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BY: _____
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 **CV11 03807 DSF (JCx)**
CASE NO.

11 ALKI DAVID, DETRON BENDROSS,
JEROME WOODS (P/K/A ROME),
12 TRISCO SMITH-PEARSON,
JEFFREY THOMPCKINS (P/K/A JT
13 MONEY), JONATHAN
SHINHOŠTER (P/K/A J-SHIN),
14 SPECTACULAR SMITH, DIAMOND
SMITH (P/K/A BABY BLUE),
15 COREY MATHIS (P/K/A SLICK
'EM), EMMANUEL RAMONE
16 DeANDA, ERIC JACKSON (P/K/A
KAINE), DE' ANGELO HOLMES
17 (P/K/A D-ROC), ANTHONY ROUND
(P/K/A N.A.R.D.), DENNIS ROUND,
18 and COREY JOHNSON (P/K/A
COLDHARD),

19 Plaintiffs,

20 vs.

21 CBS INTERACTIVE INC., CNET
22 NETWORKS, INC., LIME WIRE LLC,
and LIME GROUP LLC,

23 Defendants.
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COMPLAINT FOR:

- (1) INDUCEMENT OF COPYRIGHT INFRINGEMENT;
- (2) CONTRIBUTORY COPYRIGHT INFRINGEMENT; and
- (3) VICARIOUS COPYRIGHT INFRINGEMENT

JURY TRIAL DEMANDED

1 Plaintiffs, for their Complaint against Defendants CBS Interactive Inc. ("CBS
2 Interactive") and CNET Networks, Inc. ("CNET," collectively with CBS
3 Interactive, the "CBS Defendants"), Lime Wire LLC ("LW"), and Lime Group LLC
4 ("Lime Group," collectively with LW, the "LimeWire Defendants"), allege as
5 follows:

6 **SUMMARY OF THE ACTION**

7 1. This action arises from Defendants' direct contribution to and
8 participation in massive copyright infringement of Plaintiffs' works on peer-to-peer
9 ("P2P") systems. LimeWire is the most notorious of these systems in recent years.
10 LimeWire and its principals were found liable for copyright infringement on a
11 virtually unprecedented scale in 2010 and enjoined from further infringing activities
12 by a federal Court.

13 2. The CBS Defendants have been the main distributor of LimeWire
14 software and have promoted this and other P2P systems in order to directly profit
15 from wide-scale copyright infringement. Internet users have downloaded more than
16 *220 million* copies of LimeWire software from the CBS Defendants' website, found
17 at Download.com, since 2008. This consisted 95 percent or more of all copies of
18 LimeWire that were downloaded until LimeWire was shut down by Court Order.
19 Download.com also was a major source for other P2P software applications,
20 including Morpheus (174 million downloads), iMesh (115 million downloads), and
21 FrostWire (32 million downloads). The CBS Defendants received massive amounts
22 of revenue from P2P providers on a "pay per download" basis and also from
23 advertising revenues generated by advertisements placed on the download screen for
24 P2P software. The CBS Defendants' business model has been so dependent upon
25 P2P and file sharing applications that entire pages of Download.com are designed
26 specifically to list and categorize these software offerings. In fact, the CBS
27 Defendants were well aware that these software applications were used
28

1 9. Plaintiff Alki David is a citizen of the United Kingdom and resident of
2 the State of California.

3 10. Plaintiff Detron Bendross is a member of the rap group 2 Live Crew
4 and a citizen and resident of the State of Florida.

5 11. Plaintiff Jerome Woods, professionally known as "ROME," is a citizen
6 and resident of the State of California.

7 12. Plaintiff Trisco Smith-Pearson is a member of the R&B group The
8 Force MDs and a citizen and resident of the State of New York.

9 13. Plaintiff Jeffrey Thompkins, professionally known as "JT Money," is a
10 citizen and resident of the State of Florida.

11 14. Plaintiff Jonathan Shinhoster, professionally known as "J-Shin," is a
12 citizen and resident of the State of Florida.

13 15. Plaintiff Spectacular Smith is a member of the R&B group Pretty Ricky
14 and a citizen and resident of the State of Florida.

15 16. Plaintiff Diamond Smith, professionally known as "Baby Blue," is a
16 member of the R&B group Pretty Ricky and a citizen and resident of the State of
17 Florida.

18 17. Plaintiff Corey Mathis, professionally known as "Slick 'Em," is a
19 member of the R&B group Pretty Ricky and a citizen and resident of the State of
20 Florida.

21 18. Plaintiff Emmanuel Ramone DeAnda is a member of the R&B group
22 Pretty Ricky and a citizen and resident of the State of Florida.

23 19. Plaintiff Eric Jackson, professionally known as "Kaine," is a member
24 of the hip hop group Ying Yang Twins and a citizen and resident of the State of
25 Georgia.

26 20. Plaintiff De'Angelo Holmes, professionally known as "D-Roc," is a
27 member of the hip hop group Ying Yang Twins and a citizen and resident of the
28 State of Georgia.

1 21. Plaintiff Anthony Round, professionally known as "N.A.R.D.," is a
2 member of the hip hop group Do Or Die and a citizen and resident of the State of
3 Illinois.

4 22. Plaintiff Dennis Round is a member of the hip hop group Do Or Die
5 and a citizen and resident of the State of Illinois.

6 23. Plaintiff Corey Johnson, professionally known as "Coldhard," is a
7 member of the hip hop group Crucial Conflict and a citizen and resident of the State
8 of Illinois.

9 24. Defendant CBS Interactive, Inc. is a Delaware corporation with its
10 principal place of business at 235 Second Street, San Francisco, California 94105.

11 25. Defendant CNET Networks, Inc. is a Delaware corporation and a fully-
12 owned subsidiary of CBS Interactive. CNET's principal place of business is 235
13 Second Street, San Francisco, California 94105.

14 26. Defendant Lime Group LLC is a Delaware limited liability company
15 with its principal place of business at 377 Broadway, 11th Floor, New York, New
16 York 10013.

17 27. Defendant Lime Wire LLC is a Delaware limited liability company
18 with its principal place of business at 377 Broadway, 11th Floor, New York, New
19 York, 10013, and is a wholly-owned subsidiary of Defendant Lime Group LLC,
20 with which it shares offices and officers/employees. Lime Wire LLC and Lime
21 Group LLC directly and indirectly designed LimeWire and updated, improved,
22 promoted, distributed and marketed LimeWire.

23 28. Each Defendant acted in concert with each other and as the principal,
24 agent, or joint venture of, or for, other Defendants with respect to the acts,
25 violations, and common course of copyright infringement alleged by Plaintiffs.

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FACTS

P2P File Sharing Systems, Including LimeWire

29. P2P file sharing networks are systems which allow users to connect to one another and transfer files located on each other's hard drives. In order to participate in these networks, each user must download and install on the user's computer a software program—commonly known as a “client”—that facilitates the file transfers. Examples of P2P clients include Napster, Aimster, KaZaA, Grokster and LimeWire.

30. P2P clients provide an interface for users to search and obtain copies of files located on their respective file sharing networks. Depending on which P2P client is employed, users can filter results by type of file (e.g., audio or video), file name, artist and other identifying information. Many P2P clients, including those found liable in some of the most infamous copyright infringement cases of the past decade, are (or were) specifically designed to locate music files by name of the song or artist and are (or were) targeted at audiences well-known for their desire to infringe copyrights.

31. File sharing networks depend on users to actually “share” their files. P2P clients are specifically designed to facilitate this process. In most cases, the client automatically searches a user's computer for “shareable” files, typically audio and video files. Clients also often penalize users with slower download speeds or other decreased functionality if they do not share “enough” files with other users on the network. The purpose of this functionality is clear: users must share files if they wish to enjoy the full benefits of the P2P network, and the client will make all files available for sharing unless the user specifically opts out of this option.

32. As Napster's one-time success proved, there is a large demographic of internet users who seek to obtain free copies of their favorite music regardless of copyrights. The sheer size of this group demonstrated that P2P clients could generate massive revenues if they designed a user experience that expressly catered

1 to copyright infringement, thereby drawing users to their advertisements and pay
2 services. When Napster was shut down due to court-ordered injunction, numerous
3 P2P clients stepped in to fill the void. These P2P clients, including but not limited
4 to Aimster, Grokster, KaZaA, Morpheus and LimeWire, actively marketed
5 themselves to Napster's former customers.

6 . . . 33. . . . To use just the most recent P2P client found liable for copyright
7 infringement, the LimeWire Defendants began providing their P2P network in or
8 around August 2000. In order to attract users to their service, the LimeWire
9 Defendants advertised on other P2P networks and made statements comparing
10 LimeWire's user experience to other file sharing clients. Above and beyond mere
11 advertisements, the LimeWire Defendants specifically designed their client to be
12 highly efficient at finding and downloading copies of copyrighted sound recordings.

13 34. There were two forms of the LimeWire software (updated in several
14 versions over the years). The first was "LimeWire Basic," a free version of the P2P
15 client. The second was "LimeWire PRO," which sold for approximately \$19 and
16 ostensibly offered purchasers faster downloads. Both forms of LimeWire were
17 compatible with each other, and users could share files with each other no matter
18 with form of LimeWire they possessed.

19 35. When a user first installed LimeWire, the program automatically
20 searched their hard drive for media files and made them available for other users to
21 download via the P2P network. In order to ensure that the maximum number of
22 files were "shareable" at any given time, LimeWire was designed to automatically
23 open when a user started their computer. This meant that turning on one's computer
24 automatically logged the user into the P2P network and made the selection of files
25 across that network as vast as possible.

26 36. Another method that the LimeWire Defendants employed to ensure the
27 maximum amount of available files—thereby increasing LimeWire's reputation as a
28 desirable copyright infringement tool—was to maximize the number of available

1 shared files by automatically saving them in a "shared" folder on the user's hard
2 drive. If a user turned off this feature or opted to have their files saved in a non-
3 shared folder, they were labeled a "freeloader" by the LimeWire software and ran
4 the risk of being refused future downloads by other users who could choose to block
5 sharing with freeloaders. The LimeWire Defendants actively discouraged
6 freeloaders on their website, stating, for example, "If you're not sharing enough
7 files, users with certain connection preferences won't let you connect to them for
8 downloading. For this reason, we recommend all LimeWire users share generously
9 with one another." In other words, share files or you will not be able to infringe as
10 easily.

11 37. The LimeWire Defendants also designed LimeWire's interface to
12 maximize users' ability to quickly locate and obtain copies of copyrighted materials.
13 Users could search by music genre, song name, artist name or album name. When
14 searches yielded multiple sources for the same copyrighted materials, LimeWire
15 displayed the connection speed of each source (*i.e.*, how fast that user's internet
16 connection was) so that the searching user could choose the fastest download option.
17 Using these features in combination, LimeWire users were able to locate and
18 download copyrighted sound recordings in the shortest amount of time possible.

19 38. On May 25, 2010, United States District Judge Kimba Wood found
20 LimeWire liable for massive copyright infringement. Later that same year, Judge
21 Wood permanently enjoined LimeWire from all further infringement activities. In
22 doing so, the Court found that, among other things:

- 23 • LimeWire "intentionally encouraged direct infringement" by its users;
- 24 • the LimeWire software application was used "overwhelmingly for
25 infringement" and allowed for infringement on a "massive scale";
- 26 • LimeWire and its principals knew about "the substantial infringement
27 being committed" by LimeWire users;

28

- 1 • LimeWire marketed itself to Napster users, who were known copyright
- 2 infringers, and promoted LimeWire's infringing capabilities to those users;
- 3 • LimeWire employed a business model that depended on mass
- 4 infringement, relying on "massive user population generated by" the
- 5 LimeWire software's "infringement-enabling features"; and
- 6 • LimeWire "actively assisted infringing users" in their infringement
- 7 efforts and tested the LimeWire client software by searching for copyrighted
- 8 material.

9 39. Of the many P2P clients that remain in existence, most include features
10 nearly identical or identical to those found in LimeWire. FrostWire, as just one
11 example, is an open source P2P client developed from the LimeWire developmental
12 source code by a group of "concerned [members] of LimeWire's open source
13 community" who first sought to "protect" the LimeWire code in 2005, after the
14 Supreme Court's *Grokster* opinion. The CBS Defendants call FrostWire a "fork of
15 the LimeWire source code" that is "practically indistinguishable" from LimeWire.
16 Commenters on the CBS Defendants' website, Download.com, further describe
17 FrostWire as "Like An Updated Version Of LimeWire," a "Great program to
18 replace LimeWire," and "just as good as LimeWire, maybe better."

19 **The CBS Defendants' Participation In And Profiteering From Infringement**

20 40. Download.com, found at <http://download.cnet.com>, is one of the CBS
21 Defendants' stable of websites. As the name implies, Download.com offers
22 programs and applications for download. In addition to this service, the site also
23 provides reviews written by CNET editors, allows program-specific comments from
24 users, and is organized in such a way as to maximize a user's ability to find and
25 obtain copies of the program or application they desire.

26 41. Software publishers must be approved to have their software listed on
27 Download.com. In order to do so, they first go through an application process on
28 [Upload.com](https://upload.cnet.com), found at <https://upload.cnet.com>. On this site, the CBS Defendants

1 advertise that software publishers should “[p]romote your software on the *largest*
2 *distribution network in the world.*” As they further state, “Upload.com is the central
3 destination to submit and promote your software on CNET Download.com and other
4 sites in our growing distribution network.”

5 42. After a software publisher creates a developer account, which requires
6 Download.com staff approval, they may submit their program for review. In this
7 application, the publisher categorizes the program and fills out a detailed
8 explanation of its features and purpose. After reviewing this application,
9 Download.com’s staff decides whether to permit the program on Download.com and
10 where to place it on the website.

11 43. As developers release new versions of their software, they must also
12 update their application to Download.com. Included in this update are explanations
13 of new features, new functionality, improvements in user interface and experience,
14 and any other difference between the new and previous version. As with the initial
15 application, the Download.com staff reviews and decides whether to allow the
16 listing.

17 44. At each step in the initial application and subsequent update process,
18 Download.com possessed the ability to refuse to list the publisher’s software,
19 thereby conferring upon Download.com the ability to supervise and control any
20 infringing activity taking place on its website. If Download.com staff did not
21 believe the software should be accepted, they could either outright refuse to list it or
22 suggest changes to the program itself. At no point was Download.com obligated to
23 list programs submitted for approval to Upload.com. Further, Download.com was
24 within its full rights to *remove* listings at its discretion.

25 45. The CBS Defendants generate revenue from Download.com in several
26 ways. First, software publishers have the option to pay for a “Basic” and
27 “Premium” account on Upload.com. Although there is also a “Free” account, the
28 former two types of account offer increased benefits for a monthly subscription fee.

1 Second, companies may advertise directly with Download.com and seek to place
2 their ads on popular download listings. Third, the CBS Defendants advertise their
3 other websites on Download.com, driving traffic and revenue to those sites. Fourth,
4 the CBS Defendants offer a program called Pay-Per-Download ("PPD"), which they
5 push heavily on Upload.com and which offers several unique options.

6 46. PPD is described as a "performance-based program that allows you to
7 increase downloads by up to 150 percent, while maintaining control of your costs."
8 Participants in the program obtain a "top-five 'sponsored' listing" for their product
9 in their respective Download.com category, out-of-category promotional rotation on
10 Download.com pages, including on "post-download pages and other placements in
11 [Defendants'] network," and 10 additional keywords to enable Download.com users
12 to find the publisher's program. Participants also have the option to pay only for
13 initiated downloads from unique users and the ability to choose "the bid amount and
14 monthly spending cap for your campaign."

15 47. PPD is designed to offer adaptable advertising options for software
16 publishers and generate strong cash flow for the CBS Defendants. On information
17 and belief, several P2P client publishers, including the LimeWire Defendants, used
18 and use the PPD program and generated substantial revenues for the CBS
19 Defendants. In addition, due to P2P clients' popularity, publishers of other types of
20 software advertised heavily on P2P download screens, thus generating additional
21 revenue streams for the CBS Defendants due to P2P client listings on
22 Download.com.

23 48. Download.com hosted copies of LimeWire for download on its servers.
24 It also has variously hosted other such notorious infringers as Napster, Morpheus,
25 KaZaA, BearShare, and iMesh. Today, even after the United States District Court's
26 recent infringement findings and permanent injunction against LimeWire,
27 Download.com *still* hosts download links for several P2P clients. Upon information
28 and belief, the CBS Defendants have generated and continue to continue to generate

1 substantial fees from the P2P client publishers themselves and advertisers who wish
2 to have their programs listed on P2P client download screens. The CBS Defendants
3 also generate revenues by cross-promoting their websites on P2P client download
4 screens.

5 49. Because the CBS Defendants own the "largest [download] distribution
6 network in the world," they were particularly valuable partners in the dissemination
7 and popularity of various P2P client infringers. LimeWire, which was one of
8 Download.com's top downloaded programs, owed its success to the distribution it
9 received through Download.com. Upon information and belief, approximately 95
10 percent of LimeWire downloads occurred via Download.com. In fact, LimeWire's
11 own website redirected users to Download.com when they attempted to download
12 the client. Other infamous P2P client publishers included similar redirects from
13 their home websites for downloads of their programs.

14 50. The CBS Defendants also worked with LimeWire and other P2P
15 publishers to provide software that maximized infringement. For each version of
16 LimeWire, for example, Download.com staff corresponded with the LimeWire
17 Defendants' representatives regarding the features in the client program. These
18 features demonstrated that LimeWire was explicitly designed for copyright
19 infringement. For example, LimeWire (a) included search capabilities that focused
20 on music title, artist, music genre, and other identifying factors of copyrighted sound
21 recordings; (b) provided a "preview" function for the audio player so users could
22 confirm that audio files they wished to download were the actual files they were
23 searching for; (c) punished users who did not share enough files; and (d) in later
24 versions, included a copyright filter but set the default upon installation to "off."
25 Nevertheless, Download.com did not refuse to list LimeWire on its site and did not
26 require that the LimeWire Defendants include filters or other protections against
27 copyright infringement. Other P2P clients underwent a similarly-streamlined
28 approval process for their infringement software.

1 51. Although the CBS Defendants' distribution was critical to the
2 infringing P2P systems' success, that was not the extent of their involvement.
3 Defendants also actively promoted the P2P clients on Download.com and explained
4 how users could infringe copyrights to the greatest degree possible.

5 52. One way that the CBS Defendants promoted copyright infringing P2Ps
6 was to write "reviews" of the program and apply a rating on a five star scale. These
7 reviews discussed the program's functionality, features, strengths, and weaknesses.
8 In many instances, they also discussed the purpose of the program. The LimeWire
9 Defendants similarly posted self-serving explanations of LimeWire on
10 Download.com in order to promote the product

11 53. For example, the CBS Defendants posted a "CNET Editors' Review"
12 on LimeWire on February 12, 2009. CNET editor Seth Rosenblatt noted from the
13 start that LimeWire was a "post-Napster clone" that had evolved into a "leading role
14 as the quintessential Gnutella [protocol] client." He also noted that "LimeWire is
15 the highest-profile P2P application." At the time the CBS Defendants posted this
16 review, they knew that LimeWire was embroiled in a lawsuit accusing it of massive
17 copyright infringement, and that several other P2P clients had already been shut
18 down for their own infringement. Nevertheless, the CBS Defendants did not issue a
19 warning that users should refrain from using LimeWire to infringe copyrights.
20 Instead, they pointed out that it was a useful Napster replacement and gave it four-
21 and-a-half stars out of five.

22 54. As part of their review process, the CBS Defendants tested the software
23 that they reviewed and, in the case of P2P clients, *infringed copyrights to do so*. In a
24 video that Download.com posted to its website, the CBS Defendants again reviewed
25 LimeWire, but this time demonstrated how it worked to Download.com users. As
26 the viewer looks at the screen demonstrating a sample search, they see a list of
27 copyrighted works, including those from several well-known musical artists. In this
28 same video, Defendants admit that they downloaded files generated by these

1 searches to test the speeds LimeWire could deliver for users. The message of the
2 video is clear: LimeWire is really great at infringing copyrights.

3 55. Download.com staff also acknowledged in public interviews that they
4 knew P2P clients hosted on their site were intended for copyright infringement. In
5 an interview discussing LimeWire, for example, Mr. Rosenblatt, the editor who
6 wrote the previously-mentioned LimeWire review, noted that file sharing is
7 primarily used for copyright infringement.

8 56. To this day, Download.com still hosts and promotes P2P clients that
9 have been specifically designed for copyright infringement. For example, as noted
10 previously, the CBS Defendants continue to provide a download for FrostWire, the
11 open source version of LimeWire that is "practically indistinguishable" from its
12 infringing cousin. As Download.com's users point out on the website, "Frostwire is
13 basically Limewire replaced! ... I'm glad that this is a lot like Limewire because
14 then I don't have to learn anything new." Although the CBS Defendants now
15 include a belated, stock warning against copyright infringement on their website,
16 this does not stop them from continuing their support of known infringers.

17 57. Plaintiffs' copyrighted works were and are available on P2P file
18 sharing networks developed, distributed, and promoted by Defendants. Defendants
19 accordingly are liable for copyright infringement.

20 **COUNT 1**

21 **INDUCEMENT OF COPYRIGHT INFRINGEMENT**

22 58. Plaintiffs incorporate as if set forth herein the allegations made in
23 Paragraphs 1 through 57.

24 59. Individuals using P2P client software that Defendants created,
25 distributed and promoted, including LimeWire and others, have directly infringed
26 and are directly infringing Plaintiffs' copyrights by, for example, creating
27 unauthorized reproductions of Plaintiffs' copyrighted works and distributing copies
28

1 of such works to the public in violation of Plaintiffs' exclusive rights under the
2 Copyright Act, 17 U.S.C. §§ 106, 501.

3 60. Defendants are liable for inducing the copyright infringement of
4 Download.com users. The CBS Defendants distribute and promote several P2P
5 clients, including but not limited to the LimeWire client and current offerings such
6 as FrostWire and iMesh. In distributing and promoting these P2P clients, the CBS
7 Defendants inform and informed their users that the clients were optimized for the
8 unauthorized copying and transmission of copyrighted sound recordings, thereby
9 actively facilitating, encouraging and enticing Download.com users to engage in the
10 infringement.

11 61. Defendants have induced and continue to induce infringement by, for
12 example, aiming to satisfy a known source of demand for copyright infringement,
13 including the market comprising users of other infringing services that were shut
14 down or compelled to block access to Plaintiffs copyrighted works, such as Napster,
15 Morpheus, Grokster, KaZaA, and now LimeWire.

16 62. Defendants further have induced and continue to induce infringement
17 by, for example, continuing to provide downloads for P2P that clients that fail to
18 block or diminish access to infringing material even though there are technological
19 means to do so – means that are known to Defendants and the P2P client publishers,
20 and some of which have been employed by P2P clients who operate legally.

21 63. Defendants further have induced and continue to induce infringement
22 by, for example, building and maintaining a business model to profit directly from
23 the demand for infringing P2P clients.

24 64. Defendants' infringement is and has been willful, intentional,
25 purposeful, and in disregard of the rights of Plaintiffs, and has caused substantial
26 damage to Plaintiffs.

27 65. As a direct and proximate result of Defendants' infringement, Plaintiffs
28 are entitled to damages and their costs, including reasonable attorneys' fees;

1 pursuant to 17 U.S.C. § 505. Defendants' conduct has caused, and unless enjoined
2 by the Court, will continue to cause Plaintiffs great and irreparable injury that
3 cannot be fully compensated or measured in money. Plaintiffs have no adequate
4 remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs therefore also are entitled to
5 injunctive relief to prohibit further infringement of Plaintiffs' copyrights.

6 **COUNT 2**

7 **CONTRIBUTORY COPYRIGHT INFRINGEMENT**

8 66. Plaintiffs incorporate as if set forth herein the allegations made in
9 Paragraphs 1 through 65.

10 67. Individuals using P2P client software that Defendants created,
11 distributed and promoted, including LimeWire and others, have directly infringed
12 and are directly infringing Plaintiffs' copyrights by, for example, creating
13 unauthorized reproductions of Plaintiffs' copyrighted works and distributing copies
14 of such works to the public in violation of Plaintiffs' exclusive rights under the
15 Copyright Act, 17 U.S.C. §§ 106, 501.

16 68. Defendants are liable as contributory infringers for the copyright
17 infringement committed via P2P client software that Defendants distributed,
18 including LimeWire and others. Defendants have knowledge of the massive
19 infringement that has occurred and continues to occur through P2P client software
20 that they created, distributed and promoted, and Defendants have caused, enabled,
21 facilitated, and materially contributed to that infringement.

22 69. Defendants' knowledge of infringement is both actual and constructive.
23 Examples of this knowledge include written and oral statements by Defendants and
24 user comments posted on Download.com; express comparisons of P2P clients to
25 other notorious and illegally-operated P2P systems; and features of P2P clients
26 Defendants discussed with the software publishers that demonstrated the client was
27 optimized for finding and distributing popular sound recordings. All of these facts
28 directly and circumstantially exhibit Defendants' awareness that the overarching

1 purpose and use of P2P clients they distributed and continue to distribute is to
2 infringe Plaintiffs' copyrighted works.

3 70. Defendants have caused, enabled, facilitated and materially contributed
4 to the infringement complained of herein. Defendants have, in addition to the
5 actions detailed above, provided the tools and instruction for infringement via P2P
6 clients they distribute; directly and indirectly promoted the infringement via P2P
7 clients they distribute; directly profited from their distribution of P2P clients; and
8 refused to exercise their ability to stop the infringement made possible by their
9 distribution.

10 71. Defendants' infringement is and has been willful, intentional,
11 purposeful, and in disregard of the rights of Plaintiffs, and has caused substantial
12 damage to Plaintiffs.

13 72. As a direct and proximate result of Defendants' infringement, Plaintiffs
14 are entitled to damages and their costs, including reasonable attorneys' fees,
15 pursuant to 17 U.S.C. § 505. Defendants' conduct has caused, and unless enjoined
16 by the Court, will continue to cause Plaintiffs great and irreparable injury that
17 cannot be fully compensated or measured in money. Plaintiffs have no adequate
18 remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs therefore also are entitled to
19 injunctive relief to prohibit further infringement of Plaintiffs' copyrights.

20 **COUNT 3**

21 **VICARIOUS COPYRIGHT INFRINGEMENT**

22 73. Plaintiffs incorporate as if set forth herein the allegations made in
23 Paragraphs 1 through 72.

24 74. Individuals using P2P client software that Defendants distributed,
25 including LimeWire and others, have directly infringed and are directly infringing
26 Plaintiffs' copyrights by, for example, creating unauthorized reproductions of
27 Plaintiffs' works and distributing copies of such works to the public in violation of
28 Plaintiffs' exclusive rights under the Copyright Act, 17 U.S.C. §§ 106, 501.

1 75. Defendants are liable as vicarious infringers for the copyright
2 infringement committed via P2P client software that Defendants created, distributed
3 and promoted, including LimeWire and others. At all times relevant to this action,
4 Defendants (i) have had the right and ability to control and/or supervise the
5 infringing conduct of P2P client users, including without limitation through their
6 ability to cut off distribution of P2P clients and listing on Download.com any and all
7 versions of the software; and (ii) have had a direct financial interest in, and derived
8 substantial financial benefit from, the infringement of Plaintiffs' copyrighted works
9 via P2P clients that Defendants distributed.

10 76. Defendants have derived direct and substantial benefit from
11 infringement in several ways, including without limitation (i) fees paid to
12 Defendants by P2P client publishers through the PPD program and general
13 Upload.com account registrations, (ii) advertisements P2P clients bought to run on
14 Download.com for their software, (iii) advertisements other software publishers
15 bought to run on P2P client download pages due to the popularity of the P2P clients,
16 (iv) cross-promotion on P2P client download pages for other sites in the CBS
17 Defendants' stable of websites.

18 77. Defendants' infringement is and has been willful, intentional,
19 purposeful, and in disregard of the rights of Plaintiffs, and has caused substantial
20 damage to Plaintiffs.

21 78. As a direct and proximate result of Defendants' infringement, Plaintiffs
22 are entitled to damages and their costs, including reasonable attorneys' fees,
23 pursuant to 17 U.S.C. § 505. Defendants' conduct has caused, and unless enjoined
24 by the Court, will continue to cause Plaintiffs great and irreparable injury that
25 cannot be fully compensated or measured in money. Plaintiffs have no adequate
26 remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs therefore also are entitled to
27 injunctive relief to prohibit further infringement of Plaintiffs' copyrights.

28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully pray for the following relief:

3 a. For damages, including without limitation, actual and statutory
4 damages, for Defendants' infringements of Plaintiffs' copyrights;

5 b. For injunctive relief requiring that Defendants and Defendants' agents,
6 servants, employees, officers, attorneys, successors, licensees, partners, and assigns,
7 and all persons acting in concert or participation with each or any of them, cease
8 infringing, whether directly or indirectly, and cease causing, enabling, facilitating,
9 encouraging, promoting, inducing, contributing to, and participating in the
10 infringement of, any of Plaintiffs' respective copyrights;

11 c. For pre-judgment and post-judgment interest;

12 d. For Plaintiffs' costs and disbursements in this action, including
13 reasonable attorneys' fees; and

14 e. For such other and further relief as the Court deems proper and just.

15
16 May 3, 2011

Respectfully submitted,

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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury.

May 3, 2011

Respectfully submitted,

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