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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 MALIBU MEDIA, LLC

11 Plaintiff,

12 v.

13 [redacted]

14 Defendant

Case No. 3:15-cv-04152-WHA

**ANSWER TO AMENDED COMPLAINT
AND AFFIRMATIVE DEFENSES**

15
16 Defendant [redacted] by and through her attorney Nicholas Ranallo, responds to Malibu
17 Media’s Amended Complaint as follows:

18 **Introduction**

- 19 1. Defendant admits that Malibu Media has alleged acts of copyright infringement under
20 United States Copyright Act of 1976, as amended, 17 U.S.C. §101 et seq.
21 2. Defendant denies the allegations of Paragraph 2 of Plaintiff’s Amended Complaint.
22 3. Defendant lacks sufficient knowledge or information to respond to the allegations in
23 Paragraph 3 of Plaintiff’s Amended Complaint, and therefore denies them.
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25 **Jurisdiction and Venue**

- 26 4. Defendant admits that this court has subject matter jurisdiction over this action.
27 5. Defendant admits that she resides in the State of California. Defendant denies the remaining
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1 allegations in Paragraph 5 of Plaintiff's Amended Complaint.

2 6. Defendant lacks sufficient knowledge or information to respond to the allegations in
3 Paragraph 6 of Plaintiff's Amended Complaint, and therefore denies them.

4 7. Defendant admits that she resides within the Northern District of California. Defendant
5 denies the remaining allegations in Paragraph 7 of Plaintiff's Amended Complaint.

6 **Intradistrict Assignment**

7 8. Defendant lacks sufficient knowledge or information to respond to the allegations in
8 Paragraph 8 of Plaintiff's Amended Complaint, and therefore denies them.

9 **Parties**

10 9. Defendant lacks sufficient knowledge or information to respond to the allegations in
11 Paragraph 9 of Plaintiff's Amended Complaint, and therefore denies them.

12 10. Admitted.

13 **Factual Background**

14 I. To the extent that Roman Numeral I represents an independent allegation, Defendant
15 denies such allegation.

16 11. Defendant lacks sufficient knowledge or information to respond to the allegations in
17 Paragraph 11 of Plaintiff's Amended Complaint, and therefore denies them.

18 12. Defendant lacks sufficient knowledge or information to respond to the allegations in
19 Paragraph 12 of Plaintiff's Amended Complaint, and therefore denies them.

20 13. Defendant lacks sufficient knowledge or information to respond to the allegations in
21 Paragraph 13 of Plaintiff's Amended Complaint, and therefore denies them.

22 14. Defendant lacks sufficient knowledge or information to respond to the allegations in
23 Paragraph 14 of Plaintiff's Amended Complaint, and therefore denies them.

- 1 15. Defendant lacks sufficient knowledge or information to respond to the allegations in
2 Paragraph 15 of Plaintiff’s Amended Complaint, and therefore denies them.
- 3 16. Defendant lacks sufficient knowledge or information to respond to the allegations in
4 Paragraph 16 of Plaintiff’s Amended Complaint, and therefore denies them.
- 5 17. Defendant lacks sufficient knowledge or information to respond to the allegations in
6 Paragraph 17 of Plaintiff’s Amended Complaint, and therefore denies them.
- 7 18. Defendant denies the allegations of Paragraph 18 of Plaintiff’s Amended Complaint
- 8 19. Defendant denies the allegations of Paragraph 19 of Plaintiff’s Amended Complaint.
- 9 20. Defendant denies the allegations of Paragraph 20 of Plaintiff’s Amended Complaint.
- 10 21. Defendant lacks sufficient knowledge or information to respond to the allegations in
11 Paragraph 21 of Plaintiff’s Amended Complaint, and therefore denies them.
- 12 22. Defendant denies that “IPP International UG downloaded from Defendant one or more bits
13 of each file listed on Exhibit A.” Defendant lacks sufficient knowledge or information to
14 respond to the remaining allegations in Paragraph 22, and on that basis denies them.
- 15 23. Defendant denies the allegations of Paragraph 23 of Plaintiff’s Amended Complaint.
- 16 24. Defendant lacks sufficient knowledge or information to respond to the allegations in
17 Paragraph 24 of Plaintiff’s Amended Complaint, and therefore denies them.
- 18 25. Defendant denies the allegations in Paragraph 25 of Plaintiff’s Amended Complaint.
- 19 26. Defendant lacks sufficient knowledge or information to respond to the allegations in
20 Paragraph 26 of Plaintiff’s Amended Complaint, and therefore denies them.
- 21 27. Defendant lacks sufficient knowledge or information to respond to the allegations in
22 Paragraph 27 of Plaintiff’s Amended Complaint, and therefore denies them.

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26 **COUNT 1**

- 27 28. Defendant reaffirms, realleges, and reincorporates her responses and denies to each of the
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1 preceding paragraphs as if set forth fully herein.

2 29. Defendant lacks sufficient knowledge or information to respond to the allegations in
3 Paragraph 29 of Plaintiff’s Amended Complaint, and therefore denies them.

4 30. Defendant denies the allegations in Paragraph 30 of Plaintiff’s Amended Complaint.

5 31. Defendant lacks sufficient knowledge or information to respond to the allegations in
6 Paragraph 31 of Plaintiff’s Amended Complaint, and therefore denies them.

7 32. Defendant denies the allegations in Paragraph 32 and each subpart of Paragraph 32 of
8 Plaintiff’s Amended Complaint.

9 33. Defendant denies the allegations set forth in Paragraph 33 of Plaintiff’s Amended
10 Complaint.

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12 **DEFENDANT’S AFFIRMATIVE DEFENSES**

13 **Factual Background**

- 14 1. Plaintiff is a purveyor of pornographic adult films and prodigious litigant.
- 15 2. Upon information and belief, Plaintiff has filed upwards of 4000 lawsuits alleging
16 infringement of its works via BitTorrent protocol.
- 17 3. Upon information and belief, Plaintiff’s goal in filing these lawsuits is not a judgment on the
18 merits. Rather, Plaintiff seeks to coerce a settlement from the ISP subscriber – as herein –
19 without regard to whether that subscriber has actually infringed any of Plaintiff’s works.
- 20 4. Upon information and belief, Plaintiff coerces its settlements by leveraging potential
21 embarrassment of the Defendant into monetary settlement by, inter alia, threatening to
22 depose a Defendant’s friends, family, and neighbors, as well as by leveraging the inherent
23 cost of federal litigation.
- 24 5. Upon information and belief, the conduct set forth herein led Central District of California
25 District Judge Otis Wright to refer to Malibu Media’s operation as “essentially an extortion
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scheme.”

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2 6. Upon information and belief, many of Plaintiff’s works feature “performers” that are
3 apparently extremely young, and, indeed, Plaintiff allows users to sort its movies by “age”
4 on its website.

5 7. Indeed, one work that was allegedly downloaded by Defendant in this matter is simply titled
6 “So Young.”

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8 8. In an effort to curtail the spread of child pornography and to protect “performers” in the
9 pornography industry, the United States has introduced numerous record-keeping and other
10 requirements with regard to every individual appearing in a visual depiction of actual
11 sexually explicit conduct. See 18 U.S.C. §2257.

12 9. In addition, 18 U.S.C. §2257 requires certain record-keeping and compliance information to
13 appear at the beginning and end of pornographic works.

14 10. Upon information and belief Plaintiff is subject to the requirements of 18 U.S.C. §2257 in
15 relation to each of the works allegedly infringed in this matter.

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17 11. Upon information and belief, Plaintiff has not met its obligations under 18 U.S.C. §2257
18 with regard to the works at issue in this matter.

19 12. Upon information and belief, many if not all of the works at issue in this litigation were
20 filmed in the home of Malibu Media’s owners Collette and Brigham Field in Ventura
21 County, California.

22 13. Upon information and belief, Ms. Field has acknowledged that Plaintiff films many of the
23 works in her home in Ventura County, and has previously used the hashtag “#venturacounty”
24 in social media posts as an addendum to an Instagram message indicating that she was
25 “getting ready for another day of shooting.”

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27 14. Upon information and belief, the City of Malibu and Ventura County each require all
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- 1 commercial film productions to obtain a permits before engaging in commercial filming.
- 2 15. Upon information and belief, Plaintiff has not secured a relevant filming permit for any of
- 3 Malibu Media’s works, including but not limited to the works at issue in the instant litigation.
- 4 16. Upon information and belief, Ventura County has also passed legislation regulating the
- 5 pornography industry in the county, including but not limited to Ordinance No. 4452,
- 6 requiring, inter alia, a permit to produce an “adult film” in the County.
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- 8 17. Upon information and belief, Malibu Media has not obtained the permits required to produce
- 9 an adult film in Ventura County.
- 10 18. Upon information and belief, California state law requires that performers in “adult films”
- 11 use barrier protection, including condoms, to protect employees during the production of
- 12 adult films.
- 13 19. Upon information and belief, the works at issue herein do not comply with the requirements
- 14 regarding the use of “barrier protection” set forth by the State of California.
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- 16 20. Upon information and belief, many of Plaintiff’s works, including the works allegedly
- 17 infringed in this matter, appear on BitTorrent before they are even available to members of
- 18 Malibu Media’s website or any other licensed outlet for its works.
- 19 21. Upon information and belief, Plaintiff and/or its agents, employees are responsible for
- 20 intentionally seeding Malibu Media’s works on BitTorrent.
- 21 22. Upon information and belief, Plaintiff and/or its agents or employees intentionally seed
- 22 Malibu Media’s works in order to encourage BitTorrent users to download the seeded works.
- 23
- 24 23. Upon information and belief, Malibu Media makes more income from suing and settling
- 25 with alleged copyright infringers than it does from the licensed distribution or display of its
- 26 works.
- 27 24. Plaintiff in this matter has alleged infringements from July 23, 2013 to July 15, 2015.
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1 25. Each alleged infringement in this action purportedly arose from the same IP address.

2 26. Upon information and belief, at no time from July 23, 2013 to July 5, 2015, did Plaintiff
3 make any attempt to curtail the alleged infringement of its works via IP address 24.5.36.86
4 despite purportedly having actual knowledge of the same.

5 **First Affirmative Defense: Unclean Hands**

6 27. Defendant repeats, reasserts, and restates the allegations of Paragraphs 1-26 of Defendant's
7 affirmative defenses as though fully set forth herein.

8 28. The conduct set forth herein, including but not limited to Plaintiff's failure to comply with
9 Federal, State, and local laws, regulations, and ordinances in connection with the creation
10 and distribution of the allegedly infringed works herein violates law, conscience, good faith,
11 and other equitable principles and Plaintiff should therefore take nothing on its complaint.

12 **Second Affirmative Defense: Implied License**

13 29. Defendant repeats, reasserts, and restates the allegations of Paragraphs 1-28 of Defendant's
14 affirmative defenses as though fully set forth herein.

15 30. Plaintiff's conduct set forth above, including but not limited to seeding its own works on
16 BitTorrent or otherwise allowing such works to appear on BitTorrent before being released
17 on Malibu Media's own website, constitutes an implied license for users of BitTorrent

18 **Third Affirmative Defense: Laches**

19 31. Defendant repeats, reasserts, and restates the allegations of Paragraphs 1-25 of Defendant's
20 affirmative defenses as though fully set forth herein.

21 32. Despite purportedly having actual knowledge that an individual was allegedly infringing
22 Plaintiff's purportedly copyrighted works, Plaintiff waited more than 2 years before making
23 any effort to curtail the alleged infringements.
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Fourth Affirmative Defense: Failure to State A Claim Upon Which Relief May Be Granted

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33. Defendant repeats, reasserts, and restates the allegations of Paragraphs 1-32 of Defendant’s affirmative defenses as though fully set forth herein.

34. Plaintiff’s Amended Complaint fails to allege that Defendant downloaded a full copy of each of the relevant works, alleging only that Defendant copied and distributed the “constituent elements” of each of the original works covered by the Copyrights-in-Suit in the form of encrypted and unusable file format.

35. As Plaintiff’s own complaint recognizes, a BitTorrent client only re-assembles the “constituent elements” of Plaintiff’s work if a BitTorrent user downloads 100% of the torrent file in question. See, e.g. ¶ 14 of Plaintiff’s Amended Complaint.

36. Because Malibu Media fails to allege – and cannot allege from the information available to it – that a Defendant has downloaded the entire torrent file, it has failed to state a cognizable legal claim for copyright infringement of its registered work(s).

Fifth Affirmative Defense: Unconstitutionally Excessive Damages

37. Defendant repeats, reasserts, and restates the allegations of Paragraphs 1-36 of Defendant’s affirmative defenses as though fully set forth herein.

38. The measure of damages sought by Plaintiff is unconstitutionally excessive.

Sixth Affirmative Defense: Failure to Mitigate Damages

39. Defendant repeats, reasserts, and restates the allegations of Paragraphs 1-38 of Defendant’s affirmative defenses as though fully set forth herein.

40. Upon information and belief, as set forth above, rather than discouraging the purportedly unlawful sharing of its works via BitTorrent, Plaintiff has actively engaged in activity designed to encourage the sharing of its works via BitTorrent.

Seventh Affirmative Defense - Waiver

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41. Defendant repeats, reasserts, and restates the allegations of Paragraphs 1-40 of Defendant’s affirmative defenses as though fully set forth herein.

42. As a result of the conduct set forth herein, Plaintiff’s claim is barred by the doctrine of waiver.

Seventh Affirmative Defense: Estoppel

43. Defendant repeats, reasserts, and restates the allegations of Paragraphs 1-38 of Defendant’s affirmative defenses as though fully set forth herein.

44. As a result of the conduct set forth herein, Plaintiff’s claim is barred by the doctrine of estoppel.

WHEREFORE, Defendant prays this court for the following relief:

- 1) For dismissal of Plaintiff’s action with prejudice;
- 2) For an order that Plaintiff shall take no relief from their complaint herein;
- 3) For an award of Defendant’s costs and attorney fees herein incurred; and
- 4) For such other relief as this Court deems just.

DATED: February 13, 2016 NICHOLAS RANALLO, ATTORNEY AT LAW

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DEMAND FOR A JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Defendant demands a jury trial on all issues so triable.

DATED: February 13, 2016

NICHOLAS RANALLO, ATTORNEY AT LAW

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CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that on this 13th day of February, 2016, a true and correct copy of the foregoing was transmitted to counsel or record for Plaintiff via ECF, electronic mail, and by regular mail to Plaintiff’s counsel of record.

/s/ Nicholas R. Ranallo
Nicholas Ranallo, Attorney at Law