

1 Brett L. Gibbs, Esq. (SBN 251000)
Of Counsel to Prenda Law Inc.
2 38 Miller Avenue, #263
Mill Valley, CA 94941
3 415-325-5900
blgibbs@wefightpiracy.com

4 *Attorney for Plaintiff*

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6 IN THE UNITED STATES DISTRICT COURT FOR THE
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8 SOUTHERN DISTRICT OF CALIFORNIA

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10 AF HOLDINGS LLC,) **No. 3:12-cv-01519-BTM-BLM**
11 Plaintiff,)
v.)
12 CHRIS ROGERS,) **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 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 and negligence claims under the common law to combat
21 the willful and intentional infringement of its creative works. Defendant Chris Rogers (“Defendant”)
22 knowingly and illegally reproduced and distributed Plaintiff’s copyrighted Video by acting in
23 concert with others via the BitTorrent file sharing protocol and, upon information and belief,
24 continues to do the same. In using BitTorrent, Defendant’s infringement actions furthered the efforts
25 of numerous others in infringing on Plaintiff’s copyrighted works. The result: exponential viral
26 infringement. Plaintiff seeks a permanent injunction, statutory or actual damages, award of costs and
27 attorney’s fees, and other relief to curb this behavior.
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BACKGROUND

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2 8. BitTorrent is a modern file sharing method (“protocol”) used for distributing data via
3 the Internet.

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

10
11 10. Standard P2P protocols involve a one-to-one transfer of whole files between a single
12 uploader and single downloader. Although standard P2P protocols solve some of the issues
13 associated with traditional file transfer protocols, these protocols still suffer from such issues as
14 scalability. For example, when a popular file is released (e.g. an illegal copy of the latest blockbuster
15 movie) the initial source of the file performs a one-to-one whole file transfer to a third party, who
16 then performs similar transfers. The one-to-one whole file transfer method can significantly delay
17 the spread of a file across the world because the initial spread is so limited.

18
19 11. In contrast, the BitTorrent protocol is a decentralized method of distributing data.
20 Instead of relying on a central server to distribute data directly to individual users, the BitTorrent
21 protocol allows individual users to distribute data among themselves. Further, the BitTorrent
22 protocol involves breaking a single large file into many small pieces, which can be transferred much
23 more quickly than a single large file and, in turn, redistributed much more quickly than a single large
24 file. Moreover, each peer can download missing pieces of the file from multiple sources—often
25 simultaneously—which causes transfers to be fast and reliable. After downloading a piece, a peer
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1 automatically becomes a source for the piece. This distribution method contrasts sharply with a one-
2 to-one whole file transfer method.

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

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

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

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

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

3 16. 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.

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8 17. Efforts at combating BitTorrent-based copyright infringement have been stymied by
9 BitTorrent's decentralized nature. Because there are no central servers to enjoin from unlawfully
10 distributing copyrighted content, there is no primary target on which to focus anti-piracy efforts.
11 Indeed, the same decentralization that makes the BitTorrent protocol an extremely robust and
12 efficient means of transferring enormous quantities of data also acts to insulate it from anti-piracy
13 measures. This lawsuit is Plaintiff's only practical means of combating BitTorrent-based
14 infringement of the Video.
15

16 **ALLEGATIONS COMMON TO ALL COUNTS**

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

19 19. The Video is currently registered in the United States Copyright Office (Copyright
20 No. PA0001754383). (*See* Exhibit A to Amended Complaint.) On December 20, 2011, Plaintiff
21 received the rights to this Video pursuant to an assignment agreement, a true and correct copy of that
22 agreement is attached hereto as Exhibit B. (*See* Exhibit B to Amended Complaint.)
23

24 20. The torrent file used to access the copyrighted material was named in a manner that
25 would have provided an ordinary individual with notice that the Video was protected by the
26 copyright laws of the United States.
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1 21. Plaintiff employs proprietary peer-to-peer network forensic software to perform
2 exhaustive real time monitoring of the BitTorrent-based swarm involved in distributing the Video.
3 This software is effective in capturing data about the activity of peers in a swarm and their infringing
4 conduct.

5 22. Defendant, using IP address 68.8.137.53, without Plaintiff's authorization or license,
6 intentionally downloaded a torrent file particular to Plaintiff's Video, purposefully loaded that
7 torrent file into his BitTorrent client—in this case, µTorrent Mac 1.5.14—entered a BitTorrent
8 swarm particular to Plaintiff's Video, and reproduced and distributed the Video to numerous third
9 parties.
10

11 23. Plaintiff's investigators detected Defendant's illegal download on
12 5/7/2012 at 7:45:42 PM (UTC). However, this is a simply a snapshot observation of when the IP
13 address was *observed* in the BitTorrent swarm; the conduct took itself place before and after this
14 date and time.
15

16 24. Defendant was part of a group of BitTorrent users or peers in a single swarm—a
17 process generally described above—whose computers were collectively interconnected for the
18 sharing of a particular unique file. The particular file a BitTorrent swarm is associated with has a
19 unique file "hash"—i.e. a unique file identifier generated by an algorithm. The unique hash value in
20 this case is identified as 6C10F2DCFF52961B876AA592183103BAC958E989 (hereinafter "Hash
21 Tag."), and common to all of the participants in the swarm.
22

23 **COUNT I – COPYRIGHT INFRINGEMENT**

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

26 26. Defendant's conduct infringes upon Plaintiff's exclusive rights of reproduction and
27 distribution that are protected under the Copyright Act.
28

1 43. Reasonable Internet users take steps to secure their Internet access accounts
2 preventing the use of such accounts for an illegal purpose. Defendant's failure to secure his Internet
3 access account, thereby allowing for its illegal use, constitutes a breach of the ordinary care that a
4 reasonable Internet account holder would do under like circumstances.

5
6 44. In the alternative, Defendant secured his connection, but permitted an unknown third
7 party to use his Internet connection to infringe on Plaintiff's Video. Defendant knew, or should have
8 known, that this unidentified individual used Defendant's Internet connection for the aforementioned
9 illegal activities. Defendant declined to monitor the unidentified third-party infringer's use of his
10 computer Internet connection, demonstrating further negligence.

11 45. In the alternative, Defendant knew of, and allowed for, the unidentified third party
12 infringer's use of his Internet connection for illegal purposes and thus was complicit in the
13 unidentified third party's actions.

14
15 46. Upon information and belief, Defendant's failure to secure his Internet access account
16 directly allowed for the copying and sharing of Plaintiff's Video over the BitTorrent protocol
17 through Defendant's Internet connection, and interfered with Plaintiff's exclusive rights in the
18 copyrighted work.

19 47. Upon information and belief, Defendant knew, or should have known of, the
20 unidentified third party's infringing actions, and, despite this, Defendant directly, or indirectly,
21 allowed for the copying and sharing of Plaintiff's Video over the BitTorrent protocol through
22 Defendant's Internet connection, and interfered with Plaintiff's exclusive rights in the copyrighted
23 Video.

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25 48. By virtue of his unsecured access, Defendant negligently allowed the use of his
26 Internet access account to perform the above-described copying and sharing of Plaintiff's
27 copyrighted Video.

1 49. Had Defendant taken reasonable care in securing access to this Internet connection, or
2 monitoring the unidentified third-party individual's use of his Internet connection, such
3 infringements as those described above would not have occurred by the use of Defendant's Internet
4 access account.

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6 50. Defendant's negligent actions allow others to unlawfully copy and share Plaintiff's
7 copyrighted Video, proximately causing financial harm to Plaintiff and unlawfully interfering with
8 Plaintiff's exclusive rights in the Video.

9 **JURY DEMAND**

10 51. Plaintiff hereby demands a jury trial in this case.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff respectfully requests Judgment and relief as follows:

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

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18 2) Judgment in favor of the Plaintiff against Defendant for actual damages or statutory
19 damages pursuant to 17 U.S.C. § 504, at the election of Plaintiff, in an amount to be ascertained at
20 trial;

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

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25 4) On Count II, an order that Defendant is jointly and severally liable to the Plaintiff in
26 the full amount of Judgment on the basis of a common law claim for contributory infringement of
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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