

Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DALLAS BUYERS CLUB, LLC,  
  
Plaintiff,

v.

DAVID MUCKALA, an individual;  
NICHOLAS PELTCHIE, an individual;  
YUHON WONG, an individual;  
PATRICK ARMSTRONG, an individual;  
MIHN NGUYEN, an individual;  
ROBERT RODI, an individual;  
SHARON L. STENZINGER, an individual;  
KATHERINE DEBACKER, an individual;  
MIKE MILES, an individual;  
JACOB STICKLEY, an individual; and  
AMY RAYL, an individual,

Defendants.

Civil Action No. 15-cv-582RAJ

FIRST AMENDED COMPLAINT FOR  
COPYRIGHT INFRINGEMENT

JURY TRIAL REQUESTED

Plaintiff Dallas Buyers Club, pursuant to Fed. R. Civ. Proc. 15(a)(1), hereby submits its first amended complaint against Defendants:

**I. INTRODUCTION**

1. Plaintiff Dallas Buyers Club, LLC is a developer and producer of the motion pictures *Dallas Buyers Club* (“motion picture”). Plaintiff brings this action in an effort to stop

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

## 13 II. JURISDICTION AND VENUE

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

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

18 4. Venue in this District is proper under 28 U.S.C. § 1391(b) and/or  
19 28 U.S.C. §1400(a). Although the true identity of each Defendant is unknown to Plaintiff at this  
20 time, on information and belief each Defendant may be found in this District and/or a substantial  
21 part of the acts of infringement complained of herein occurred in this District. On information and  
22 belief, personal jurisdiction in this District is proper because each Defendant, without consent or  
23 permission of Plaintiff as exclusive rights owner, distributed and offered to distribute over the  
24 Internet copyrighted works for which Plaintiff has exclusive rights.

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**III. PARTIES**

**A. PLAINTIFF DALLAS BUYERS CLUB, LLC AND ITS COPYRIGHT**

5. Plaintiff is a limited liability company having a place of business at 2170 Buckthorne Place, Suite 400, The Woodlands, TX 77380. Plaintiff is engaged in the production of the motion picture known as and entitled “*Dallas Buyers Club*” for theatrical exhibition, home entertainment, and other forms of distribution.

6. Plaintiff is the owner of the exclusive rights under copyright in the United States in *Dallas Buyers Club*. *Dallas Buyers Club* been registered with the United States Copyright Office by the author, Dallas Buyers Club, LLC, effective November 13, 2013, and assigned Registration No. PA 1-873-195. (Exhibit A)

7. Under the Copyright Act, Plaintiff is the proprietor of all right, title, and interest in *Dallas Buyers Club*, including the exclusive rights to reproduce and distribute to the public as well as the right to sue for past infringement.

8. *Dallas Buyers Club* contains wholly original material that is copyrightable subject matter under the laws of the United States. It is easily discernible as a professional work as it was created using professional performers, directors, cinematographers, lighting technicians, set designers and editors and with professional-grade cameras, lighting and editing equipment. *Dallas Buyers Club* received six Academy Award nominations including Best Motion Picture of the Year and was awarded Best Performance by an Actor in a Leading Role, Best Performance by an Actor in a Supporting Role and Best Achievement in Makeup and Hairstyling. Prior to its Oscar nominations, the motion picture won two Golden Globe awards for Best Performance by an Actor in a Motion Picture and Best Performance by an Actor in a Supporting Role in a Motion Picture. To date, *Dallas Buyers Club* has received worldwide critical acclaim and has won at least 67 awards and garnered an additional 33 nominations. (Exhibit B) It has significant value and has been created, produced and lawfully distributed at considerable expense. *Dallas Buyers Club* is

1 currently offered for sale in commerce, playing in theaters and available for rental and/or purchase  
2 from Amazon, iTunes, Netflix and Blockbuster On Demand, among others.

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

7 **B. DEFENDANTS**

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

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

25 12. After receipt of the identity of each Defendant, Plaintiff engaged in further due  
26 diligence in a good faith effort to confirm, on information and belief, that the identified subscriber

1 was the person responsible for the infringing conduct or, in the alternative, that another party with  
2 access to the IP address of the subscriber was responsible. For example, each IP address had been  
3 observed associated with significant infringing activity and with the exchange of multiple other  
4 titles on peer-to-peer networks apart from but in some instances close in time to that of *Dallas*  
5 *Buyers Club*. The volume, titles and persistent observed BitTorrent activity associated with each  
6 Defendant's IP address indicate (a) that each Defendant is not a transitory or occasional guest, but  
7 either the primary subscriber of the IP address or someone who resides with the subscriber and is  
8 an authorized user of the IP address; (b) that any user of the IP address would likely have been  
9 aware of the bandwidth devoted to this activity through general service slowdown throughout the  
10 observed period of activity as residential data services typically have limited capacity; (c) that such  
11 subscriber or resident of the location is likely to have been aware of at least some of the infringing  
12 activity throughout the observed period of activity; and (d) that each Defendant is not a child, but  
13 an adult, often with mature distinct tastes.

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

19 14. Google address mapping and county records were investigated to confirm  
20 ownership/rental status of and residence at the property associated with the IP address, as well as  
21 observe the physical makeup and layout of the house and neighborhood to anticipate possible  
22 claims that a wireless signal was high jacked by someone outside of the residence. Further, given  
23 the standard security measures imposed by the ISP to prevent unauthorized use of an IP address,  
24 the volume of piracy demonstrated over the extended observation period could not be the result of  
25 someone driving by, a temporary houseguest or a hacker sitting in a car on the street  
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1           15.     Where possible, social media sites such as Facebook and LinkedIn were used to  
2 obtain further information on the subscriber.

3           16.     Finally, in an exercise of caution, multiple letters were send to the identified  
4 individual, or their counsel to the extent Plaintiff was made aware thereof, informally requesting  
5 their voluntary participation in identifying the actual infringer, to the extent that is different from  
6 the subscriber. Where responses were received, Plaintiff attempted further informal follow-up with  
7 the subscriber or their attorney, again in an effort to ensure, as much as possible short of formal  
8 litigation proceedings, that each Doe Defendant was properly named.

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

11           18.     ISP Comcast assigned the IP address 76.104.230.141 to Doe 1, Defendant David  
12 Muckala, 1819 E. Maryland St., Bellingham, WA 98226, for a period of time, including but not  
13 limited to on 3/16/15 at 01:35:15 PM UTC, and Defendant's IP address was observed infringing  
14 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted  
15 location.

16           19.     ISP Comcast assigned the IP address 98.232.159.18 to Doe 3, Defendant Nicholas  
17 Peltchie, 1617 9th Ave, Longview, WA 98632, for a period of time, including but not limited to  
18 on 3/8/15 at 11:26:10 AM UTC, and Defendant's IP address was observed infringing Plaintiff's  
19 motion picture at that time. On information and belief, Defendant resides at the noted location.

20           20.     ISP Comcast assigned the IP address 24.17.25.149 to Doe 6, Defendant Yuhon  
21 Wong, 3784 E. R. St., Tacoma, WA 98404, for a period of time, including but not limited to on  
22 2/28/15 at 07:02:06 PM UTC, and Defendant's IP address was observed infringing Plaintiff's  
23 motion picture at that time. On information and belief, Defendant resides at the noted location.

24           21.     ISP Comcast assigned the IP address 24.17.114.78 to Doe 9, Defendant Patrick  
25 Armstrong, 27507 Maple Ridge Way SE, Maple Valley, WA 98038, for a period of time, including  
26 but not limited to on 2/5/15 at 05:05:57 AM UTC, and Defendant's IP address was observed

1 infringing Plaintiff's motion picture at that time. On information and belief, Defendant resides at  
2 the noted location.

3 22. ISP Comcast assigned the IP address 98.232.38.68 to Doe 13, Defendant Mihn  
4 Nguyen, 15402 146th Pl SE, Renton, WA 98058, for a period of time, including but not limited to  
5 on 3/1/15 at 11:30:45 PM 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 23. ISP Comcast assigned the IP address 73.53.88.111 to Doe 14, Defendant Robert  
8 Rodi, 351 Slater St. S., Kirkland, WA 98033, for a period of time, including but not limited to on  
9 2/19/15 at 03:48:30 PM UTC, and Defendant's IP address was observed infringing Plaintiff's  
10 motion picture at that time. On information and belief, Defendant resides at the noted location.

11 24. ISP Comcast assigned the IP address 73.221.203.12 to Doe 22, Defendant Sharon  
12 L. Stenzinger, 1608 E. 64th St., Tacoma, WA 98404, for a period of time, including but not limited  
13 to on 3/10/15 at 03:11:22 AM UTC, and Defendant's IP address was observed infringing Plaintiff's  
14 motion picture at that time. On information and belief, Defendant resides at the noted location.

15 25. ISP Comcast assigned the IP address 174.21.214.197 to Doe 24, Defendant  
16 Katherine Debacker, 14036 Courtland Pl N., Seattle, WA 98133, for a period of time, including  
17 but not limited to on 3/2/15 at 01:18:05 AM UTC, and Defendant's IP address was observed  
18 infringing Plaintiff's motion picture at that time. On information and belief, Defendant resides at  
19 the noted location.

20 26. ISP Comcast assigned the IP address 71.231.231.210 to Doe 27, Defendant Mike  
21 Miles, 20815 8th Ave S., Des Moines, WA 98198, for a period of time, including but not limited  
22 to on 2/26/15 at 02:09:24 PM UTC, and Defendant's IP address was observed infringing Plaintiff's  
23 motion picture at that time. On information and belief, Defendant resides at the noted location.

24 27. ISP Comcast assigned the IP address 207.118.13.23 to Doe 28, Defendant Jacob  
25 Stickley, 17116 5th Ave, Lakebay, WA 98303, for a period of time, including but not limited to  
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1 on 2/12/15 at 04:25:22 AM UTC, and Defendant's IP address was observed infringing Plaintiff's  
2 motion picture at that time. On information and belief, Defendant resides at the noted location.

3 28. ISP Comcast assigned the IP address 174.21.119.12 to Doe 29, Defendant Amy  
4 Rayl, 4004 NE 22nd Pl, Renton, WA 98056, for a period of time, including but not limited to on  
5 2/6/15 at 12:30:40 PM 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 29. 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 30. 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 31. 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 32. The Plaintiff has identified each Defendant by the IP address assigned by the ISP  
8 used by each Defendant and the date and at the time at which the infringing activity of each  
9 Defendant was observed. This is accomplished using forensic software to collect, identify and  
10 record the IP addresses in use by those people that employ the BitTorrent protocol to share, copy,  
11 reproduce and distribute copyrighted works.

12 33. 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

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

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

#### 15 VI. JOINDER

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

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25  
26 <sup>1</sup> In logs kept in the ordinary course of business, ISPs keep track of the IP addresses assigned to their subscribers. Once provided with an IP address, plus the date and time of the detected and documented infringing activity, ISPs can use their subscriber logs to identify the subscriber with more specificity. Only the ISP to whom a 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 and/or distributed the motion picture. The temporal proximity of the observed acts of each  
2 Defendant, together with the known propensity of BitTorrent participants to actively exchange  
3 files continuously for hours and even days, makes it possible that Defendants either directly  
4 exchanged the motion picture with each other, or did so through intermediaries and each shared in  
5 the distribution of the motion picture to others. Therefore, Defendants each conspired with other  
6 infringers on the BitTorrent network to copy and/or distribute *Dallas Buyers Club*, either in the  
7 same transaction or occurrence or a series of transactions or occurrences.

8 36. 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 37. 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.  
26

1 38. 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 39. 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 40. 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 41. 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 42. Plaintiff realleges the substance of the prior paragraphs.

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

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

12 45. 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, *Dallas Buyers Club*. On information and belief, each Defendant  
16 participated in a swarm and/or reproduced and/or distributed the same seed file of *Dallas Buyers*  
17 *Club* in digital form either directly with each other. Plaintiff has identified each Defendant by the  
18 IP address assigned to that Defendant by his or her ISP and the date and at the time at which the  
19 infringing activity of each Defendant was observed.

20 46. 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 47. In doing so, each Defendant has directly and/or contributorily violated Plaintiff's  
2 exclusive rights of at least reproduction, preparation derivative works and distribution. Each  
3 Defendant's actions constitute infringement of Plaintiff's exclusive rights protected under  
4 17 U.S.C. § 101 et seq.

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

9 49. 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 50. 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 51. The foregoing acts of infringement have been willful, intentional, and in disregard  
20 of and with indifference to the rights of Plaintiff.

21 52. 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 *Dallas Buyers*

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

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

19 RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of March, 2016.

20 s/David A. Lowe, WSBA No. 24,453

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