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EXHIBIT 1

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5

6
7 IN THE UNITED STATES DISTRICT COURT FOR THE
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 AF HOLDINGS LLC,)
)
11 Plaintiff,)
)
12 v.)
)
13 JOSH HATFIELD,)
)
14 Defendant.)
)
)

No. 4:12-cv-2049-PJH

SECOND AMENDED COMPLAINT
DEMAND FOR JURY TRIAL

15
16 Plaintiff AF Holdings LLC (“Plaintiff”), through its undersigned counsel, hereby files this
17 Second Amended Complaint requesting damages and injunctive relief, and alleges as follows:

18 **NATURE OF THE CASE**

19 1. Plaintiff files this action for copyright infringement under the United States Copyright
20 Act and related contributory infringement claim under the common law to combat the willful and
21 intentional infringement of its creative works. Defendant Josh Hatfield (“Defendant”), whose name
22 Plaintiff expects to ascertain during discovery, knowingly and illegally reproduced and distributed
23 Plaintiff’s copyrighted Video by acting in concert with other individuals over the Internet via the
24 BitTorrent file sharing protocol and, upon information and belief, continues to do the same. In using
25 BitTorrent, Defendant’s infringing actions furthered the efforts of numerous others in infringing on
26 Plaintiff’s copyrighted works. The result: exponential viral infringement. Plaintiff seeks a permanent
27 injunction, statutory or actual damages, award of costs and attorney’s fees, and other relief to curb
28 this behavior.

1 **THE PARTIES**

2 2. Plaintiff AF Holdings LLC is a limited liability company organized and existing
3 under the laws of the Federation of Saint Kitts and Nevis. Plaintiff is a holder of rights to various
4 copyrighted works, and is the exclusive holder of the relevant rights with respect to the copyrighted
5 creative work at issue in this Second Amended Complaint.

6 3. The copyrighted work at issue in this Second Amended Complaint is one of
7 Plaintiff's adult entertainment videos, "Sexual Obsession" (the "Video").

8 4. Defendant is an individual who, on information and belief, is over the age of 18,
9 resides in this District, and was the account holder of Internet Protocol ("IP") address 67.161.66.97
10 at the time of the alleged infringing activity. An IP address is a number assigned to devices, such as
11 computers, that are connected to the Internet. In the course of monitoring Internet-based
12 infringement of its copyrighted content, Plaintiff's agents observed unlawful reproduction and
13 distribution occurring over IP address 67.161.66.97 via the BitTorrent file transfer protocol.

14 5. Defendant used IP address 67.161.66.97 to illegally download, republish and
15 distribute copies of Plaintiff's copyrighted Video through a unique BitTorrent swarm.

16 6. On information and belief Defendant effected, was a participant in, or in some way
17 abetted the illegal acts alleged herein, proximately causing the damages alleged. As a result,
18 Plaintiff believes that Defendant caused damage to Plaintiff, is liable to Plaintiff for such damage,
19 and Plaintiff seeks compensation for such.

20 **JURISDICTION AND VENUE**

21 7. This Court has subject matter jurisdiction over Plaintiff's copyright infringement
22 claim under 17 U.S.C. §§ 101, *et seq.*, (the Copyright Act), 28 U.S.C. § 1331 (actions arising under
23 the laws of the United States), and 28 U.S.C. § 1338(a) (actions arising under an Act of Congress
24 relating to copyrights). This Court has supplemental jurisdiction over Plaintiff's contributory
25 infringement claim under 28 U.S.C. § 1367(a) because they are so related to Plaintiff's copyright
26 infringement claim, which is within this Court's original jurisdiction, that the claims form part of the
27 same case and controversy under Article III of the United States Constitution.

1 protocol allows individual users to distribute data among themselves. Further, the BitTorrent
2 protocol involves breaking a single large file into many small pieces, which can be transferred much
3 more quickly than a single large file and, in turn, redistributed much more quickly than a single large
4 file. Moreover, each peer can download missing pieces of the file from multiple sources—often
5 simultaneously—which causes transfers to be fast and reliable. After downloading a piece, a peer
6 automatically becomes a source for the piece. This distribution method contrasts sharply with a one-
7 to-one whole file transfer method.

8 14. In BitTorrent vernacular, individual downloaders/distributors of a particular file are
9 called peers. The group of peers involved in downloading/distributing a particular file is called a
10 swarm. A server which stores a list of peers in a swarm is called a tracker. A computer program that
11 implements the BitTorrent protocol is called a BitTorrent client. Each swarm is unique to a particular
12 file.

13 15. The BitTorrent protocol operates as follows. First, a user locates a small “torrent” file.
14 This file contains information about the files to be shared and about the tracker, the computer that
15 coordinates the file distribution. Second, the user loads the torrent file into a BitTorrent client, which
16 automatically attempts to connect to the tracker listed in the torrent file. Third, the tracker responds
17 with a list of peers and the BitTorrent client connects to those peers to begin downloading data from
18 and distributing data to the other peers in the swarm. When the download is complete, the BitTorrent
19 client continues distributing data to other peers in the swarm until the user manually disconnects
20 from the swarm or the BitTorrent client otherwise does the same.

21 16. The degree of anonymity provided by the BitTorrent protocol is extremely low.
22 Because the protocol is based on peers connecting to one another, a peer must broadcast identifying
23 information (i.e. an IP address) before it can receive data. Nevertheless, the actual names of peers in
24 a swarm are unknown, as the users are allowed to download and distribute under the cover of their
25 IP addresses.

26 17. The BitTorrent protocol is an extremely popular method for transferring data. The
27 size of swarms for popular files can reach into the tens of thousands of unique peers. A swarm will
28 commonly have peers from many, if not every, state in the United States and several countries

1 around the world. And every peer in the swarm participates in distributing the same exact file to
2 dozens, hundreds, or even thousands of other peers.

3 18. The BitTorrent protocol is also an extremely popular method for unlawfully copying,
4 reproducing, and distributing files in violation of the copyright laws of the United States. A broad
5 range of copyrighted albums, audiovisual files, photographs, software, and other forms of media are
6 available for illegal reproduction and distribution via the BitTorrent protocol.

7 19. Efforts at combating BitTorrent-based copyright infringement have been stymied by
8 BitTorrent's decentralized nature. Because there are no central servers to enjoin from unlawfully
9 distributing copyrighted content, there is no primary target on which to focus anti-piracy efforts.
10 Indeed, the same decentralization that makes the BitTorrent protocol an extremely robust and
11 efficient means of transferring enormous quantities of data also acts to insulate it from anti-piracy
12 measures. This lawsuit is Plaintiff's only practical means of combating BitTorrent-based
13 infringement of the Video.

14 **ALLEGATIONS COMMON TO ALL COUNTS**

15 20. Plaintiff is the exclusive rights holder with respect to BitTorrent-based reproduction
16 and distribution of the Video.

17 21. The Video is currently registered in the United States Copyright Office (Copyright
18 No. PA0001725120). (*See Exhibit A to Second Amended Complaint.*) On June 12, 2011, Plaintiff
19 received the rights to this Video pursuant to an assignment agreement, a true and correct copy of that
20 agreement is attached hereto as Exhibit B. (*See Exhibit B to Second Amended Complaint.*)

21 22. The torrent file used to access the copyrighted material was named in a manner that
22 would have provided an ordinary individual with notice that the Video was protected by the
23 copyright laws of the United States.

24 23. Plaintiff employs proprietary peer-to-peer network forensic software to perform
25 exhaustive real time monitoring of the BitTorrent-based swarm involved in distributing the Video.
26 This software is effective in capturing data about the activity of peers in a swarm and their infringing
27 conduct.

28

1 24. Defendant, using IP address 67.161.66.97, without Plaintiff's authorization or license,
2 intentionally downloaded a torrent file particular to Plaintiff's Video, purposefully loaded that
3 torrent file into his BitTorrent client—in this case, µTorrent 2.2—entered a BitTorrent swarm
4 particular to Plaintiff's Video, and reproduced and distributed the Video to numerous third parties.

5 25. Plaintiff's investigators detected this illegal activity on April 21, 2011 at 5:25:25 p.m.
6 However, this is a simply a snapshot observation of when the IP address was *observed* in the
7 BitTorrent swarm; the conduct took itself place before and after this date and time.

8 26. Defendant was part of a group of BitTorrent users or peers in a single swarm—a
9 process generally described above—whose computers were collectively interconnected for the
10 sharing of a particular unique file. The particular file a BitTorrent swarm is associated with has a
11 unique file "hash"—i.e. a unique file identifier generated by an algorithm. The unique hash value in
12 this case is identified as 8E71D02081F484D17E8DB785EF2E3E14493E653D (hereinafter "Hash
13 Tag."), and common to all of the participants in the swarm.

14 **COUNT I – COPYRIGHT INFRINGEMENT – REPRODUCTION**

15 27. Plaintiff hereby incorporates by reference each and every allegation contained in the
16 preceding paragraphs as if fully set forth fully herein.

17 28. Plaintiff is the copyright owner of the Video.

18 29. Defendant, without authorization, unlawfully obtained a copy of the Video.

19 30. Normally, the Video is offered by Plaintiff for purchase. Defendant, however, did not
20 purchase the Video and/or obtain the Video legally.

21 31. Defendant used IP address 67.161.66.97 to access the Video on the Internet, and
22 download the unique file containing the Video onto a hard drive through the unique swarm
23 associated with the unique Hash Tag using the BitTorrent protocol.

24 32. Defendant's actions constituted copyright infringement of Plaintiff's Video.

25 33. Defendant knew or had constructive knowledge that his acts constituted copyright
26 infringement of Plaintiff's Video.

27 34. Defendant's conduct was willful within the meaning of the Copyright Act:
28 intentional, and with indifference to the Plaintiff's rights.

1 35. Defendant's conduct infringed upon Plaintiff's exclusive rights of reproduction of the
2 Video that are protected under the Copyright Act.

3 36. Plaintiff has been damaged by Defendant's conduct, including but not limited to
4 economic and reputation losses. Plaintiff continues to be damaged by such conduct, and has no
5 adequate remedy at law to compensate the Plaintiff for all of the possible damages stemming from
6 Defendant's conduct.

7 37. As Defendant's infringement was intentional and willful, the Plaintiff is entitled to an
8 award of actual damages and/or statutory damages (pursuant to 17 U.S.C. § 504(c)) at its own
9 election, exemplary damages, attorneys' fees (pursuant to 17 U.S.C. § 505), injunctive relief
10 (pursuant to 17 U.S.C. §§ 502, 503) and the costs of the suit.

11 **COUNT II – COPYRIGHT INFRINGEMENT – DISTRIBUTION**

12 38. Plaintiff hereby incorporates by reference each and every allegation contained in the
13 preceding paragraphs as if fully set forth fully herein.

14 39. Plaintiff holds the exclusive rights under the Copyright Act to distribute the Video.

15 40. Defendant has used, and continues to use, the BitTorrent file transfer protocol to
16 unlawfully distribute the Video to other individuals over the Internet by publishing the Video to
17 hundreds of thousands of BitTorrent users from a computer owned or controlled by Defendant,
18 which, in essence, served as a distribution server for the Video. In doing so, Defendant violated
19 Plaintiff's exclusive rights to distribute the Video.

20 41. Defendant was not given any permission to conduct such reproduction, and Plaintiff
21 never consented to such.

22 42. Defendant's actions constitute infringement of Plaintiff's copyrights and exclusive
23 rights under the Copyright Act.

24 43. Defendant knew or had constructive knowledge that his acts constituted copyright
25 infringement of Plaintiff's Video.

26 44. Defendant's conduct was willful within the meaning of the Copyright Act:
27 intentional, and with indifference to the Plaintiff's rights.
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DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a jury trial as provided by FRCP 38(a).

By: /s/ Brett L. Gibbs

Brett L. Gibbs, Esq. (SBN 251000)

Attorney for Plaintiff