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EXHIBIT 1

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4 *Attorney for Plaintiff*

5
6 IN THE UNITED STATES DISTRICT COURT FOR THE
7
8 NORTHERN DISTRICT OF CALIFORNIA

9
10 AF HOLDINGS LLC,)
)
11 Plaintiff,)
)
12 v.)
)
13 JOSH HATFIELD,)
)
14 Defendant.)
)
)
)
)

No. 3:12-cv-2049-PJH

SECOND AMENDED COMPLAINT
DEMAND FOR JURY TRIAL

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

17 **NATURE OF THE CASE**

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

3
4 **THE PARTIES**

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

9 3. The copyrighted work at issue in this Second Amended Complaint is one of
10 Plaintiff’s adult entertainment videos, “Sexual Obsession” (the “Video”).

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

17
18 5. Defendant used IP address 67.161.66.97 to illegally download, republish and
19 distribute copies of Plaintiff’s copyrighted Video through a unique BitTorrent swarm.

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

24 **JURISDICTION AND VENUE**

25 7. This Court has subject matter jurisdiction over Plaintiff’s copyright infringement
26 claim under 17 U.S.C. §§ 101, *et seq.*, (the Copyright Act), 28 U.S.C. § 1331 (actions arising under
27 the laws of the United States), and 28 U.S.C. § 1338(a) (actions arising under an Act of Congress
28

1 relating to copyrights). This Court has supplemental jurisdiction over Plaintiff's contributory
2 infringement claim under 28 U.S.C. § 1367(a) because they are so related to Plaintiff's copyright
3 infringement claim, which is within this Court's original jurisdiction, that the claims form part of the
4 same case and controversy under Article III of the United States Constitution.

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

13
14 9. Venue is properly founded in this judicial district pursuant to 28 U.S.C. §§ 1391(b)
15 and 1400(a) because Defendant resides in this District, may be found in this District, or a substantial
16 part of the events giving rise to the claims in this action occurred within this District

17 **BACKGROUND**

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

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

26 12. Standard P2P protocols involve a one-to-one transfer of whole files between a single
27 uploader and single downloader. Although standard P2P protocols solve some of the issues
28 associated with traditional file transfer protocols, these protocols still suffer from such issues as

1 scalability. For example, when a popular file is released (e.g. an illegal copy of the latest blockbuster
2 movie) the initial source of the file performs a one-to-one whole file transfer to a third party, who
3 then performs similar transfers. The one-to-one whole file transfer method can significantly delay
4 the spread of a file across the world because the initial spread is so limited.

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

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

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

27 16. The degree of anonymity provided by the BitTorrent protocol is extremely low.
28 Because the protocol is based on peers connecting to one another, a peer must broadcast identifying

1 information (i.e. an IP address) before it can receive data. Nevertheless, the actual names of peers in
2 a swarm are unknown, as the users are allowed to download and distribute under the cover of their
3 IP addresses.

4 17. The BitTorrent protocol is an extremely popular method for transferring data. The
5 size of swarms for popular files can reach into the tens of thousands of unique peers. A swarm will
6 commonly have peers from many, if not every, state in the United States and several countries
7 around the world. And every peer in the swarm participates in distributing the same exact file to
8 dozens, hundreds, or even thousands of other peers.

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

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

20 **ALLEGATIONS COMMON TO ALL COUNTS**

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

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

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

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

8 24. Defendant, using IP address 67.161.66.97, without Plaintiff's authorization or license,
9 intentionally downloaded a torrent file particular to Plaintiff's Video, purposefully loaded that
10 torrent file into his BitTorrent client—in this case, µTorrent 2.2—entered a BitTorrent
11 swarm.particular to Plaintiff's Video, and reproduced and distributed the Video to numerous third
12 parties
13

14 25. Plaintiff's investigators detected this illegal activity on April 21, 2011 at 5:25:25 p.m.
15 and May 2, 2011 at 10:37:48 p.m (UTC). However, this is a simply a snapshot observation of when
16 the IP address was *observed* in the BitTorrent swarm; the conduct took itself place before and after
17 this date and time.

18 26. Defendant was part of a group of BitTorrent users or peers in a single swarm—a
19 process generally described above—whose computers were collectively interconnected for the
20 sharing of a particular unique file. The particular file a BitTorrent swarm is associated with has a
21 unique file “hash”—i.e. a unique file identifier generated by an algorithm. The unique hash value in
22 this case is identified as 8E71D02081F484D17E8DB785EF2E3E14493E653D (hereinafter “Hash
23 Tag.”), and common to all of the participants in the swarm.
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1 apartment building in Oakland, California (338 Lenox Ave. Apt. 7). Plaintiff discovered a recent
2 listing by a real estate agent for one of the units located on the property. According to that listing,
3 the building has eight units with at least on two-bedroom unit. The listing stated as follows: “338
4 Lenox Ave. Oakland, CA 94610, Light filled corner unit on top floor (of three floors) in a well
5 maintained eight-unit apartment building Large two bedrooms and one bath Spacious living room
6 and dinning [sic] room with views of park and Lake Merritt Remodeled kitchen with all amenities,
7 including granite counter, maple cabinet, dishwasher, refrigerator and gas range Remodeled all tile
8 full bath Master bedroom with separate dressing room with closet, linen closet, wash basin and
9 vanity counter Second bedroom with closet plus 2 more additional large hall closets Refinished
10 hardwood floors throughout Landlord pays water and garbage On site laundry Bar-B-Q in the
11 backyard GREAT LOCATION AND NEIGHBORHOOD Best in Adams Point Located in the a safe
12 and quiet neighborhood across from Lake Merritt Full range shopping convenience with Whole
13 Foods and Trader Joe’s nearby Close to all conveniences — shops, restaurants, entertainments,
14 business & medical centers Easy freeway access to I-580 and I-80, and only 10 miles to San
15 Francisco downtown 5 minutes walk to bars/restaurants on Broadway and Grand Ave. 5 minutes
16 walk to Whole Foods, and 15 minutes walk to 19th Street BART station FREE Broadway shuttle to
17 Oakland downtown and BART Click here to view a detailed shuttle route and street map Location,
18 Location, Location -> click here to view the location on larger Google map RENTAL INFO
19 Available on March 1st, 2012 One-year lease required. Rent: \$1,700 Security deposit: \$2,000 One-
20 car garage and one-car parking space for \$100/month, parking in tandem Considerate professional
21 fellow occupants Cats are welcome (requires additional pet security deposit of \$250), no dogs Must
22 have good credit and rental history Sorry, no Sec.8 at this point of time.”
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1 34. Plaintiff called the agent who listed the rental and left a voice message, but never
2 received a call back. There was no information available about Defendant's neighbors or whether he
3 in fact Defendant had any nearby neighbors.

4 35. On September 8, 2012, Plaintiff conducted more research. Research on the building's
5 other potential residents indicated that, while a residential building, it had a few tenants who were
6 running their businesses out of their units.

7 36. On or around October 9, 2012, Plaintiff performed a skip trace on Defendant to gain
8 more information on him.¹

9 37. Through this skip trace, it was revealed that Defendant was thirty-three-years old and
10 in fact currently residing at 338 Lenox Avenue Apt. 7, Oakland, California 94610. Further it
11 revealed that he lived at that location with thirty-year old female with a different last name. There
12 was no indication that the two were married.

13 38. Further investigation on or around the same time indicated that Defendant had a
14 criminal record. The offenses allegedly occurred in Oregon on June 25, 2001 and January 10, 1999,
15 and both were labeled as "Court Offense: VIOL OF BASIC RULE." The actual violation charged
16 was unclear, but each passed through the criminal courts in Oregon. Past residences in the skip trace
17 revealed that Defendant had numerous past residences in various parts of Oregon that matched the
18 court criminal records.

19 39. Through its investigation, Plaintiff found no evidence that Defendant had a wireless
20 Internet network. Further, Plaintiff found no evidence that, if such wireless Internet connection
21 existed, that such network was unsecured (i.e. without password protection).

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¹ A skip trace is common form of investigative tool using public records to gain a wealth of knowledge, including location and relatives, of an individual.

1 40. Most importantly, Plaintiff searched the Court’s docket in this case and never found
2 any declaration under oath from Defendant stating clearly that he had not infringed on Plaintiff’s
3 work. In fact, Plaintiff had never encountered such a document off the record as well.

4 41. Considering the above, and considering that Josh Hatfield was the subscriber assigned
5 67.161.66.97 by his ISP on April 21, 2011 at 5:25:25 p.m. and May 2, 2011 at 10:37:48 p.m
6 (UTC)—i.e. the dates and times of the observed infringement—and was the only known person with
7 direct access to this account during this period, and considering that any then unknown or
8 unconfirmed information would bear out through the discovery process, Plaintiff concluded that it
9 had a good faith basis to name Josh Hatfield as the infringing Defendant in this case.

10 42. On September 28, 2012, Plaintiff filed its Notice of Motion and Motion for Leave to
11 File a Second Amended Complaint.
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13 43. On November 7, 2012, the Court issued a Civil Minutes order that stated, in part,
14 “Plaintiff’s Motion to Amend Complaint-Held. Plaintiff shall submit a proposed amended complaint
15 to the court within one week. The court takes the matter under submission.”
16

17 **COUNT I – COPYRIGHT INFRINGEMENT – REPRODUCTION**

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

20 45. Plaintiff is the copyright owner of the Video.

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

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

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

27 49. Defendant’s actions constituted copyright infringement of Plaintiff’s Video.
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1 50. Defendant knew or had constructive knowledge that his acts constituted copyright
2 infringement of Plaintiff's Video.

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

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

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

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

15 **COUNT II – COPYRIGHT INFRINGEMENT – DISTRIBUTION**

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

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

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

24 58. Defendant was not given any permission to conduct such reproduction, and Plaintiff
25 never consented to such.

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

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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