

Honorable Thomas S. Zilly

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

COBBLER NEVADA, LLC,

Plaintiff,

v.

AZUCENA RIVERA, an individual;
JESSE ROSENFELD, an individual;
ALVA GODFREY, an individual;
RUSSELL JENKINS, an individual;
KAYLA NORBERG, an individual;
MARIYA MUDRYAK, an individual;
SHANNON TORGERSON, an individual;
JORGE HERRERA, an individual;
BERNICE CAIN, an individual;
DON VANDERHULE, an individual;
KRISTIN COMSTOCK, an individual;
BETTY DAMOS, an individual;
PAUL SNOW, an individual; and
JACKIE ELHARD, an individual,

Defendants.

Civil Action No. 15-cv-1435TSZ

FIRST AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT

JURY TRIAL REQUESTED

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

I. INTRODUCTION

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

II. JURISDICTION AND VENUE

16
17 2. This is a civil action seeking damages and injunctive relief for copyright
18 infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).

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

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

3 **III. PARTIES**

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

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

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

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

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

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

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
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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 24.18.0.13 to Doe 3, Defendant Azucena
6 Rivera, 424 Harvest Edge Pl., Burlington, WA 98233, for a period of time, including but not
7 limited to on 3/20/15 05:08:14 PM UTC, and Defendant's IP address was observed infringing
8 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
9 location.

10 19. ISP Comcast assigned the IP address 73.181.176.17 to Doe 6, Defendant Jesse
11 Rosenfield, 2515 194th St. Ct. E, Spanaway, WA 98387, for a period of time, including but not
12 limited to on 3/20/15 06:53:08 AM UTC, and Defendant's IP address was observed infringing
13 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
14 location.

15 20. ISP Comcast assigned the IP address 174.61.245.53 to Doe 7, Defendant Alva
16 Godfrey, 1105 Spring St., Apt. 410 OFC, Seattle, WA 98104, for a period of time, including but
17 not limited to on 3/19/15 09:57:10 AM UTC, and Defendant's IP address was observed infringing
18 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
19 location.

20 21. ISP Comcast assigned the IP address 73.11.70.235 to Doe 9, Defendant Russell
21 Jenkins, 3505 O St., Vancouver, WA 98663, for a period of time, including but not limited to on
22 3/19/15 01:48:25 AM UTC, and Defendant's IP address was observed infringing Plaintiff's motion
23 picture at that time. On information and belief, Defendant resides at the noted location.

24 22. ISP Comcast assigned the IP address 71.236.181.115 to Doe 10, Defendant Kayla
25 Norberg, 1704 Davis Ave., Vancouver, WA 98661, for a period of time, including but not limited
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1 to 3/18/15 09:09:23 PM 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 23. ISP Comcast assigned the IP address 24.20.170.134 to Doe 16, Defendant Mariya
4 Mudryak, 8406 NE 90th Pl., Vancouver, WA 98662, for a period of time, including but not limited
5 to on 3/14/15 08:06:40 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 24. ISP Comcast assigned the IP address 67.183.229.205 to Doe 17, Defendant
8 Shannon Torgerson, 17506 32nd Ave E, Tacoma, WA 98446, for a period of time, including but
9 not limited to on 3/14/15 08:02:20 AM UTC, and Defendant's IP address was observed infringing
10 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
11 location.

12 25. ISP Comcast assigned the IP address 67.185.14.118 to Doe 18, Defendant Jorge
13 Herrera, 10520 Irene Ave SW, Lakewood, WA 98499, for a period of time, including but not
14 limited to on 3/14/15 06:03:07 AM UTC, and Defendant's IP address was observed infringing
15 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
16 location.

17 26. ISP Comcast assigned the IP address 67.185.220.112 to Doe 19, Defendant Bernice
18 Cain, 4006 S. 67th St., Tacoma, WA 98409, for a period of time, including but not limited to on
19 3/14/15 04:36:04 AM UTC, and Defendant's IP address was observed infringing Plaintiff's motion
20 picture at that time. On information and belief, Defendant resides at the noted location.

21 27. ISP Comcast assigned the IP address 67.183.36.120 to Doe 26, Defendant Don
22 Vanderhule, 10300 Des Moines Mem. Dr. S., Apt. 307, Seattle, WA 98168, for a period of time,
23 including but not limited to on 3/13/15 07:47:54 PM UTC, and Defendant's IP address was
24 observed infringing Plaintiff's motion picture at that time. On information and belief, Defendant
25 resides at the noted location.
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1 28. ISP Comcast assigned the IP address 67.170.47.73 to Doe 28, Defendant Kristin
2 Comstock, 11922 172nd Ave NE, Arlington, WA 98223, for a period of time, including but not
3 limited to on 3/29/15 06:03:52 PM 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 29. ISP Comcast assigned the IP address 71.56.130.160 to Doe 29, Defendant Betty
7 Damos, 2201 Markle Ave, Vancouver, WA 98660, for a period of time, including but not limited
8 to on 3/28/15 03:46:23 AM UTC, and Defendant's IP address was observed infringing Plaintiff's
9 motion picture at that time. On information and belief, Defendant resides at the noted location.

10 30. ISP Comcast assigned the IP address 71.227.201.158 to Doe 32, Defendant Paul
11 Snow, 5115 148th St. SW, Apt. C17, Edmonds, WA 98026, for a period of time, including but not
12 limited to on 3/19/15 02:25:28 AM UTC, and Defendant's IP address was observed infringing
13 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
14 location.

15 31. ISP Comcast assigned the IP address 76.22.121.242 to Doe 33, Defendant Jackie
16 Elhard, 27686 241st Ave SE, Maple Valley, WA 98038, for a period of time, including but not
17 limited to on 3/17/15 03:29:22 PM UTC, and Defendant's IP address was observed infringing
18 Plaintiff's motion picture at that time. On information and belief, Defendant resides at the noted
19 location.

20 **IV. PEER-TO-PEER NETWORKS AND THE BITTORRENT PROTOCOL**

21 32. Defendants are each participants in a peer-to-peer ("P2P") network using the
22 BitTorrent protocol. The BitTorrent protocol makes even small computers with low bandwidth
23 capable of participating in large data transfers across a P2P network. To begin an exchange, the
24 initial file-provider intentionally elects to share a file with a torrent network. This initial file is
25 called a seed. Other users ("peers") connect to the network and connect to the seed file to
26 download. As yet additional peers request the same file each additional user becomes a part of the

1 network from where the file can be downloaded. However, unlike a traditional peer-to-peer
2 network, each new file downloader is receiving a different piece of the data from users who have
3 already downloaded the file that together comprises the whole. This piecemeal system with
4 multiple pieces of data coming from peer members is usually referred to as a “swarm.” The effect
5 of this technology makes every downloader also an uploader of the illegally transferred file(s).
6 This means that every “node” or peer user who has a copy of the infringing copyrighted material
7 on a torrent network can also be a source of download, and thus distributor for that infringing file.

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

12 34. Defendants actions are part of a common design, intention and purpose to hide
13 behind the apparent anonymity provided by the Internet and the BitTorrent technology to
14 download pieces of the copyrighted motion picture in a manner that, but for the investigative
15 technology used by Plaintiff, would be untraceable, leaving the Plaintiff without the ability to
16 enforce its copyright rights. By participating in the “swarm” to download Plaintiff’s copyright
17 motion picture, the Defendants agreed with one another to use the Internet and BitTorrent
18 technology to engage in violation of federal statute to accomplish and unlawful objective.

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

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

25 36. More specifically, forensic software is used to scan peer-to-peer networks for the
26 presence of infringing transactions with respect to a particular audiovisual work. Any digital copy

1 of an audiovisual work may be uniquely identified by a unique, coded, string of characters called
2 a “hash checksum.” The hash checksum is a string of alphanumeric characters generated by a
3 mathematical algorithm known as US Secure Hash Algorithm 1 or “SHA-1.” This software
4 facilitates the identification of computers that are used to transmit a copy or a part of a copy of a
5 digital media file identified by a particular hash value by their IP address at a particular date and
6 time. To overcome concerns with spoofing or the like, a direct TCP connection is made to each
7 defendant’s computer. Additional software using geolocation functionality is then used to confirm
8 the geographical location of the computer used in the infringement. Though an IP address alone
9 does not reveal the name or contact information of the account holder, in this case the Doe
10 Defendant, it does reveal the likely general location of the Defendant. IP addresses are distributed
11 to ISPs by public, nonprofit organizations called Regional Internet Registries. These registries
12 assign blocks of IP addresses to ISPs by geographic region. In the United States, these blocks are
13 assigned and tracked by the American Registry of Internet Numbers. Master tables correlating the
14 IP addresses with local regions are maintained by these organizations in a publicly available and
15 searchable format. An IP address’ geographic location can be further narrowed by cross-
16 referencing this information with secondary sources such as data contributed to commercial
17 databases by ISPs.

18 37. The end result are evidence logs of infringing transactions and the IP addresses of
19 the users responsible for copying and distributing the audiovisual work, here *The Cobbler*. The IP
20 addresses, hash value, dates and times, ISP and geolocation obtained correctly reflect the
21 subscribers using the IP addresses and that they were all part of a “swarm” of users that were
22 reproducing, distributing, displaying or performing the copyrighted work.¹ As noted above,

23
24 ¹ In logs kept in the ordinary course of business, ISPs keep track of the IP addresses assigned to their
25 subscribers. Once provided with an IP address, plus the date and time of the detected and documented infringing
26 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.

1 through early discovery authorized by the Court, Plaintiff was able to identify the Does associated
2 with the IP addresses observed infringing *The Cobbler* in this case.

3 VI. JOINDER

4 38. Each Defendant is alleged to have committed violations of 17 U.S.C. § 101 *et. seq.*
5 within the same series of transactions or occurrences (e.g. downloading and distribution of the
6 same copyrighted motion picture owned by Plaintiff) and by using the same means (BitTorrent
7 network). The infringed work was included in one file related to the torrent file; in other words,
8 all of the infringements alleged in this lawsuit arise from the exact same unique copy of Plaintiff's
9 movie as evidenced by the cryptographic hash value. The Defendants are all part of the exact same
10 "swarm." Defendants' acts occurred in the same series of transactions because each Defendant
11 downloaded and/or distributed, or offered to distribute *The Cobbler* to other infringers on the
12 network, including the Doe Defendants and/or other network users, who in turn downloaded and/or
13 distributed the motion picture. The temporal proximity of the observed acts of each Defendant,
14 together with the known propensity of BitTorrent participants to actively exchange files
15 continuously for hours and even days, makes it possible that Defendants either directly exchanged
16 the motion picture with each other, or did so through intermediaries and each shared in the
17 distribution of the motion picture to others. Therefore, Defendants each conspired with other
18 infringers on the BitTorrent network to copy and/or distribute *The Cobbler*, either in the same
19 transaction or occurrence or a series of transactions or occurrences.

20 39. To use BitTorrent, a user intentionally downloads a program that they then install
21 on their computer called a "client." The BitTorrent client is the user's interface during the
22 downloading/uploading process. The client may be free, supported by advertising, offer upgrades
23 or add on services for a fee, or a combination of several options. Users then intentionally visit a
24 "torrent site" or network site to find media or content available for download, often using a

25 _____
26 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 standard web browser. A torrent site is often advertising revenue or subscription supported index
2 of media or content being made available by other users on the network and maintains a listing of
3 movies and television programs among other protected content. A user then uses the torrent site to
4 connect with other users and exchange or “share” content though the BitTorrent protocol often
5 with many users at the same time.

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

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

22 42. The use of BitTorrent does more than cause harm through the theft of intellectual
23 property. The BitTorrent distribution of pirated files is a model of business that profits from theft
24 through sales and advertising and a system of rewards and compensation to the participants, each
25 of whom contribute to and further the enterprise. Each Defendant is a participant in the BitTorrent
26 distribution of pirated files and the substantially similar conduct of each Defendant furthered a

1 model of business that profits from theft of intellectual property including Plaintiff's motion
2 picture.

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

11 44. Permissive joinder in the instant case is to permit a more efficient management of
12 Plaintiff's claims against the several Defendants and to reduce the costs to Plaintiff and Defendants
13 and to reduce the costs and burdens on the Court. Notice is provided, that on being specifically
14 identified and on request from an identified Defendant, Plaintiff agrees to sever any Defendant
15 that claims prejudice in being joined in this matter and to proceed against each such Defendant
16 individually.

17 VII. CAUSE OF ACTION—COPYRIGHT INFRINGEMENT

18 45. Plaintiff realleges the substance of the prior paragraphs.

19 46. Plaintiff owns the exclusive rights to the commercially released motion picture *The*
20 *Cobbler*, which has significant value and has been acquired, produced and created at considerable
21 expense.

22 47. At all relevant times Plaintiff has been the holder of the pertinent exclusive rights
23 infringed by Defendants to the copyrighted motion picture *The Cobbler*. The motion picture is the
24 subject of a valid Certificate of Copyright Registration.

25 48. Plaintiff is informed and believes that each Defendant, without the permission or
26 consent of Plaintiff, has used, and continues to use, an online media distribution system to

1 wrongfully misappropriate, reproduce and distribute to the public, including by making available
2 for distribution to others, *The Cobbler*. On information and belief, each Defendant participated in
3 a swarm and/or reproduced and/or distributed the same seed file of *The Cobbler* in digital form
4 either directly with each other. Plaintiff has identified each Defendant by the IP address assigned
5 to that Defendant by his or her ISP and the date and at the time at which the infringing activity of
6 each Defendant was observed.

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

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

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

22 52. The conduct of each Defendant is causing and, unless enjoined and restrained by
23 this Court, will continue to cause the Plaintiff great and irreparable injury that cannot fully be
24 compensated or measured in money. The Plaintiff has no adequate remedy at law. Pursuant to
25 17 U.S.C. §§ 502 and 503, the Plaintiff is entitled to injunctive relief prohibiting each Defendant
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1 from further infringing the Plaintiff's copyright and ordering that each Defendant destroy all copies
2 of the copyrighted motion picture made in violation of the Plaintiff's copyrights.

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

7 54. The foregoing acts of infringement have been willful, intentional, and in disregard
8 of and with indifference to the rights of Plaintiff.

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

11 **VIII. PRAYER FOR RELIEF**

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

- 13 A. Pursuant to 17 U.S.C. §502, an order preliminarily and permanently enjoining each
14 Defendant from directly or indirectly infringing Plaintiff's rights in *The Cobbler*
15 and any motion picture, whether now in existence or later created, that is owned or
16 controlled by Plaintiff ("Plaintiff's motion pictures"), including without limitation
17 by using the Internet to reproduce or copy, distribute or otherwise make available
18 for distribution to the public Plaintiff's motion pictures, except pursuant to a lawful
19 license or with the express authority of Plaintiff.
- 20 B. Pursuant to 17 U.S.C. § 503, an order that each Defendant destroy all copies of
21 Plaintiff's motion pictures that Defendant has downloaded onto any computer hard
22 drive or server without Plaintiff's authorization and shall destroy all copies of those
23 motion pictures transferred onto any physical medium or device in each
24 Defendant's possession, custody, or control.
- 25 C. An order that each Defendant file with this Court and serve on Plaintiff, within
26 30 days of service of this order, a report in writing under oath setting forth in detail
the manner and form in which Defendants have complied with the terms of the
ordered relief.
- D. Pursuant to 17 U.S.C. § 504 or other applicable provision, for actual or statutory
damages, at the election of Plaintiff, and a finding of willful infringement.
- E. Pursuant to 17 U.S.C. § 505, for Plaintiff's reasonable attorney's fees and costs.

F. For such other and further relief as the Court deems proper.

RESPECTFULLY SUBMITTED this 9th day of March, 2016.

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

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