigned IP address
11 174.31.83.171 to Robert Luttrell for a period of time, including but not limited to
12 12/12/2012 at 06:42:37 a.m.

13 52. At all times material, Defendant Robert Luttrell resided in Spokane,
14 Washington.

15 53. Defendant Robert Luttrell's IP address of 174.31.83.171 was observed
16 infringing Plaintiff's motion picture at 06:42:37 a.m. on 12/12/2012.

17 54. ISP Comcast, upon information and belief, assigned IP address 24.16.113.58
18 to Jessi Galloway for a period of time, including but not limited to 12/11/2012 at
19 10:29:03 p.m.

20 55. At all times material, Defendant Jessi Galloway resided in Spokane,
21 Washington.

22 56. Defendant Jessi Galloway's IP address of 24.16.113.58 was observed
23 infringing Plaintiff's motion picture at 10:29:03 p.m. on 12/11/2012.

24 57. ISP Comcast, upon information and belief, assigned IP address
25 67.185.235.226 to Olga Symonenko for a period of time, including but not limited
26 to 12/11/2012 at 04:08:46 a.m.

1 58. At all times material, Defendant Olga Symonenko resided in Spokane,
2 Washington.

3 59. Defendant Olga Symonenko's IP address of 67.185.235.226 was observed
4 infringing Plaintiff's motion picture at 04:08:46 a.m. on 12/11/2012.

5 60. ISP Comcast, upon information and belief, assigned IP address
6 174.61.161.244 to Josephine Geroe for a period of time, including but not limited
7 to 12/10/2012 at 12:43:20 a.m.

8 61. At all times material, Defendant Josephine Geroe resided in Spokane,
9 Washington.

10 62. Defendant Josephine Geroe's IP address of 174.61.161.244 was observed
11 infringing Plaintiff's motion picture at 12:43:20 a.m. on 12/10/2012.

12 63. ISP Comcast, upon information and belief, assigned IP address
13 76.28.216.226 to Allen Athos for a period of time, including but not limited to
14 12/07/2012 at 05:45:24 a.m.

15 64. At all times material, Defendant Allen Athos resided in Spokane,
16 Washington.

17 65. Defendant Allen Athos' IP address of 76.28.216.226 was observed
18 infringing Plaintiff's motion picture at 05:45:24 a.m. on 12/07/2012.

19 66. ISP CenturyLink, upon information and belief, assigned IP address
20 67.5.94.32 to Defendants Kurt and Chrisann Ogden for a period of time, including
21 but not limited to 12/07/2012 at 01:00:42 a.m.

22 67. At all times material, Defendants Kurt and Chrisann Ogden resided in Deer
23 Park, Washington.

24 68. Defendants Kurt and Chrisann Ogden's IP address of 67.5.94.32 was
25 observed infringing Plaintiff's motion picture at 01:00:42 a.m. on 12/07/2012.

26 ////

1 69. ISP Comcast, upon information and belief, assigned IP address 67.160.38.27
2 to Amanda Simons for a period of time, including but not limited to 12/07/2012 at
3 12:55:52 a.m.

4 70. At all times material, Defendant Amanda Simons resided in Spokane,
5 Washington.

6 71. Defendant Amanda Simons' IP address of 67.160.38.27 was observed
7 infringing Plaintiff's motion picture at 12:55:52 a.m. on 12/07/2012.

8 72. ISP CenturyLink, upon information and belief, assigned IP address
9 71.37.135.90 to Stephen Mize for a period of time, including but not limited to
10 12/05/2012 at 03:21:11 a.m.

11 73. At all times material, Defendant Stephen Mize resided in Spokane,
12 Washington.

13 74. Defendant Stephen Mize's IP address of 71.37.135.90 was observed
14 infringing Plaintiff's motion picture at 03:21:11 a.m. on 12/07/2012.

15 75. ISP Fairpoint, upon information and belief, assigned IP address
16 66.243.237.91 to Defendants Dean Barnett and Brenda Barnett for a period of time,
17 including but not limited to 12/03/2012 at 11:36:42 p.m.

18 76. At all times material, Defendants Dean Barnett and Brenda Barnett resided in
19 Selah, Washington.

20 77. Defendants Dean Barnett and Brenda Barnett's IP address of 66.243.237.91
21 was observed infringing Plaintiff's motion picture at 11:36:42 p.m. on 12/03/2012.

22 78. ISP Comcast, upon information and belief, assigned IP address
23 67.185.155.193 to Charles Solberg for a period of time, including but not limited to
24 12/02/2012 at 11:57:39 p.m.

25 79. At all times material, Defendant Charles Solberg resided in Liberty Lake,
26 Washington.

1 80. Defendant Charles Solberg's IP address of 67.185.155.193 was observed
2 infringing Plaintiff's motion picture at 11:57:39 p.m. on 12/02/2012.

3 81. ISP Comcast, upon information and belief, assigned IP address
4 24.16.123.206 to Defendant Ryan Lamberson for a period of time, including but
5 not limited to 12/02/2012 at 04:39:20 p.m.

6 82. At all times material, Defendant Ryan Lamberson resided in Spokane Valley,
7 Washington.

8 83. Defendant Ryan Lamberson's IP address of 24.16.123.206 was observed
9 infringing Plaintiff's motion picture at 04:39:20 p.m. on 12/02/2012.

10 84. ISP CenturyLink, upon information and belief, assigned IP address
11 97.115.138.248 to Defendant Melinda Brommer for a period of time, including but
12 not limited to 12/02/2012 at 06:17:31 a.m..

13 85. At all times material, Defendant Melinda Brommer resided in Nine Mile
14 Falls, Washington.

15 86. Defendant Melinda Brommer's IP address of 97.115.138.248 was observed
16 infringing Plaintiff's motion picture at 06:17:31 a.m. on 12/02/2012.

17 87. ISP Comcast, upon information and belief, assigned IP address 97.185.249.5
18 to Defendant David Starr for a period of time, including but not limited to
19 12/02/2012 at 01:36:58 a.m.

20 88. At all times material, Defendant David Starr resided in Spokane,
21 Washington.

22 89. Defendant David Starr's IP address of 67.185.249.5 was observed infringing
23 Plaintiff's motion picture at 01:36:58 a.m. on 12/02/2012.

24 90. ISP Charter Communications, upon information and belief, assigned IP
25 address 71.92.104.96 to Defendant Rafael Torres for a period of time, including but
26 not limited to 12/02/2012 at 01:10:07 a.m.

1 91. At all times material, Defendant Rafael Torres resided in Yakima,
2 Washington.

3 92. Defendant Rafael Torres' IP address of 71.92.104.96 was observed
4 infringing Plaintiff's motion picture at 01:10:07 a.m. on 12/02/2012.

5 93. ISP CenturyLink, upon information and belief, assigned IP address
6 97.115.143.158 to Defendant Racheal Graham for a period of time, including but
7 not limited to 12/01/2012 at 06:03:50 p.m.

8 94. At all times material, Defendant Racheal Graham resided in Spokane,
9 Washington.

10 95. Defendant Racheal Graham's IP address of 97.115.143.158 was observed
11 infringing Plaintiff's motion picture at 06:03:50 p.m. on 12/01/2012.

12 96. ISP Comcast, upon information and belief, assigned IP address 67.185.123.3
13 to Defendant Jennifer Boyd for a period of time, including but not limited to
14 12/01/2012 at 03:35:18 a.m.

15 97. At all times material, Jennifer Boyd resided in Spokane, Washington.

16 98. Defendant Jennifer Boyd's IP address of 67.185.123.3 was observed
17 infringing Plaintiff's motion picture at 03:35:18 a.m. on 12/01/2012.

18 99. ISP Comcast, upon information and belief, assigned IP address 24.16.115.15
19 to Defendant William Brown for a period of time, including but not limited to
20 12/01/2012 at 02:26:28 a.m.

21 100. At all times material, Defendant William Brown resided in Spokane,
22 Washington.

23 101. Defendant William Brown's IP address of 24.16.115.15 was observed
24 infringing Plaintiff's motion picture at 02:26:28 a.m. on 12/01/2012.

25 ////

26 ////

1 **Further Identification of the Remaining Doe Defendants**

2 102. Plaintiff has not named in this amended complaint the persons identified as
3 Does 2, 5, 6, and 24. With respect to two of these Defendants, Plaintiff is still
4 working with the ISP to obtain subscriber identifying information. With respect to
5 the other two Defendants, Plaintiff is working with the subscriber or his counsel in
6 an effort to resolve this matter by way of settlement and has not named those
7 parties to permit settlement discussions to continue, or should Defendant request,
8 permit them to appear anonymously with leave of the Court. Plaintiff will either
9 move to file a second amended complaint naming these Defendants or file notices
10 of dismissals of the claims against them within the next 30 days.

11 **JOINDER**

12 103. Plaintiff acknowledges that joinder in this action under F.R.C.P. 20(a)(2) is
13 permissive in that Plaintiff's claims arise out of the same occurrences or
14 transactions, or series of occurrences or transactions and that there are questions of
15 law and fact common to each of the Defendants.

16 104. All of the Defendants have collectively acted through BitTorrent to illegally
17 download and distribute Plaintiff's motion picture, or have contributed to and/or
18 facilitated such conduct by others, each damaging Plaintiff.

19 105. As such, Plaintiff's rights to relief, as stated below, ultimately arise out of
20 the same series of transactions and occurrences.

21 106. This action also raises substantial questions of law and fact common to all
22 Defendants.

23 107. Permissive joinder in the instant case is to permit a more efficient
24 management of Plaintiff's claims against the several Defendants and to reduce the
25 costs to Plaintiff and Defendants and to reduce the costs and burdens on the Court.

26 ////

1 108. Notice is provided, that on being specifically identified and on request from
2 an identified Defendant, Plaintiff agrees to sever any Defendant that claims
3 prejudice in being joined in this matter and to proceed against each such Defendant
4 individually.

5 **FACTS COMMON TO ALL CLAIMS**

6 **IP Addresses**

7 109. To connect to the internet and/or to provide such access to others, each
8 Defendant was required to contract with an ISP and create an account for service.
9 It is the ISP that grants each user access to the internet and the ability to send and
10 receive information, whether in the form of an email, photo or motion picture.

11 110. To identify the source and destination of any piece of information, an ISP
12 assigns an IP address to each user which allows data to flow to and from each user
13 of the internet.

14 111. Each IP address is unique, and for any one time an IP address can be traced
15 back to a specific ISP account holder and user.

16 112. A standard term for any account for service from an ISP is that such service
17 may not be used for illegal activity. Indeed, many ISPs, such as Comcast, go to
18 considerable lengths to advise their subscribers of their usage policies, including
19 the prohibition of using or permitting use of the account to engage in infringing
20 activity.

21 113. Internet piracy and the use of the internet to conduct illegal activity are
22 commonly known. As such both through the license granted to a user from their
23 ISP to obtain an IP address and through common knowledge, Defendants were on
24 notice of the need to limit the use of their IP address to legal and authorized
25 activity.

26 ////

Peer-to-Peer Internet Piracy Via BitTorrent

1
2 114. As noted by Senator Levin in Congressional hearings on peer-to-peer internet
3 piracy, “In the world of copyright law, taking someone’s intellectual property is a
4 serious offense, punishable by large fines. In the real world, violations of copyright
5 law over the Internet are so widespread and easy to accomplish that many participants
6 seem to consider it equivalent to jaywalking – illegal but no big deal. But it is a big
7 deal. Under U.S. law, stealing intellectual property is just that – stealing. It hurts
8 artists, the music industry, the movie industry, and others involved in creative work.
9 And it is unfortunate that the software being used – called ‘file sharing’ as if it were
10 simply enabling friends to share recipes, is helping create a generation of Americans
11 who don’t see the harm.”

12 115. Defendants, either directly or indirectly, utilized an interactive peer-to-peer file
13 transfer technology protocol to copy Plaintiff’s motion picture.

14 116. Peer-to-peer networks, at least in their most common form, are computer
15 systems that enable internet users to: 1) make files (including motion pictures) stored
16 on each user's computer available for copying by other users or peers; 2) search for
17 files stored on other users' computers; and 3) transfer exact copies of files from one
18 computer to another via the internet.

19 117. The particular peer-to-peer protocol at issue in this suit is the BitTorrent
20 protocol.

21 118. Defendants and each of them directly or indirectly used BitTorrent in a
22 collective and often interdependent manner via the internet in the unlawful
23 reproduction and distribution of Plaintiff’s copyrighted motion picture.

24 119. To use BitTorrent, a user intentionally downloads a small program that they
25 install on their computers — the BitTorrent "client" application. The BitTorrent client
26 is the user's interface during the downloading/uploading process. The client may be
27

1 free, supported by advertising, offer upgrades or add on services for a fee, or a
2 combination of several options.

3 120. A BitTorrent client application typically lacks the ability to search for media
4 or content files. To find media or content available for download (as made available
5 by other BitTorrent users), users intentionally visit a “torrent site” using a standard
6 web browser.

7 121. A torrent site is a website that contains an index of media or content being
8 made available by other users (generally an extensive listing of movies and television
9 programs, among other copyrighted content). The torrent site hosts and distributes
10 small files known as "torrent files." Torrent files do not contain actual media or
11 content. Torrent files are used to instruct a user's computer where to go and how to
12 get the desired media or content. Torrent files interact with specific trackers, allowing
13 the user to download the desired media or content.

14 122. A torrent site is often an advertisement-revenue based or subscription-supported
15 index of media or content being made available by other users on the network and
16 maintains a listing of movies and television programs among other copyrighted
17 content.

18 123. A user then uses the torrent site to connect with other users and exchange
19 content though the BitTorrent protocol often with many users at the same time.

20 124. Internet piracy, and in particular BitTorrent piracy, though known as peer-to-
21 peer file sharing, is often a for-profit business as many software clients, torrent sites
22 and networks generate millions of dollars in revenue through sales and advertising.

23 125. Many participants, possibly including some or all of the Defendants, have paid
24 money to facilitate or permit increased access to content which has been made
25 available without authorization.

26 / / / /

27

1 126. The torrent file contains a unique hash identifier which is a unique identifier
2 generated by a mathematical algorithm developed by the National Security Agency.
3 This torrent file is tagged with the file's unique "hash," which acts as a "roadmap" to
4 the IP addresses of other users who are sharing the media or content identified by the
5 unique hash, as well as specifics about the media or content file.

6 127. A BitTorrent tracker manages the distribution of files, connecting uploaders
7 (those who are distributing content) with downloaders (those who are copying the
8 content). A tracker directs a BitTorrent user's computer to other users who have a
9 particular file, and then facilitates the download process from those users. When a
10 BitTorrent user seeks to download a motion picture or other content, he or she merely
11 clicks on the appropriate torrent file on a torrent site, and the torrent file instructs the
12 client software how to connect to a tracker that will identify where the file is available
13 and begin downloading it. In addition to a tracker, a user can manage file distribution
14 through a Peer Exchange and/or a Distributed Hash Table.

15 128. A Peer Exchange is a communications protocol built into almost every
16 BitTorrent protocol which allows users to share files more quickly and efficiently.
17 Peer Exchange is responsible for helping users find more users that share the same
18 media or content.

19 129. A Distributed Hash Table is a sort of world-wide telephone book, which uses
20 each file's "hash" to locate sources for the requested media or content. Thus, users are
21 able to access a partial list of other users with the media or content they want rather
22 than being filtered through a central computer called a tracker. By allowing users to
23 rely on individual computers for information, this not only reduces the load on the
24 central tracker, but also means that every client that is sharing this media or content
25 is also helping to hold this worldwide network together.

26 ////

1 130. Files downloaded in this method are downloaded in hundreds of individual
2 pieces. Each piece that is downloaded is immediately thereafter made available for
3 distribution to other users seeking the same file. The effect of this technology makes
4 every downloader also an uploader of the content. This means that every user who has
5 a copy of the infringing media or content on a torrent network is also a source for
6 others to download that media or content.

7 131. Thus, each IP address identified by the tracker is an uploading user who is
8 running a BitTorrent client on his or her computer and who is offering the media or
9 content for download. Once selected, the downloading user's BitTorrent client then
10 begins downloading the media or content by communicating with the BitTorrent client
11 programs running on one or more uploading users' computers.

12 132. The effect of this distributed network of users all downloading and uploading
13 the same file creates what is commonly known as a "swarm" wherein users operate
14 collectively to copy and distribute media and content.

15 133. Members of the swarm become interconnected to download files, wherein the
16 download creates an exact digital copy on the downloaders' computers. As additional
17 infringers request the same file, each additional infringer joins the collective swarm,
18 and each new infringer receives pieces of the file from each other infringer in the
19 swarm who has already downloaded any part of the file.

20 134. This distributed nature of BitTorrent leads to a rapid viral sharing of media and
21 content throughout the collective peer users. As more peers join the collective swarm,
22 the frequency and speed of successful downloads also increases.

23 135. Thus, a Defendant's distribution of even a single unlawful copy of the motion
24 picture can result in the nearly instantaneous worldwide distribution of that single
25 copy to an unlimited number of people. In this case, each Defendant's copyright

26 ///

27

28 FIRST AMENDED COMPLAINT – Page 18

1 infringement built upon the prior infringements, in a continuing cascade of
2 infringement going forward.

3 136. Further, though it is clearly established that the Defendants, either directly or
4 indirectly, participated in the exact same swarm, possibly directly linking to each
5 other, the nature of the BitTorrent system is such that the exact same data may be in
6 multiple swarms at the same time. As such, while a single swarm more directly links
7 Defendants, the same data, Plaintiff's motion picture, is being transferred in many
8 swarms, making every identified Defendant a participant in, if not the same transaction
9 or occurrence, the same series of transactions or occurrences - the BitTorrent exchange
10 of Plaintiff's motion picture.

11 **Conduct of Defendants**

12 137. Plaintiff has recorded each IP address assigned to each Defendant identified
13 herein as actually copying and publishing Plaintiff's motion picture via BitTorrent, as
14 Plaintiff's investigator has downloaded the motion picture from each Defendant's IP
15 identified herein.

16 138. This conduct was illegal and in violation of Defendants' license and terms of
17 access to the internet through their ISP.

18 139. Each Defendant knew or should have known the infringing conduct observed
19 by Plaintiff was unlicensed and in violation of plaintiff's copyrights

20 140. This case involves a single swarm in which numerous Defendants, either
21 directly or indirectly, engaged in mass copyright infringement of Plaintiff's motion
22 picture.

23 141. Each Defendant's IP address was used to illegally upload and share Plaintiff's
24 motion picture within the swarm.

25 ////

26 ////

27

1 142. Upon information and belief, each Defendant whose conduct constitutes direct
2 infringement was a willing and knowing participant in the swarm at issue and engaged
3 in such participation for the purpose of infringing Plaintiff's copyright.

4 143. By participating in a swarm, each Defendant whose conduct constitutes direct
5 infringement participated in the exact same or nearly identical transaction, occurrence,
6 or series of transactions or occurrences as the other Defendants.

7 144. Upon information and belief, many Defendants also acted in concert with
8 others, including other Defendants by participating in a Peer Exchange.

9 145. Upon information and belief, many Defendants also acted in concert with other
10 Defendants and swarm members and by linking together globally through use of a
11 Distributed Hash Table.

12 146. Each Defendant's conduct is effectively a collective enterprise constituting
13 substantially similar or identical facts.

14 **Exemplar Defendant**

15 147. For example, IP address 98.225.30.177, which ISP Comcast has identified as
16 having been assigned to Defendant C.G. Chinque Albright at the time of the subject
17 infringement, was used to initiate the infringing conduct alleged herein by first
18 intentionally logging into one of the many BitTorrent client repositories known for
19 their large index of copyrighted movies, television shows, software and adult videos.
20 Said IP address was then used to intentionally obtain a torrent file identified by a
21 "hash" or SHA1: 33E6C4D563C276F29A7A48502C6640191DE3DD72, in this
22 specific instance which is for Plaintiff's motion picture from the index and
23 intentionally loaded that torrent file into a computer program designed to read such
24 files.

25 148. With the torrent file intentionally loaded from said IP address, the user's
26 BitTorrent program used the BitTorrent protocol to initiate connections with hundreds
27

1 of other users possessing and uploading or sharing copies of the digital media
2 described in SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72, namely,
3 Plaintiff's motion picture, including with, upon information and belief, other
4 Defendants. As the motion picture was copied via said IP address piece by piece,
5 these downloaded pieces of Plaintiff's motion picture were then immediately available
6 to all other Defendants for those Defendants' uses from this direct infringer's
7 computer.

8 149. Each of Defendants' assigned IP addresses were used to perform the same acts
9 as those described for Defendant Albright's, above. As a result, each of the direct
10 infringers using these addresses also immediately became an uploader, meaning that
11 each downloaded piece was immediately available to other users seeking to obtain the
12 file without degradation in sound or picture quality. It is in this way that each IP
13 address assigned to Defendants copied and distributed the motion picture at the same
14 time. Thus, each participant in the BitTorrent swarm was an uploader or distributor
15 and also a downloader or copier of Plaintiff's motion picture.

16 **CLAIMS FOR RELIEF STATED IN THE ALTERNATIVE**

17 Pursuant to F.R.Civ.P. 8(d)(2), Plaintiff sets forth the following claims for relief
18 in the alternative.

19 **FIRST CLAIM FOR RELIEF**

20 **COPYRIGHT INFRINGEMENT**

21 150. Plaintiff repeats and realleges each of the allegations above.

22 151. Defendants have, without the permission or consent of Plaintiff, distributed
23 Plaintiff's motion picture through a public website and any one of various public
24 BitTorrent trackers, Peer Exchanges, and/or Distributed Hash Tables.

25 152. Plaintiff alleges that each Defendant, without the permission or consent of
26 Plaintiff, has used, and continues to use, BitTorrent software to download Plaintiff's

1 motion picture, to distribute the motion picture to the public, including hundreds of
2 other BitTorrent users, and/or to make the motion picture available for distribution to
3 others.

4 153. Defendants' actions constitute infringement of Plaintiff's exclusive rights under
5 The Copyright Act.

6 154. Defendants' conduct has been willful, intentional, in disregard of and indifferent
7 to Plaintiff's rights.

8 155. As a direct and proximate result of Defendants' conduct, Plaintiff's exclusive
9 rights under 17 U.S.C. § 106 have been violated.

10 156. Plaintiff is entitled to damages pursuant to 17 U.S.C. § 504 and attorney fees
11 and costs pursuant to 17 U.S.C. § 505.

12 157. The conduct of each Defendant is causing and, unless enjoined and restrained
13 by this Court, will continue to cause Plaintiff great and irreparable injury.

14 158. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief
15 prohibiting each Defendant from further contributing to the infringement of Plaintiff's
16 copyrights and ordering that each Defendant destroy all copies of Plaintiff's motion
17 picture made in violation of Plaintiff's rights.

18 **SECOND CLAIM FOR RELIEF**

19 **CONTRIBUTORY INFRINGEMENT**

20 159. Plaintiff repeats and realleges each of the allegations 1 - 149 above.

21 160. Defendants have, without the permission or consent of Plaintiff, contributed to
22 the infringement of Plaintiff's copyrights by other Defendants and other swarm
23 members.

24 161. By participating in the BitTorrent swarm with other Defendants, each
25 Defendant induced, caused or materially contributed to the infringement of Plaintiff's

26 ////

1 exclusive rights under the Copyright Act by other Defendants and other swarm
2 members.

3 162. Defendants' conduct has been willful, intentional, in disregard of and indifferent
4 to Plaintiff's rights.

5 163. As a direct and proximate result of Defendants' conduct, Plaintiff's exclusive
6 rights under 17 U.S.C. § 106 have been violated.

7 164. Plaintiff is entitled to damages pursuant to 17 U.S.C. § 504 and attorney fees
8 and costs pursuant to 17 U.S.C. § 505.

9 165. The conduct of each Defendant is causing and, unless enjoined and restrained
10 by this Court, will continue to cause Plaintiff great and irreparable injury.

11 166. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief
12 prohibiting each Defendant from further contributing to the infringement of Plaintiff's
13 copyrights and ordering that each Defendant destroy all copies of Plaintiff's motion
14 picture made in violation of Plaintiff's rights and take such further steps as are
15 necessary to prevent further infringement.

16 **THIRD CLAIM FOR RELIEF**

17 **Alternative Statement Pursuant to FRCP 8(d)(2)**

18 **Indirect Infringement of Copyright**

19 167. Plaintiff repeats and realleges each of the allegations 1 - 149 above.

20 168. Defendants obtained internet access through an ISP and permitted, facilitated
21 and/or promoted the use of the internet access identified with the specific IP address
22 for the infringing of Plaintiff's exclusive rights under The Copyright Act by others.

23 169. Defendants, and each of them, are liable as indirect or secondary infringers.

24 170. Defendants, and each of them, failed to secure, police and protect the use of
25 their internet service against illegal conduct, including the downloading and sharing
26 of Plaintiff's motion picture by others.

27

28 FIRST AMENDED COMPLAINT – Page 23

1 171. Defendants' failure was with notice as illegal conduct is in violation of the
2 law and in violation of the license for access granted to each Defendant by their ISP
3 which issued them an IP address to access the internet.

4 172. Defendants' conduct has been willful, intentional, in disregard of and indifferent
5 to Plaintiff's rights.

6 173. As a direct and proximate result of Defendants' conduct, Plaintiff's exclusive
7 rights under 17 U.S.C. § 106 have been violated.

8 174. Plaintiff is entitled to damages pursuant to 17 U.S.C. § 504 and attorney fees
9 and costs pursuant to 17 U.S.C. § 505.

10 175. The conduct of each Defendant is causing and, unless enjoined and restrained
11 by this Court, will continue to cause Plaintiff great and irreparable injury.

12 176. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief
13 prohibiting each Defendant from further indirect infringement of Plaintiff's copyrights
14 and ordering that each Defendant destroy all copies of Plaintiff's motion picture made
15 in violation of Plaintiff's rights and take such further steps as are necessary to prevent
16 further indirect infringement.

17 **DAMAGES**

18 177. Plaintiff has been damaged and claims damages of \$30,000.00 from each
19 Defendant on its First and Second Claims for Relief pursuant to 17 U.S.C. § 504(c)(1)
20 and, in the alternative, damages on its Third Claim for Relief pursuant to 17 U.S.C. §
21 504(c)(1) of not more than the statutory minimum of \$750.00.

22 **Notice of Further Claims**

23 178. While the relief prayed for by Plaintiff is specific and less than may be allowed
24 by law, Plaintiff hereby provides notice of the potential damages available under
25 various laws, such as 17 U.S.C. § 504, which include:

26 a. Defendants' profits;

1 b. Plaintiff's full damages;

2 c. Statutory damages of up to \$150,000.00 against each Defendant should there
3 be a finding of willful conduct;

4 d. All costs and attorney fees incurred in this action; and

5 e. Broad equitable relief, including the destruction of all infringing articles and
6 equipment used in the infringement.

7 179. Plaintiff gives notice it may move for permission to amend its complaint so as
8 to elect the full scope of relief available against each or any Defendant as discovery
9 proceeds.

10 180. Similarly, as discovery proceeds Plaintiff may move to amend its complaint to
11 name additional direct infringers of its copyrighted work.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment against Defendants and each of
14 them as follows:

15 A. On all Claims for Relief:

16 1. For entry of permanent injunctions enjoining each Defendant from directly,
17 contributorily or indirectly infringing Plaintiff's rights in Plaintiff's motion picture,
18 including without limitation by using the internet to reproduce or copy Plaintiff's
19 motion picture, to distribute Plaintiff's motion picture, or to make Plaintiff's motion
20 picture available for distribution to the public, except pursuant to a lawful license or
21 with the express authority of Plaintiff, and further directing Defendants to destroy all
22 unauthorized copies of Plaintiff's motion picture and for such other;

23 2. Plaintiff's reasonable costs and attorney fees pursuant to 17 U.S.C. § 505;

24 and

25 3. Any further relief as the Court deems proper;

26 ////

1 B. On its First and Second Claims for Relief Only, for \$30,000.00 damages
2 pursuant to 17 U.S.C. § 504;

3 C. On its Third Claim for Relief Only, for statutory damages of not more than
4 \$750.00 pursuant to 17 U.S.C. § 504 should Defendant be found liable solely for non-
5 willful infringement under Plaintiff's alternate theory.

6 **DEMAND FOR JURY TRIAL**

7 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands
8 a trial by jury.

9 DATED: August 30, 2013

Respectfully submitted,

The VanderMay Law Firm

s/ Maureen C. VanderMay
Maureen C. VanderMay, WSBA No. 16742
email: elfmanwa@vandermaylawfirm.com
The VanderMay Law Firm
2085 Commercial Street NE
Salem, OR 97301
(503) 588-8053
Of Attorneys for Plaintiff