

COMPLAINT

To the Court and All Parties:

Plaintiff, Fathers & Daughters Nevada, LLC (“F & D”), includes the following preamble to explain the necessity for the pseudonymous defendants (“Does”) named in this complaint.

PREAMBLE

The Problem

The Yale Journal of Law & Technology discusses one of the most comprehensive reports regarding piracy to date, commissioned by NBC Universal, that found 13.8% of all internet traffic in the United States constitutes illegal distribution of copyrighted content such as films, television episodes, music, and software via BitTorrent, a peer-to-peer file sharing system used to distribute data over the internet.¹ This report also found that of the most popular 10,000 pieces of content managed by the largest and most popular BitTorrent “tracker” worldwide,² film content is by far the most distributed of this material, all of which was copyrighted

¹ *Envisional Estimates Infringing Use*, YALE J.L. & TECH. 183–85 (2011), available at <http://www.yalelawtech.org/p2p-law-piracy/envisional-estimates-infringing-use/> (citing *Technical report: An Estimate of Infringing Use of the Internet* at p.3, available at http://documents.envisional.com/docs/Envisional-Internet_Usage-Jan2011.pdf) [hereinafter *Envisional*].

² PublicBT (publicbt.com). *Id.* at p. 4 n. 2.

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and shared illegitimately.³

Since this Envisional report, the volume of films being illegally copied and distributed has only gotten worse.⁴ More recently, a Columbia study showed that 46% of the U.S. population has copied, shared, or “downloaded for free” music, movies, and TV shows.⁵ Again, the Columbia study estimated that in the U.S. little to none of this private copying is legal.⁶

And the next generation of Americans is poised to engage in such illegal copying to an even greater extent. In the same Columbia study, 70% of adults under 30 indicated that they copy, share, or download media “for free,” and 37% in this age group acquired most or all of their digital music/video collections or a large collection in this way.⁷ As noted by Senator Levin in Congressional hearings on peer-to-peer Internet piracy,

³ Envisional at 4.

⁴ See follow-up report, *Sizing the Piracy Universe*, Envisional (Sept. 2013), available at <https://copyrightalliance.org/sites/default/files/-2013-netnames-piracy.pdf>.

⁵ Copy Culture in the US and Germany, Columbia University, at 5 (2013), available at http://americanassembly.org/sites/default/files/-download/publication/copy_culture.pdf.

⁶ Id.

⁷ Id.

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“it is unfortunate that the software being used—called ‘file sharing’ as if it were simply enabling friends to share recipes—is helping create a generation of Americans who don’t see the harm.”⁸

But the damage being done to film producers and distributors due to this rampant infringement is tremendous.⁹ As shown below, the US theatrical and home video revenues changed for the worse in the 2003–04 timeframe, coinciding with the development of the BitTorrent network that has made swapping large movie files practical.¹⁰

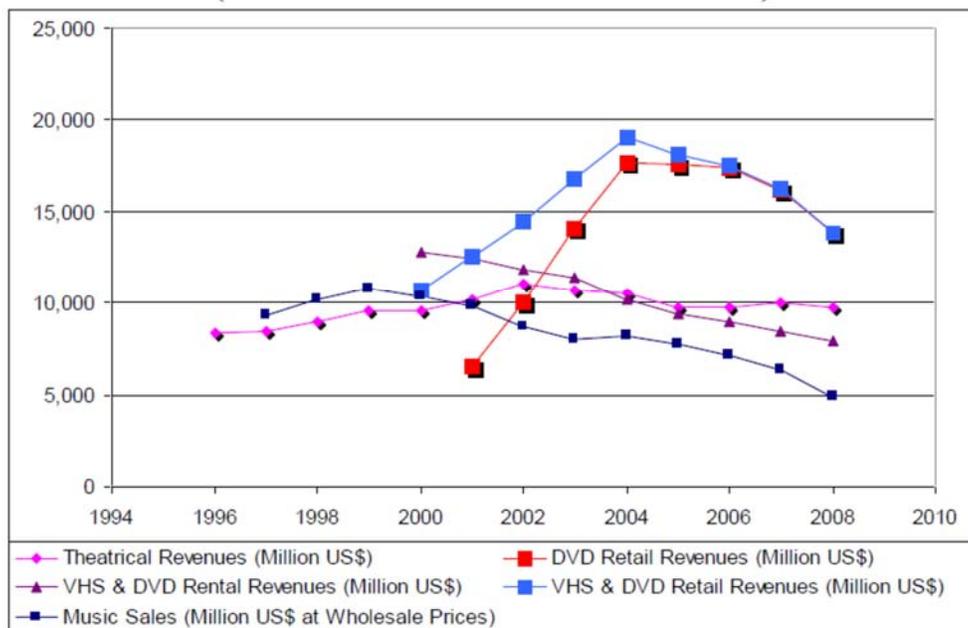
⁸ Privacy and Piracy: The Paradox of Illegal File Sharing on Peer-to-peer Networks and the Impact of Tech. on the Entm’t Indst.: S. Hrg. 108–275 before the Permanent Subcomm. on Investigations of the Senate Comm. on Gov’tal Affairs, 108th Cong. 90 (2003) (statement of Senator Levin), *available at* <https://www.gpo.gov/fdsys/pkg/CHRG-108shrg90239/html/CHRG-108shrg90239.htm> [hereinafter *Privacy and Piracy*].

⁹ See, e.g., Ambassador Froman, 2015 Special 301 Report, Executive Office of the President of the United States (noting that unauthorized recordings of first-run motion pictures that are distributed worldwide via the Internet result in economic harm not only in the market where the film was originally shown, but in other markets as well), *available at* <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>.

¹⁰ Zentner, Alejandro, Measuring the Impact of File Sharing on the Movie Industry: An Empirical Analysis Using a Panel of Countries, at 2 (Mar. 22, 2010), *available at* <http://ssrn.com/abstract=1792615>.

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Revenues in the United States: Movie and Music Industries
(measured in constant 2008 million US dollars)



Indeed, according to Texas Representative Lamar Smith, “IP theft costs the U.S. economy more than \$100 billion annually and results in the loss of thousands of American jobs.”¹¹

BitTorrent Operation

A sister district court describes BitTorrent and the anonymity of its operation as follows:

BitTorrent allows its users to download files more quickly and efficiently than its predecessor file sharing protocols.

¹¹ Smith: Law Needed to Control Cyber Piracy, Austin American-Statesman (Nov. 28, 2011), *available at* <http://www.statesman.com/news/news/opinion/smith-law-needed-to-control-cyber-piracy/nRhYk/>.

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Rather than downloading files directly from centralized servers or individual users, BitTorrent allows users, or “peers” to split a file up into pieces and download multiple pieces simultaneously from multiple peers. Once a peer downloads a particular piece of the file in question, he or she automatically begins to share that piece with other peers. These multivariate connections between downloading and uploading users create a “swarm,” eventually allowing participating users to collect all pieces of a file and reassemble it into its final form. A peer who makes a complete file available to other peers is known as a “seed.” As the name implies, each swarm begins with a seed; however, BitTorrent users often remain in a swarm after they have completed downloading a file, thus becoming seeds themselves.

BitTorrent peers are identified to each other only by their IP addresses. Though an IP address, without more, typically cannot be traced back with certainty to an individual user, Internet Service Providers [“ISPs”] can generally link an IP address to its account owner. Moreover, commonly available free web applications can often trace an IP address back to a general geographic area, such as a city or postal code. Thus, BitTorrent users are partially anonymous to each other. While peers’ names and other identifying details are opaque, their IP addresses and (to some extent) their locations may be logged and tracked.¹²

¹² *Funimation Entm’t v Does 1-427*, 2:11-cv-00269 (E.D. Tex. Sept. 16, 2016) [Dkt 43].

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Truly, BitTorrent sites promote the anonymity of their operation:¹³



So, while a rightsholder can find the geographical location of an IP address and trace that IP address activity to an Internet Service Provider (“ISP”), only the ISP has the ability to find the account holder’s identity required to contact or name the individual in a complaint. And The Cable Privacy Act prohibits cable operators, which includes the ISPs, from disclosing subscribers’ personal information without their consent or a court order.¹⁴

Law Available to Rightsholder

The last major revision to U.S. Copyright law occurred in 1998 at a time when peer-to-peer (“P2P”) software like BitTorrent was “not even a

¹³ <http://www.simtorrent.com/fathers-and-daughters-2015-720p-bluray-999mb-shaanig-t11906139.html> (last visited Mar. 25, 2016).

¹⁴ 47 U.S.C. § 551(c).

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glimmer in anyone’s eye.”¹⁵ Therefore, while Congress recognized the problem of anonymity, and provided the ability for rightsholders to obtain a subpoena from a federal district court to obtain the subscriber owner associated with an IP address participating in copyright infringement without having to file a complaint or request the Court’s permission,¹⁶ this provision may not apply to this situation, where an ISP is acting as a conduit for P2P file sharing.¹⁷

Conclusion

Given the above, Plaintiff is filing this complaint against pseudonymous Doe defendants corresponding to the account holders of the IP addresses observed copying Plaintiff’s work. This mechanism is recognized in Federal statutes,¹⁸ has been used in this district for at least 30

¹⁵ *Recording Indus. v Verizon Internet*, 351 F.3d 1229, 1238 (D.D.C. 2003) (citation omitted) [hereinafter *RIAA v. Verizon*].

¹⁶ Digital Millennium Copyright Act (“DMCA”), Pub. L. No. 105–304, 112 Stat. 2860 (Oct. 28, 1998) (codified at § 512(h)).

¹⁷ See e.g., *RIAA v. Verizon*. However, it appears this issue has not been decided in this district or circuit. See, e.g., *Garrett v Comcast Comms., Inc.*, No. 3:04–cv–693, n.1 (N.D. Tex. July 23, 2004) [Dkt. 15] (“This Court is not bound to follow the precedent of *RIAA v. Verizon*.”)

¹⁸ See, e.g., the removal statute amended in 1988 to include the following: “For purposes of removal under this chapter, the citizenship of *defendants sued under fictitious* names shall be disregarded.” 28 U.S.C. § 1441(b)(1) (emphasis added). This was enacted specifically to overturn *Bryant v. Ford Motor Co.*, 844 F.2d 602, 605 (9th Cir. 1987)

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years,¹⁹ and has been standard practice since the early BitTorrent cases were first filed in this district.²⁰

THEREFORE, COMES NOW Plaintiff, Fathers & Daughters Nevada, LLC, and does assert the following.

PARTIES

Plaintiff

1. Fathers & Daughters Nevada, LLC (“F & D”) is a Nevada Limited Liability Company with principal offices in Los Angeles, California.
2. F & D owns the copyright to the motion picture Fathers and Daughters, the work at issue as described below in paragraphs 27–34, having all pertinent copyright interests needed to bring suit.
3. F & D’s managing member is Voltage Films NCCF, LLC (“Voltage”).
To date, Voltage’s films have been nominated for 15 Academy Awards,

(holding that the presence of *Doe defendants* made the case unremovable by destroying diversity).

¹⁹ See, e.g., *Elmore v. Mark L. McCammon, Special Agent Rodriguez and Other Unknown Agents*, Ronald Scott, Bracewell & Patterson and *Other Unknown Agents*, Marcella Perry, Heights Savings Association and *One or More Unknown Banks and Unknown Agents*; and *John and Jane Does (1 to 25)*, 640 F. Supp. 905 (S.D. Tex. 1986).

²⁰ See, e.g., *Well Go USA, Inc. v. Unknown Participants*, No. 4:12–cv–00963, 2012 WL 4387420 (S.D. Tex. Sept. 25, 2012).

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5 Golden Globes, and won 9 Academy Awards and 2 Golden Globes. Several films were also nominated or won PGA, DGA, SAG, BAFTA, Independent Spirit awards and other prizes.

4. In March 2010, Voltage produced and financed *The Hurt Locker*, a motion picture directed by Kathryn Bigelow and starring Jeremy Renner, Anthony Mackie, Brian Geraghty, Ralph Fiennes, and Guy Pearce. *The Hurt Locker* was nominated for nine Academy Awards, winning six, including Best Picture, Best Director, Best Screenplay, Best Editing, Best Sound Mixing and Best Sound Editing.
5. In January 2014, Voltage produced and co-financed *Dallas Buyers Club*, a film which was nominated for six Academy Awards including Best Picture, and won three for Best Actor, Best Supporting Actor and Best Make-Up. The film, directed by Jean-Marc Vallée, starred Matthew McConaughey, Jared Leto and Jennifer Garner. It also won 2 Golden Globes for Best Actor and Best Supporting Actor.
6. Natalie Portman's directorial debut, *A Tale of Love and Darkness*—a Voltage production—was selected as a Cannes 2015 Film Festival special screening. It premiered on May 18th, 2015.
7. Voltage typically budgets \$15M-\$40M to produce its movies.

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Defendants

8. The Defendants are identified herein as Does 1–10.
9. F & D is currently unaware of the true names of Does 1–10. Due to the surreptitious nature of Defendants' actions the identities of Does 1–10 are concealed from F & D , preventing F & D from identifying them by name.
10. The Defendants in this action are listed in EXHIBIT 2, which identifies each Defendant's IP address, a specific time of observed infringing activity, and an estimated geo-located place of the Defendant's conduct.
11. Each Defendant's IP address has been observed and confirmed as distributing a copy of Fathers and Daughters through the P2P BitTorrent exchange.
12. At the time of observed copying, each defendant's IP address was managed on information and belief, by ISP or ISPs, Comcast IP Services, L.L.C. ("Comcast") and Time Warner Cable Internet LLC ("Time Warner"), who, on information and belief, generally assign an IP address to a single party for extended periods of time, often for months, and provide Wi-Fi systems with pre-installed security and passwords.

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13. The records maintained by Comcast and Time Warner should be able to identify either each Defendant, or a subscriber who contracted with Comcast and Time Warner for service who, in turn, is likely to have knowledge that will lead to the identity of each Defendant.
14. Shortly after the filing of this Complaint, Plaintiff intends to seek initial discovery to subpoena records from Comcast and Time Warner to ascertain the true identity of each defendant that will permit Plaintiff to amend this Complaint to state the same.

SUBJECT MATTER JURISDICTION

15. This is a civil action requesting remedies under U.S. Code Title 17—Copyrights, §§ 502–05, for infringement of copyright as provided by §§ 106 and 113–14 granting, among other rights, that “the owner of copyright under this title has the exclusive rights to do and to authorize any of the following: (1) to reproduce the copyrighted work in copies . . .”
16. This Court has subject matter jurisdiction at least under 28 U.S.C. §1338(a) providing that “[t]he district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to . . . copyrights . . .”

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PERSONAL JURISDICTION

17. For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.
18. And geolocation identifies the IP address associated with each Doe as geographically located within this District where the subscriber is thought to reside.
19. Therefore, upon information and belief, this Court has general jurisdiction over Does 1-10 by virtue of Does residing in this district.
20. Further, specific jurisdiction arises if there was some act by which the defendant purposefully availed himself or herself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.
21. The geolocation information in conjunction with the observed infringing behavior also shows Does reproduced and/or distributed F & D's work in this district (as described further below), and thus purposefully availed themselves of the privilege of conducting activities in this district.

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22. Therefore, F & D's claim relates to Does contacts with this district, and also supports specific jurisdiction.

VENUE

23. Venue in copyright cases is governed by 28 U.S.C. § 1400(a), instead of the general venue provision of 28 U.S.C. § 1391.

24. Section 1400(a) allows plaintiffs to bring suit for copyright infringement in the district in which the defendant or his agent resides or "may be found."

25. The Fifth Circuit has held that a defendant "may be found" in any district in which he or she may be subject to personal jurisdiction, as analyzed as if the district were a separate state.

26. Therefore, venue is proper in this Court for the same reasons given in the Personal Jurisdiction section above in paragraphs 17–22.

WORK AT ISSUE

27. Fathers and Daughters ("Motion Picture") is a movie including actors Russell Crowe, Amanda Seyfried, Kylie Rogers, Aaron Paul, Diane Kruger, and Jane Fonda.

28. The Motion Picture portrays the story of a "Pulitzer-winning writer [who] grapples with being a widower and father after a mental

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breakdown, while, 27 years later, his grown daughter struggles to forge connections of her own.”

29. Fathers and Daughters is scheduled to be released in the United States July 2016.

30. Fathers and Daughters is registered with the United States Copyright Office. See EXHIBIT 1 bearing Registration Certificate No. PAu 3-762-811 with effective registration date of March 30, 2015.

31. The Motion Picture contains wholly original material that is copyrightable subject matter under the laws of the United States.

32. The Motion Picture is currently offered for sale in commerce.

33. Fathers and Daughters includes a proper copyright notice advising the viewer that the Motion Picture is protected under copyright and other applicable laws of the United States of America.

34. Publication and advertising associated with the Motion Picture and packaging and copies bear a proper copyright notice.

JOINDER

35. Joinder in this action is made under Fed. R. Civ. P. 20(a)(2) (permissive) in that Plaintiff’s claims arise out of the same occurrences or transactions, or series of occurrences or transactions and that there are questions of law and fact common to each of the Defendants.

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36. Specifically, Plaintiff has named in this Complaint the group of Defendants based upon observations that they copied the same copy of Fathers and Daughters, identified by the same Hash Value (see ¶ 42 below) at or about the same time period.
37. By doing so, each Defendant engaged in a concerted action with other Defendants to reproduce and distribute Plaintiff's Motion Picture by exchanging pieces of the Motion Picture file in a torrent swarm.
38. Permissive joinder in the instant case permits a more efficient management of Plaintiff's claims against the several Defendants and to reduce the costs and burdens to Plaintiff, Defendants and the Court.
39. Joinder may be revisited once the Defendants have been identified and served.

COUNT I—COPYRIGHT INFRINGEMENT

Direct

40. Each Defendants, without Plaintiff's permission or consent, copied and distributed Plaintiff's Motion Picture, Fathers and Daughters, as described above in paragraphs 27–34 through a peer-to-peer network without authorization or right.

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41. Plaintiff observed this infringing activity using forensic software to identify the IP addresses using the BitTorrent protocol to reproduce, distribute, display or perform Plaintiffs' Motion Picture via the Internet.

42. The forensic software identified the IP addresses shown in EXHIBIT 2 as uploading and/or downloading parts or all of the file identified by the hash value of:

6891D2D926CF288A517471D34419A95354D3DC8F

("Hash Value"). This Hash Value is a very large hexadecimal number, generated by the particular copy of the Motion Picture through an algorithmic function, such as MD4 or SHA-1. The same file will always produce the same number using the same algorithm, and any changes to the file will almost certainly produce a different hash value. In this way, a hash value is the file's "digital fingerprint" uniquely identifying a specific file.

43. The media file that corresponded to the Hash Value was substantially similar, if not identical, to Plaintiff's Motion Picture.

44. Plaintiff did not authorize, permit, license or consent to Defendants' copying of its Work.

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45. Copyright infringement is a strict liability offense, and a court will not absolve a Defendant for copying a work unconsciously or truly believing the conduct was non-infringing.

46. As a result of the foregoing, each Defendant violated one or more of Plaintiff's exclusive right to:

A. Reproduce the Motion Picture in copies, in violation of 17 U.S.C. §§ 106(1) and 501;

B. Redistribute copies of the Motion Picture to the public by sale or other transfer of ownership, or by rental, lease or lending, in violation of 17 U.S.C. §§ 106(3) and 501;

C. Perform the Motion Picture, in violation of 17 U.S.C. §§ 106(4) and 501, by showing the Motion Picture's images in any sequence and/or by making the sounds accompanying the Motion Picture audible and transmitting said performance of the Motion Picture, by means of a device or process, to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definitions of "perform" and "publically" perform); and

D. Display the copyrighted Motion Picture, in violation of 17 U.S.C. §§ 106(5) and 501, by showing individual images of the Work non-sequentially and transmitting said display of the Motion Picture by

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means of a device or process to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definition of "publically" display).

Willful

47. Each Defendant's conduct has been willful within the meaning of 17 U.S.C. § 504(c)(2), intentional, in disregard of and indifferent to Plaintiff's rights, with notice, and with the intent to deprive Plaintiff of income and cause Plaintiff harm.

48. Specifically, each Defendant had to ignore the copyright notice advising the viewer that the Motion Picture is protected under copyright law found both in the Motion Picture and on all publication and advertising associated with the Motion Picture, install file distribution software on a computer, and search for and load a Torrent file to participate in the peer-to-peer distribution of Fathers and Daughters.

49. Plaintiff has suffered actual damages that were proximately caused by each of the Defendants, including lost sales, price erosion and a diminution of the value of its copyright.

Contributory

50. Providing the means for others to infringe creates liability for contributory copyright infringement.

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51. As all the BitTorrent downloaders of Fathers and Daughters are also uploaders, Defendants provided other persons the means to infringe F & D's copyright, thereby inducing, causing or materially contributing to the infringing conduct of others and of each other Defendant.

Vicarious

52. Vicarious liability requires neither knowledge or intent, but only requires a financial benefit and the ability to supervise.

53. To the extent Defendant ISP subscriber allowed a household member to use the Internet connection to copy and obtain Fathers and Daughters, and thereby avoided cost to Defendant, Defendant is liable.

54. To the extent a child in Defendant's household committed the infringement, Defendant is liable for any property damage proximately caused as a parent or other person who has the duty of control and reasonable discipline of a child.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against each defendant as follows:

A. Entry of permanent injunction enjoining each Defendant from directly, indirectly, contributorily or vicariously infringing Plaintiff's

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rights, including without limitation copying, distributing, or making available for distribution, Plaintiff's Motion Picture, except pursuant to a lawful license or with the express authority of Plaintiff;

B. Actual damages and profits to be proven at trial under 17 U.S.C. § 504(b), including prejudgment interest, or, as Plaintiff may elect at any time before final judgment is rendered, statutory damages pursuant to 17 U.S.C. § 504(c).

C. If statutory damages are elected, a finding that Defendants' infringement was committed willfully, and an order increasing the award of statutory damages to a just sum of not more than \$150,000;

D. If statutory damages are not elected, a finding that Defendants' infringement was committed willfully, and an award of punitive damages.

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

F. Such other and further relief as the Court deems proper.

Dated: May 10, 2016

Respectfully submitted,

s/ Joshua S. Wyde

Joshua S. Wyde, Attorney-in-Charge

Tex. State Bar No. 24060858

S.D. Tex. Bar No. 873284

THE LAW OFFICE OF JOSHUA S WYDE

710 N. Post Oak Rd. Suite 105

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Houston, TX 77024-3808
Tel: 713.482.1916
Fax: 713.466.6563
jwyde@wydelegal.com

Gary J. Fischman

Tex. State Bar No. 787469
S.D. Tex. Bar No. 17126
FISCHMAN LAW PLLC
710 N. Post Oak Rd. Suite 105
Houston, TX 77024-3808
Tel: 713.900.4924
fischman@fischmaniplaw.com

Attorneys for Plaintiff,
Fathers & Daughters Nevada, LLC