

Honorable Thomas S. Zilly

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

COBBLER NEVADA, LLC,

Plaintiff,

v.

VISHAL PANDE, an individual;
MARLIN GUTIERREZ, an individual;
DAWN MASON, an individual;
JIM D. KOTTENBROCK, an individual;
SPENCER BUCKMAN, an individual;
DANIEL WOODFORD, an individual;
PENH SOM, an individual;
ELENA PETRA, an individual;
PRINCE STINSON, an individual;
HAT SRIBONMA, an individual;
KEVIN KIMMEL, an individual;
ROBERT DADUFALZA, an individual;
JULIUS ARMAMENTO, an individual;
ADAM LUCKEY, an individual;
JESSICA LUTZ, an individual;
JENNIFER PRENDERGAST, an individual;
and
DANIEL BECKER, an individual,

Defendants.

Civil Action No. 15-cv-1432TSZ

FIRST AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT

JURY TRIAL REQUESTED



1 Plaintiff Cobbler Nevada, LLC, pursuant to Fed. R. Civ. Proc. 15(a)(1), hereby submits its
2 first amended complaint against Defendants:

3 I. INTRODUCTION

4 1. Plaintiff Cobbler Nevada, LLC is a developer and producer of the motion picture
5 *The Cobbler* (“motion picture”). Plaintiff brings this action in an effort to stop Defendants and
6 others from copying and distributing to others unauthorized copies of the Plaintiff’s copyrighted
7 motion picture through the BitTorrent file sharing protocol. Defendants’ infringements allow them
8 and others to unlawfully obtain and distribute unauthorized copyrighted works that the Plaintiff
9 expended significant resources to create. Each time a Defendant unlawfully distributes an
10 unauthorized copy of the Plaintiff’s copyrighted motion picture to others over the Internet, each
11 person who copies that motion picture can then distribute that unlawful copy to others without any
12 significant degradation in sound and picture quality. Thus, a Defendant’s distribution of even a
13 part of an unlawful copy of a motion picture can further the nearly instantaneous worldwide
14 distribution of that single copy to an unlimited number of people. Further, Defendants acts of
15 distributing Plaintiff’s motion picture support, maintain and further a for-profit exploitation of the
16 works of Plaintiff and others. The Plaintiff now seeks redress for this rampant infringement of its
17 exclusive rights.

18 II. JURISDICTION AND VENUE

19 2. This is a civil action seeking damages and injunctive relief for copyright
20 infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).

21 3. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal
22 question); and 28 U.S.C. § 1338(a) (copyright).

23 4. Venue in this District is proper under 28 U.S.C. § 1391(b) and/or
24 28 U.S.C. §1400(a). Although the true identity of each Defendant is unknown to Plaintiff at this
25 time, on information and belief each Defendant may be found in this District and/or a substantial
26 part of the acts of infringement complained of herein occurred in this District. On information and

1 belief, personal jurisdiction in this District is proper because each Defendant, without consent or
2 permission of Plaintiff as exclusive rights owner, distributed and offered to distribute over the
3 Internet copyrighted works for which Plaintiff has exclusive rights.

4 **III. PARTIES**

5 **A. PLAINTIFF COBBLER NEVADA, LLC AND ITS COPYRIGHT**

6 5. Plaintiff is a limited liability company. Plaintiff is engaged in the production of the
7 motion picture known as and entitled "*The Cobbler*" for theatrical exhibition, home entertainment
8 and other forms of distribution.

9 6. Plaintiff is the owner of the exclusive rights under copyright in the United States in
10 *The Cobbler*. *The Cobbler* been registered with the United States Copyright Office by the author,
11 Cobbler Nevada, LLC, effective October 22, 2014, and assigned Registration No. Pau 3-744-688.
12 (Exhibit A)

13 7. Under the Copyright Act, Plaintiff is the proprietor of all right, title, and interest in
14 *The Cobbler*, including the exclusive rights to reproduce and distribute to the public as well as the
15 right to sue for past infringement.

16 8. *The Cobbler* contains wholly original material that is copyrightable subject matter
17 under the laws of the United States. It is easily discernible as a professional work as it was created
18 using professional performers, directors, cinematographers, lighting technicians, set designers and
19 editors and with professional-grade cameras, lighting and editing equipment. It has significant
20 value and has been created, produced and lawfully distributed at considerable expense. *The*
21 *Cobbler* is currently offered for sale in commerce, playing in theaters and available for rental
22 and/or purchase from Amazon, iTunes and Netflix, among others.

23 9. Defendants have notice of Plaintiff's rights through general publication and
24 advertising and more specifically as identified in the content of the motion picture, advertising
25 associated with the motion picture, and all packaging and copies, each of which bore a proper
26 copyright notice.

1 **B. DEFENDANTS**

2 10. On information and belief, each Defendant copied and distributed Plaintiff's
3 copyrighted motion picture *The Cobbler*. When originally filed, the true names of Defendants were
4 unknown to Plaintiff. Rather, each Defendant was known to Plaintiff only by the Internet Protocol
5 ("IP") address assigned by an Internet Service Provider ("ISP") and the date and at the time at
6 which the infringing activity of each Defendant was observed, as explained in detail below. On
7 information and belief, ISP's such as Comcast or CenturyLink, generally assign an IP address to a
8 single party for extended periods of time, often for months or even years. As such it is likely that
9 for all relevant times each Defendant was the sole party responsible for and in control of IP address.
10 As explained in further detail below, through geolocation, the IP address used by each Defendant
11 was traced to the Western District of Washington. The IP addresses, hash value, dates and times,
12 ISP and geolocation contained in Exhibit B correctly reflect the subscribers using the IP addresses
13 and that they were all part of a "swarm" of users that were reproducing, distributing, displaying or
14 performing the copyrighted work

15 11. The Court authorized Plaintiff to conduct expedited discovery with the ISP that
16 assigned the IP addresses to each Defendant in this case. Plaintiff promptly served the subpoena
17 on the ISP. The ISP subsequently responded to the subpoena providing the identity of each
18 Defendant, where available.

19 12. After receipt of the identity of each Defendant, Plaintiff engaged in further due
20 diligence in a good faith effort to confirm, on information and belief, that the identified subscriber
21 was the person responsible for the infringing conduct or, in the alternative, that another party with
22 access to the IP address of the subscriber was responsible. For example, each IP address has been
23 observed associated with significant BitTorrent activity and with the exchange of multiple other
24 titles on peer-to-peer networks apart from but in some instances close in time to that of *The*
25 *Cobbler*. The volume, titles and persistent observed BitTorrent activity associated with each
26 Defendant's IP address indicate (a) that each Defendant is not a transitory or occasional guest, but

1 either the primary subscriber of the IP address or someone who resides with the subscriber and is
2 an authorized user of the IP address; (b) that any user of the IP address would likely have been
3 aware of the bandwidth devoted to this activity through general service slowdown throughout the
4 observed period of activity as residential data services typically have limited capacity; (c) that such
5 subscriber or resident of the location is likely to have been aware of at least some of the infringing
6 activity throughout the observed period of activity; and/or (d) that each Defendant is not a child,
7 but an adult, often with mature distinct tastes.

8 13. In certain instances, the pattern of BitTorrent activity associated with the IP address
9 was observed to cease on or near dates coinciding with notices sent by the ISP or Plaintiff,
10 providing a further indication that the subscriber either was the infringer or was aware of the
11 ongoing infringement utilizing the IP address assigned to the subscriber, and was in a position to
12 control ongoing BitTorrent activity.

13 14. Google address mapping and county records were investigated to confirm
14 ownership/rental status of and residence at the property associated with the IP address, as well as
15 observe the physical makeup and layout of the house and neighborhood to anticipate possible
16 claims that a wireless signal was high jacked by someone outside of the residence. Further, given
17 the standard security measures imposed by the ISP to prevent unauthorized use of an IP address,
18 the volume of piracy demonstrated over the extended observation period could not be the result of
19 someone driving by, a temporary houseguest or a hacker sitting in a car on the street

20 15. In some instances, social media sites such as Facebook and LinkedIn were used to
21 obtain further information on the subscriber.

22 16. Finally, in an exercise of caution, multiple letters were sent to the identified
23 individual, or their counsel to the extent Plaintiff was made aware thereof, informally requesting
24 their voluntary participation in identifying the actual infringer, to the extent that is different from
25 the subscriber. Where responses were received, Plaintiff attempted further informal follow-up with
26

1 the subscriber or their attorney, again in an effort to ensure, as much as possible short of formal
2 litigation proceedings, that each Doe Defendant was properly named.

3 17. Based on the investigation to date, and on information and belief, Plaintiff identifies
4 the Does remaining in this case on information and belief as follows:

5 18. ISP Comcast assigned the IP address 67.168.122.194 to Doe 2, Defendant Vishal
6 Pande, 2017 S. 281st St., Federal Way, WA 98003, for a period of time, including but not limited
7 to on 5/10/15 04:30:00 AM UTC, and Defendant's IP address was observed infringing Plaintiff's
8 motion picture at that time. On information and belief, Defendant resides at the noted location.

9 19. ISP Comcast assigned the IP address 73.42.183.94 to Doe 7, Defendant Marlin
10 Gutierrez, 7806 Husky Way SE, Olympia, WA 98503, for a period of time, including but not
11 limited to on 4/14/15 10:00:38 AM UTC, and Defendant's IP address was observed infringing
12 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
13 location.

14 20. ISP Comcast assigned the IP address 50.181.194.192 to Doe 9, Defendant Dawn
15 Mason, 4028 Academy St., Bellingham, WA 98226, for a period of time, including but not limited
16 to on 4/10/15 06:01:17 AM UTC, and Defendant's IP address was observed infringing Plaintiff's
17 motion picture at that time. On information and belief, Defendant resides at the noted location.

18 21. ISP Comcast assigned the IP address 50.170.103.240 to Doe 10, Defendant Jim D.
19 Kottenbrock, 10968 SE 169th Pl., Renton, WA 98055, for a period of time, including but not
20 limited to on 4/6/15 06:16:46 AM UTC, and Defendant's IP address was observed infringing
21 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
22 location.

23 22. ISP Comcast assigned the IP address 98.232.24.236 to Doe 11, Defendant Spencer
24 Buckman, 13714 3rd Ave NE, Seattle, WA 98125, for a period of time, including but not limited
25 to 4/1/15 02:10:21 AM UTC, and Defendant's IP address was observed infringing Plaintiff's
26 motion picture at that time. On information and belief, Defendant resides at the noted location.

1 23. ISP Comcast assigned the IP address 67.185.77.108 to Doe 12, Defendant Daniel
2 Woodford, 6518 Madrona Ave, Fort Lewis, WA 98433, for a period of time, including but not
3 limited to on 4/11/15 02:07:25 AM UTC, and Defendant's IP address was observed infringing
4 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
5 location.

6 24. The ISP assigned the IP address 24.19.125.8 to a subscriber, which in turn shared
7 the IP address during the relevant time with Doe 13, Defendant Penh Som, 9916 15th Ave. Ct. E,
8 Tacoma, WA 98445, believed at the time to be a tenant or roommate. On information and belief,
9 Defendant resides at the noted location.

10 25. ISP Comcast assigned the IP address 73.25.69.49 to Doe 14, Defendant Elena Petra,
11 203 NE 152nd Ave, Vancouver, WA 98684, for a period of time, including but not limited to on
12 3/20/15 06:50:45 AM UTC, and Defendant's IP address was observed infringing Plaintiff's motion
13 picture at that time. On information and belief, Defendant resides at the noted location.

14 26. ISP Comcast assigned the IP address 73.221.126.248 to Doe 19, Defendant Prince
15 Stinson, 11433 15th Ave SW, Burien, WA 98146, for a period of time, including but not limited
16 to on 3/25/15 12:55:39 AM UTC, and Defendant's IP address was observed infringing Plaintiff's
17 motion picture at that time. On information and belief, Defendant resides at the noted location.

18 27. ISP Comcast assigned the IP address 24.16.25.102 to Doe 20, Defendant Hat
19 Sribonma, 13310 NE 133rd St., Apt. 5B, Kirkland, WA 98034, for a period of time, including but
20 not limited to on 3/24/15 01:38:01 AM UTC, and Defendant's IP address was observed infringing
21 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
22 location.

23 28. ISP Comcast assigned the IP address 76.22.100.207 to Doe 21, Defendant Kevin
24 Kimmel, 12627 SE Petrovitsky Rd., Renton, WA 98058, for a period of time, including but not
25 limited to on 3/23/15 06:59:14 PM UTC, and Defendant's IP address was observed infringing
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1 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
2 location.

3 29. ISP Comcast assigned the IP address 73.35.200.186 to Doe 22, Defendant Robert
4 Dadufalza, 13215 NE 145th Pl, Woodinville, WA 98072, for a period of time, including but not
5 limited to on 3/23/15 05:03:26 AM UTC, and Defendant's IP address was observed infringing
6 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
7 location.

8 30. ISP Comcast assigned the IP address 50.135.72.108 to Doe 24, Defendant Julius
9 Armamento, 6108 202nd St. SW, Apt. 103, Lynnwood, WA 98036, for a period of time, including
10 but not limited to on 3/23/15 03:14:35 AM UTC, and Defendant's IP address was observed
11 infringing Plaintiff's motion picture at that time. On information and belief, Defendant resides at
12 the noted location.

13 31. ISP Comcast assigned the IP address 73.19.48.139 to Doe 25, Defendant Adam
14 Luckey, 3401 S. 43rd St., Unit C, Tacoma, WA 98409, for a period of time, including but not
15 limited to on 3/23/15 03:05:16 AM UTC, and Defendant's IP address was observed infringing
16 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
17 location.

18 32. ISP Comcast assigned the IP address 50.159.52.139 to Doe 26, Defendant Jessica
19 Lutz, 12265 Des Moines Mem. Dr. S., Burien, WA 98168, for a period of time, including but not
20 limited to on 3/22/15 06:13:26 PM UTC, and Defendant's IP address was observed infringing
21 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
22 location.

23 33. ISP Comcast assigned the IP address 24.22.230.103 to Doe 30, Defendant Jennifer
24 Prendergast, 1583 NE Dozer Ln., Poulsbo, WA 98370, for a period of time, including but not
25 limited to on 3/21/15 09:00:02 PM UTC, and Defendant's IP address was observed infringing
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1 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
2 location.

3 34. ISP Comcast assigned the IP address 67.183.122.13 to Doe 32, Defendant Daniel
4 Becker, 1276 Arnold St., Aberdeen, WA 98520, for a period of time, including but not limited to
5 on 3/21/15 02:31:23 AM UTC, and Defendant's IP address was observed infringing Plaintiff's
6 motion picture at that time. On information and belief, Defendant resides at the noted location.

7 IV. PEER-TO-PEER NETWORKS AND THE BITTORRENT PROTOCOL

8 35. Defendants are each participants in a peer-to-peer ("P2P") network using the
9 BitTorrent protocol. The BitTorrent protocol makes even small computers with low bandwidth
10 capable of participating in large data transfers across a P2P network. To begin an exchange, the
11 initial file-provider intentionally elects to share a file with a torrent network. This initial file is
12 called a seed. Other users ("peers") connect to the network and connect to the seed file to
13 download. As yet additional peers request the same file each additional user becomes a part of the
14 network from where the file can be downloaded. However, unlike a traditional peer-to-peer
15 network, each new file downloader is receiving a different piece of the data from users who have
16 already downloaded the file that together comprises the whole. This piecemeal system with
17 multiple pieces of data coming from peer members is usually referred to as a "swarm." The effect
18 of this technology makes every downloader also an uploader of the illegally transferred file(s).
19 This means that every "node" or peer user who has a copy of the infringing copyrighted material
20 on a torrent network can also be a source of download, and thus distributor for that infringing file.

21 36. This distributed nature of BitTorrent leads to a rapid viral spreading of a file
22 throughout peer users. As more peers join the swarm, the likelihood of a successful download
23 increases. Essentially, because of the nature of the swarm downloads as described above, every
24 infringer is sharing copyrighted material with other infringers.

25 37. Defendants actions are part of a common design, intention and purpose to hide
26 behind the apparent anonymity provided by the Internet and the BitTorrent technology to

1 download pieces of the copyrighted motion picture in a manner that, but for the investigative
2 technology used by Plaintiff, would be untraceable, leaving the Plaintiff without the ability to
3 enforce its copyright rights. By participating in the “swarm” to download Plaintiff’s copyright
4 motion picture, the Defendants agreed with one another to use the Internet and BitTorrent
5 technology to engage in violation of federal statute to accomplish and unlawful objective.

6 **V. COMPUTER FORENSIC IDENTIFICATION OF BITTORRENT INFRINGEMENT**

7 38. Plaintiff has identified each Defendant by the IP address assigned by the ISP used
8 by each Defendant and the date and at the time at which the infringing activity of each Defendant
9 was observed. This is accomplished using forensic software to collect, identify and record the IP
10 addresses in use by those people that employ the BitTorrent protocol to share, copy, reproduce and
11 distribute copyrighted works.

12 39. More specifically, forensic software is used to scan peer-to-peer networks for the
13 presence of infringing transactions with respect to a particular audiovisual work. Any digital copy
14 of an audiovisual work may be uniquely identified by a unique, coded, string of characters called
15 a “hash checksum.” The hash checksum is a string of alphanumeric characters generated by a
16 mathematical algorithm known as US Secure Hash Algorithm 1 or “SHA-1.” This software
17 facilitates the identification of computers that are used to transmit a copy or a part of a copy of a
18 digital media file identified by a particular hash value by their IP address at a particular date and
19 time. To overcome concerns with spoofing or the like, a direct TCP connection is made to each
20 defendant’s computer. Additional software using geolocation functionality is then used to confirm
21 the geographical location of the computer used in the infringement. Though an IP address alone
22 does not reveal the name or contact information of the account holder, in this case the Doe
23 Defendant, it does reveal the likely general location of the Defendant. IP addresses are distributed
24 to ISPs by public, nonprofit organizations called Regional Internet Registries. These registries
25 assign blocks of IP addresses to ISPs by geographic region. In the United States, these blocks are
26 assigned and tracked by the American Registry of Internet Numbers. Master tables correlating the

1 IP addresses with local regions are maintained by these organizations in a publicly available and
2 searchable format. An IP address' geographic location can be further narrowed by cross-
3 referencing this information with secondary sources such as data contributed to commercial
4 databases by ISPs.

5 40. The end result are evidence logs of infringing transactions and the IP addresses of
6 the users responsible for copying and distributing the audiovisual work, here *The Cobbler*. The IP
7 addresses, hash value, dates and times, ISP and geolocation obtained correctly reflect the
8 subscribers using the IP addresses and that they were all part of a "swarm" of users that were
9 reproducing, distributing, displaying or performing the copyrighted work.¹ As noted above,
10 through early discovery authorized by the Court, Plaintiff was able to identify the Does associated
11 with the IP addresses observed infringing *The Cobbler* in this case.

12 VI. JOINDER

13 41. Each Defendant is alleged to have committed violations of 17 U.S.C. § 101 *et. seq.*
14 within the same series of transactions or occurrences (e.g. downloading and distribution of the
15 same copyrighted motion picture owned by Plaintiff) and by using the same means (BitTorrent
16 network). The infringed work was included in one file related to the torrent file; in other words,
17 all of the infringements alleged in this lawsuit arise from the exact same unique copy of Plaintiff's
18 movie as evidenced by the cryptographic hash value. The Defendants are all part of the exact same
19 "swarm." Defendants' acts occurred in the same series of transactions because each Defendant
20 downloaded and/or distributed, or offered to distribute *The Cobbler* to other infringers on the
21 network, including the Doe Defendants and/or other network users, who in turn downloaded and/or

22
23 ¹ In logs kept in the ordinary course of business, ISPs keep track of the IP addresses assigned to their
24 subscribers. Once provided with an IP address, plus the date and time of the detected and documented infringing
25 activity, ISPs can use their subscriber logs to identify the subscriber with more specificity. Only the ISP to whom a
26 particular IP address has been assigned for use by its subscribers can correlate that IP address to a particular subscriber.
From time to time, a subscriber of Internet services may be assigned different IP addresses from their ISP. Thus, to
correlate a subscriber with an IP address, the ISP also needs to know when the IP address was being used.
Unfortunately, many ISPs only retain for a very limited amount of time the information necessary to correlate an IP
address to a particular subscriber, making early discovery important.

1 distributed the motion picture. The temporal proximity of the observed acts of each Defendant,
2 together with the known propensity of BitTorrent participants to actively exchange files
3 continuously for hours and even days, makes it possible that Defendants either directly exchanged
4 the motion picture with each other, or did so through intermediaries and each shared in the
5 distribution of the motion picture to others. Therefore, Defendants each conspired with other
6 infringers on the BitTorrent network to copy and/or distribute *The Cobbler*, either in the same
7 transaction or occurrence or a series of transactions or occurrences.

8 42. To use BitTorrent, a user intentionally downloads a program that they then install
9 on their computer called a “client.” The BitTorrent client is the user’s interface during the
10 downloading/uploading process. The client may be free, supported by advertising, offer upgrades
11 or add on services for a fee, or a combination of several options. Users then intentionally visit a
12 “torrent site” or network site to find media or content available for download, often using a
13 standard web browser. A torrent site is often advertising revenue or subscription supported index
14 of media or content being made available by other users on the network and maintains a listing of
15 movies and television programs among other protected content. A user then uses the torrent site to
16 connect with other users and exchange or “share” content though the BitTorrent protocol often
17 with many users at the same time.

18 43. Internet piracy, and in particular BitTorrent piracy, though known as peer-to-peer
19 file sharing, is often a for-profit business as many software clients, torrent sites and networks
20 generate millions of dollars in revenue through sales and advertising. To increase the value of the
21 advertising and sometimes subscription access sold by torrent sites, many torrent sites work to
22 expand the pool of available titles and speed of downloads through increasing the number of
23 member peers and thus the desirability of their clients and networks. To accomplish this they
24 reward participants who contribute by giving them faster download speeds, greater access, or other
25 benefits.

1 44. A significant element of the BitTorrent economic model is that those who
2 participate and download movies not only share and upload movies with others, but participants
3 are often rewarded through various means based on the volume and availability of content
4 participants in turn provide the network. In sum, there is a feedback incentive for participants as
5 they obtain not only the benefit of their pirated copy of a movie, but they obtain other benefits by
6 increasing the availability of pirated content to others. As such there are a growing number of users
7 that participate in peer-to-peer networks and receive personal gain or compensation in that the
8 networks they use reward those who provide large numbers of files for upload to others.

9 45. The use of BitTorrent does more than cause harm through the theft of intellectual
10 property. The BitTorrent distribution of pirated files is a model of business that profits from theft
11 through sales and advertising and a system of rewards and compensation to the participants, each
12 of whom contribute to and further the enterprise. Each Defendant is a participant in the BitTorrent
13 distribution of pirated files and the substantially similar conduct of each Defendant furthered a
14 model of business that profits from theft of intellectual property including Plaintiff's motion
15 picture.

16 46. Accordingly, pursuant to Fed.R.Civ.P. 20(a)(2) each of the Defendants is therefore
17 properly joined at least because: (a) the infringement complained of herein by each of the
18 Defendants was part of a series of transactions involving an identical copy of Plaintiff's
19 copyrighted work; (b) the conduct of each Defendant jointly and collectively supported and
20 advanced an economic business model of profiting from the piracy of Plaintiff's copyrighted work;
21 (c) there are common questions of law and fact; and (c) each Defendant knowingly and actively
22 participated in a conspiracy to perform an illegal act and/or injure Plaintiff through use of the
23 BitTorrent protocol to infringe Plaintiff's copyrighted work.

24 47. Permissive joinder in the instant case is to permit a more efficient management of
25 Plaintiff's claims against the several Defendants and to reduce the costs to Plaintiff and Defendants
26 and to reduce the costs and burdens on the Court. Notice is provided, that on being specifically

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

4 VII. CAUSE OF ACTION—COPYRIGHT INFRINGEMENT

5 48. Plaintiff realleges the substance of the prior paragraphs.

6 49. Plaintiff owns the exclusive rights to the commercially released motion picture *The*
7 *Cobbler*, which has significant value and has been acquired, produced and created at considerable
8 expense.

9 50. At all relevant times Plaintiff has been the holder of the pertinent exclusive rights
10 infringed by Defendants to the copyrighted motion picture *The Cobbler*. The motion picture is the
11 subject of a valid Certificate of Copyright Registration.

12 51. Plaintiff is informed and believes that each Defendant, without the permission or
13 consent of Plaintiff, has used, and continues to use, an online media distribution system to
14 wrongfully misappropriate, reproduce and distribute to the public, including by making available
15 for distribution to others, *The Cobbler*. On information and belief, each Defendant participated in
16 a swarm and/or reproduced and/or distributed the same seed file of *The Cobbler* in digital form
17 either directly with each other. Plaintiff has identified each Defendant by the IP address assigned
18 to that Defendant by his or her ISP and the date and at the time at which the infringing activity of
19 each Defendant was observed.

20 52. In addition or in the alternative, Defendants obtained Internet access through an ISP
21 and permitted, facilitated and materially contributed to the extensive use of the Internet through
22 his ISP for infringing Plaintiff's exclusive rights under The Copyright Act by others. Defendants,
23 with knowledge of the infringing conduct, failed to reasonably secure, police and protect the use
24 of his Internet service against use for improper purposes such as piracy, including the downloading
25 and sharing of Plaintiff's motion picture by others. Defendants had the right and ability to supervise
26 and control the activity constituting the infringement.

1 53. In doing so, each Defendant has directly, indirectly and/or contributorily violated
2 Plaintiff's exclusive rights of at least reproduction, preparation derivative works and distribution.
3 Each Defendant's actions constitute infringement of Plaintiff's exclusive rights protected under
4 17 U.S.C. § 101 et seq.

5 54. *The Cobbler* contains a copyright notice advising the viewer that the motion picture
6 is protected by the copyright laws. Each of the Defendants' actions with respect to copyright
7 infringement and other acts described herein were made with full knowledge of Plaintiff's
8 ownership of the copyrights in the motion picture.

9 55. The conduct of each Defendant is causing and, unless enjoined and restrained by
10 this Court, will continue to cause the Plaintiff great and irreparable injury that cannot fully be
11 compensated or measured in money. The Plaintiff has no adequate remedy at law. Pursuant to
12 17 U.S.C. §§ 502 and 503, the Plaintiff is entitled to injunctive relief prohibiting each Defendant
13 from further infringing the Plaintiff's copyright and ordering that each Defendant destroy all copies
14 of the copyrighted motion picture made in violation of the Plaintiff's copyrights.

15 56. By reason of the foregoing acts, if such remedy is elected at trial, Plaintiff is entitled
16 to statutory damages from Defendants pursuant to 17 USC §504, *et seq.* Alternatively, at Plaintiff's
17 election, Plaintiff is entitled to its actual damages incurred as a result of Defendants' acts of
18 infringement plus any profits of Defendants attributable to the infringements.

19 57. The foregoing acts of infringement have been willful, intentional, and in disregard
20 of and with indifference to the rights of Plaintiff.

21 58. As a result of each Defendant's infringement of Plaintiff's exclusive rights under
22 copyright, Plaintiff is entitled to its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

23 **VIII. PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff prays for judgment against each Defendant as follows:

25 A. Pursuant to 17 U.S.C. §502, an order preliminarily and permanently enjoining each
26 Defendant from directly or indirectly infringing Plaintiff's rights in *The Cobbler*

1 and any motion picture, whether now in existence or later created, that is owned or
2 controlled by Plaintiff (“Plaintiff’s motion pictures”), including without limitation
3 by using the Internet to reproduce or copy, distribute or otherwise make available
4 for distribution to the public Plaintiff’s motion pictures, except pursuant to a lawful
5 license or with the express authority of Plaintiff.

- 6
- 7 B. Pursuant to 17 U.S.C. § 503, an order that each Defendant destroy all copies of
8 Plaintiff’s motion pictures that Defendant has downloaded onto any computer hard
9 drive or server without Plaintiff’s authorization and shall destroy all copies of those
10 motion pictures transferred onto any physical medium or device in each
11 Defendant’s possession, custody, or control.
- 12 C. An order that each Defendant file with this Court and serve on Plaintiff, within
13 30 days of service of this order, a report in writing under oath setting forth in detail
14 the manner and form in which Defendants have complied with the terms of the
15 ordered relief.
- 16 D. Pursuant to 17 U.S.C. § 504 or other applicable provision, for actual or statutory
17 damages, at the election of Plaintiff, and a finding of willful infringement.
- 18 E. Pursuant to 17 U.S.C. § 505, for Plaintiff’s reasonable attorney’s fees and costs.
- 19 F. For such other and further relief as the Court deems proper.

20 RESPECTFULLY SUBMITTED this 9th day of March, 2016.

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