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1 2 3 4 5 6	Brett L. Gibbs, Esq. (SBN 251000) Of Counsel to Prenda Law Inc. 38 Miller Avenue, #263 Mill Valley, CA 94941 415-325-5900 blgibbs@wefightpiracy.com Attorney for Plaintiff
7	IN THE UNITED STATES DISTRICT COURT FOR THE
8	NORTHERN DISTRICT OF CALIFORNIA
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10	AF HOLDINGS LLC,) No. 4:12-cv-2049-PJH
11	Plaintiff,) v.
12) JOSH HATFIELD,) SECOND AMENDED COMPLAINT
13) Defendant.) DEMAND FOR JURY TRIAL
14)
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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 infringment. 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.

THE PARTIES

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

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

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

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

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

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JURISDICTION AND VENUE

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

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1 8. This Court has personal jurisdiction because, upon information and belief, Defendant 2 either resides in or committed copyright infringement in the State of California. Plaintiff used 3 geolocation technology to trace the IP address of Defendant to a point of origin within the State of 4 California. Geolocation is a method for ascertaining the likely geographic region associated with a 5 given IP address at a given date and time. Although not a litmus test for personal jurisdiction, the use 6 of geolocation gives Plaintiff good cause for asserting that personal jurisdiction is proper over 7 Defendant.

9. Venue is properly founded in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because Defendant resides in this District, may be found in this District, or a substantial part of the events giving rise to the claims in this action occurred within this District.

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BACKGROUND

10. BitTorrent is a modern file sharing method ("protocol") used for distributing data via the Internet.

11. Traditional file transfer protocols involve a central server, which distributes data 14 directly to individual users. This method is prone to collapse when large numbers of users request 15 data from the central server, in which case the server can become overburdened and the rate of data 16 transmission can slow considerably or cease altogether. In addition, the reliability of access to the 17 data stored on a server is largely dependent on the server's ability to continue functioning for 18 prolonged periods of time under high resource demands. 19

12. Standard P2P protocols involve a one-to-one transfer of whole files between a single 20 uploader and single downloader. Although standard P2P protocols solve some of the issues associated with traditional file transfer protocols, these protocols still suffer from such issues as 22 scalability. For example, when a popular file is released (e.g. an illegal copy of the latest blockbuster 23 movie) the initial source of the file performs a one-to-one whole file transfer to a third party, who then performs similar transfers. The one-to-one whole file transfer method can significantly delay the spread of a file across the world because the initial spread is so limited.

13. In contrast, the BitTorrent protocol is a decentralized method of distributing data. Instead of relying on a central server to distribute data directly to individual users, the BitTorrent 28

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

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

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

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

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.

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

19. Efforts at combating BitTorrent-based copyright infringement have been stymied by BitTorrent's decentralized nature. Because there are no central servers to enjoin from unlawfully 8 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 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 infringement of the Video. 13

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ALLEGATIONS COMMON TO ALL COUNTS

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

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

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

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

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

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

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

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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.

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28. Plaintiff is the copyright owner of the Video.

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

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

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

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32. Defendant's actions constituted copyright infringment 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.

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

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

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

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.

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

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

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

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

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

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

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

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COUNT III – CONTRIBUTORY INFRINGEMENT

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

48. When users in this unique swarm all possess the same infringing work with the same exact hash value, it is because each infringer possesses an exact digital copy, containing the exact bits and pieces unique to that specific file of Plaintiff's original copyrighted work. They only way this happens in a BitTorrent swarm is through the sharing of these bits and pieces of each same unique file, with the same unique hash value, between the users in the swarm. In essence, although hundreds of users may be uploading the copyrighted work, a single user will receive only the exact parts of a singular upload through that exact swarm, not a compilation of available pieces from various uploads.

49. Defendant published the Hash Tag to the BitTorrent network.

50. Defendant downloaded, uploaded and distributed the Video to other BitTorrent users through use of the hash-specified protocol in the unique swarm.

51. As each of the thousands of people who illegally downloaded the movie accessed this 23 illegal publication, they derived portions of their illegal replication of the file from multiple persons, 24 including, but not limited to, Defendant. 25

52. Defendant knew of the infringement, was conscious of his own infringement, and 26 Defendant was fully concsious that his actions resulted in multiple other persons derivatively downloaded the file containing Plaintiff's Video. 28

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53. The infringement by the other BitTorrent users could not have occurred without 2 Defendant's participation in uploading Plaintiff's copyrighted works. As such, Defendant's 3 participation in the infringing activities of others is substantial and contributed, for profit, to the infringing activity of thousands of other peers over the Internet across the world.

54. Defendant profited from this contributory infringement by way of being granted access to a greater library of other infringing works, some of which belonged to Plaintiff and some of which belonged to other copyright owners.

JURY DEMAND

Plaintiff hereby demands a jury trial in this case. 55.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests Judgment and relief as follows:

1) Judgment against Defendant that he has: a) willfully infringed Plaintiff's rights in federally registered copyrights pursuant to 17 U.S.C. § 501; and b) otherwise injured the business reputation and business of Plaintiff by Defendant's acts and conduct set forth in this Second Amended Complaint;

Judgment in favor of the Plaintiff against Defendant for actual damages or statutory 2) damages pursuant to 17 U.S.C. § 504, at the election of Plaintiff, justifying an award of \$150,000 per infringement, in a total amount to be ascertained at trial;

3) Order of impoundment under 17 U.S.C. §§ 503 & 509(a) impounding all infringing copies of Plaintiff's audiovisual works, photographs or other materials, which are in Defendant's possession or under his control;

4) On Count III, an order that Defendant is liable to the Plaintiff in the full amount of Judgment on the basis of a common law claim for contributory infringement of copyright; for an award of compensatory damages in favor of the Plaintiff and against Defendant in an amount to be determined at trial;

5) Judgment in favor of Plaintiff against the Defendant awarding the Plaintiff attorneys' fees, litigation expenses (including fees and costs of expert witnesses), and other costs of this action; 27 and 28

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1	6) Judgment in favor of the Plaintiff against Defendant, awarding Plaintiff declar	atory
2	and injunctive or other equitable relief as may be just and warranted under the circumstances.	
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4	Respectfully Submitted,	
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7	DATED: September 28, 2012	
8	By: <u>/s/ Brett L. Gibbs</u>	
9	Brett L. Gibbs, Esq. (SBN 251000) Of Counsel to Prenda Law Inc.	
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	11 SECOND AMENDED COMPLAINT CASE NO. 3:12-cv-20	49-PJH

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1	DEMAND FOR A JURY TRIAL
2	Plaintiff hereby demands a jury trial as provided by FRCP 38(a).
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5	By: <u>/s/ Brett L. Gibbs</u>
6	Brett L. Gibbs, Esq. (SBN 251000)
7	Attorney for Plaintiff
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