

INDROP

T-2058-12

Court File No.

FEDERAL COURT

FEDERAL COURT COUR FÉDÉRALE	
FILED	NOV 14 2012
CHARLES SKELTON	
TORONTO, ONT	

BETWEEN:

VOLTAGE PICTURES LLC

Plaintiff

-and-

JOHN DOE AND JANE DOE

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-991-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

TORONTO, this 14th day of November, 2012

**CHARLES SKELTON
REGISTRY OFFICER
AGENT DU GREFFE**

Issued by: _____

Address of local office:
Federal Court of Canada
180 Queen Street West
Toronto, ON M5V 3L6

Tel.: (416) 973-3356
Fax.: (416) 954-5068

Defendants: **John Doe and Jane Doe**
Addresses Unknown

CLAIM

1. The Plaintiff, Voltage Pictures LLC (“Voltage”), claims against John Doe, Jane Doe and other persons unknown (collectively, the “Defendants”) for:

- a) a declaration that the Defendants’ unauthorized reproduction and distribution of the Plaintiff’s copyrighted cinematographic works, listed in Schedule “A” (the “Works”), constitutes an infringement of the Plaintiff’s rights contrary to sections 27(1) and 27(2) of the *Copyright Act*;
- b) an interim, interlocutory and permanent injunction restraining each Defendant, and any and all persons acting on behalf of or in conjunction with any of them or any and all persons with notice of this injunction, from downloading, reproducing, and distributing the Works;
- c) statutory damages pursuant to s. 38.1 of the *Copyright Act*;
- d) in the alternative, actual damages pursuant to s. 35 of the *Copyright Act* in an amount to be proven at trial;
- e) an accounting of all profits from the Defendants’ wrongful activities;
- f) damages for conversion, unlawful interference with economic relations and unjust enrichment in an amount to be proven at trial;
- g) aggravated, exemplary and punitive damages in the amount of \$10,000.00;
- h) special damages, the particulars of which will be provided prior to trial;

- i) pre-judgment and post-judgment interest pursuant to ss. 36 and 37 *Federal Court Act*, R.S.C. 1985, c. F-7, as amended;
- j) costs of this action on a substantial indemnity basis, plus applicable taxes;
and
- k) such further and other relief as this Honourable Court may deem just.

The Parties

2. The Plaintiff, Voltage Pictures LLC (“Voltage”), is a movie production company based in Los Angeles, California, with exclusive rights to lawfully distribute the Works in Canada.

3. The Defendants are persons whose names and identities are currently unknown to the Plaintiff, but who have unlawfully and without Voltage’s authorization or consent copied and distributed Voltage’s protected Works in breach of the laws of Canada.

The Unauthorized Distribution of the Works Through the BitTorrent Protocol

4. The Defendants are members of peer-to-peer (“P2P”) internet networks that have used the BitTorrent Protocol to copy and distribute the Works without authorization.

5. The BitTorrent Protocol is a P2P file sharing protocol that facilitates the distribution of large amounts of data over the internet through networks.

6. When a file is initially uploaded to a P2P network, that is referred to as “seeding”. Other P2P networks users, called “peers”, can then connect to the user seeding the file in order to copy it.

7. The BitTorrent Protocol breaks a file into numerous small data packets, each of which is identifiable by a unique hash number created using a hash algorithm. Once a file has been broken into numerous packets, other network users or peers are able to download different sections of the same file from multiple users. Each new peer is directed to the most readily available packet of the file they wish to download. In other words, a peer does not copy a file from one user, but from any peer who previously downloaded the file and has it available on the BitTorrent network. The peer then becomes a seeder as it distributes the data packet to other peers connected to the BitTorrent network.

8. Once a packet is downloaded by a peer, that peer automatically becomes a download source for other peers connected to the Bit Torrent network who are requesting the file. This speeds up the time it takes to download a file and frees up the capacity of a computer or server to simultaneously download and upload files. Unless the settings on the user's BitTorrent program are changed, every user who is copying or who has copied a file is simultaneously distributing it to every other user or peer connected to the BitTorrent network. This allows even small computers with low bandwidth to participate in large data transfers across a P2P network.

The Actions of the Defendants

9. Through a forensic investigation, the Plaintiff has identified the Defendants (identified by their Internet Protocol ("IP") addresses), as having participated through P2P networks in the unauthorised copying and distribution of Voltage's Works. An IP address is a unique numerical identifier assigned to an internet user by that user's internet

service provider (“ISP”). Once the Plaintiff obtains the Defendants’ contact information from their ISPs, it will be able to name those Defendants as parties to this claim.

10. In simple terms, the Defendants are engaging in the flagrant theft of Voltage’s works and, in addition, are intentionally facilitating and assisting in the theft of those same Works by others, on an international scale.

11. Voltage has a right to receive revenues, proceeds, and profits from its Works and has a proprietary interest in this right. Through their conduct, the Defendants have:

- a) contravened the *Copyright Act*;
- b) converted Voltage’s proprietary rights unto themselves;
- c) deprived Voltage of revenues and other consideration; and
- d) unlawfully interfered with Voltage’s economic relations.

12. All of the Defendants’ activities are done without the authorization of Voltage and without any payment or compensation to Voltage.

13. Voltage is therefore entitled to an accounting and disgorgement of all revenues and profits (in whatever form) made by the Defendants from the wrongful conversion of Voltage’s property, and damages from the losses of actual and prospective proceeds as a result of the Defendants’ acts.

14. By trafficking in, offering and distributing the Works, the Defendants have directly and intentionally facilitated the unauthorized reception, distribution and use of Voltage’s protected works by persons not authorized to receive them. The Defendants

have thereby unlawfully interfered with Voltage's economic relations with its customers and lawful distributors, and are liable therefor.

15. By reason of the foregoing, the Defendants are liable for all pecuniary losses suffered by Voltage as a result of their interference.

16. Voltage generates its revenues through the lawful distribution and sales of its works. It is critical to Voltage that access to its Works be conditional on payment of a purchase price. The sole purpose of the Defendants' P2P activities, apart from commercial gain, is to permit consumers to receive and view Voltage's Works without payment to Voltage and without charge. The Defendants' activities are carried out intentionally, with full knowledge of Voltage's rights, and without Voltage's consent. As a direct and proximate result of their wrongful acts, the Defendants have been unjustly enriched and Voltage has suffered, and will continue to suffer, loss of revenues, proceeds and profits. The exact amount of unjust profits realized by the Defendants and profits lost by Voltage are presently unknown and cannot be readily ascertained without an accounting.

Damages

17. The Plaintiff claims statutory damages pursuant to s. 38.1 of the *Copyright Act*.

18. Alternatively, the Plaintiff claims damages pursuant to s. 35 of the *Copyright Act* in an amount to be proven at trial.

19. Voltage sustains an economic loss every time the Defendants use P2P networks to make the Works available to be received and viewed. As a result of the Defendants'

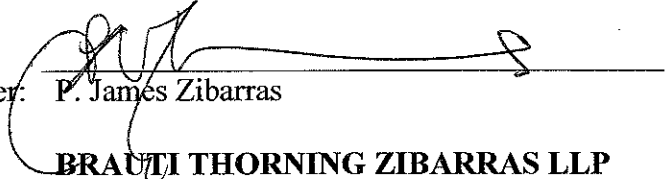
conduct in copying and distributing the Works, Voltage has suffered and continues to suffer loss, damage and expense, in an amount to be proved at trial, while the Defendants have benefited and profited and continue to benefit and profit from their wrongful activities.

20. The Defendants have acted in a high-handed, malicious, and reprehensible fashion, and in wanton and reckless disregard for Voltage's rights, which ought not to be countenanced by this Honourable Court. Accordingly, Voltage is entitled to punitive, aggravated, and exemplary damages.

21. The Plaintiff proposes this action be tried in Toronto, Ontario.

DATED AT TORONTO, this 14th day of November, 2012.

BRAUTI THORNING ZIBARRAS LLP

Per: 
P. James Zibarras

BRAUTI THORNING ZIBARRAS LLP

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Lawyers for the Plaintiff,
VOLTAGE PICTURES LLC

SCHEDULE "A"**Voltage's Cinematographic Works**

Generation Um ... (2012)
Tucker & Dale vs Evil (2010)
The Whistleblower (2010)
True Justice: Brotherhood (2010)
The Third Act aka The Magic of Belle Isle (2012)
Breathless (2012)
Peace Love & Misunderstanding (2011)
Conviction (2010)
The Good Doctor (2011)
Faces in the Crowd (2011)
Rosewood Lane (2011)
Puncture (2011)
Another Happy Day aka Reasonable Bunch (2011)
The Barrens (2012)
True Justice: Lethal Justice (2010)
True Justice: Blood Alley (2010)
Killer Joe (2011)
Maximum Conviction (2012)
Fire with Fire (2012)
Rites of Passage (2012)
True Justice: Urban Warfare (2010)
True Justice: Deadly Crossing (2010)
Rites of Passage AKA Party Killers (2012)
Balls to the Wall (2011)
Sacrifice (2011)
Escapee (2011)
True Justice: Dark Vengeance (2010)

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Plaintiff

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JOHN DOE and JANE DOE
Defendants

FEDERAL COURT

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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