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15 Attorneys for Plaintiff
16 HURRICANE ELECTRIC LLC

17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19 HURRICANE ELECTRIC LLC,

20 Plaintiff,

21 v.

22 DALLAS BUYERS CLUB, LLC, a
23 California LLC; DALLAS BUYERS
24 CLUB, LLC, a Texas LLC; GLACIER
25 FILMS 1, LLC; DOUBLE LIFE
26 PRODUCTIONS, INC.; VOLTAGE
27 PICTURES, LLC; ORION
28 RELEASING, LLC; COOK
PRODUCTIONS, LLC; WWE
STUDIOS FINANCE CORP.; MON,
LLC; TBV PRODUCTIONS, LLC;
CELL FILM HOLDINGS, LLC;
VENICE PI, LLC; SURVIVOR
PRODUCTIONS, INC.; I AM WRATH
PRODUCTION, INC.; POW NEVADA,
LLC; HEADHUNTER, LLC;
NICOLAS CHARTIER; CRAIG J.
FLORES; AVI LERNER; VOLTAGE
PRODUCTIONS, INC.; KILLING
LINK DISTRIBUTION, LLC;
MILLENIUM ENTERTAINMENT,
LLC; and DOES 1-20,

CASE NO.

**COMPLAINT FOR COPYRIGHT
MISUSE AND DECLARATORY
JUDGMENT OF NO COPYRIGHT
INFRINGEMENT**

JURY TRIAL DEMANDED

COMPLAINT FOR COPYRIGHT MISUSE AND DECLARATORY JUDGMENT OF
NO COPYRIGHT INFRINGEMENT

Defendants.

1
2 Plaintiff Hurricane Electric LLC ("Plaintiff" or "HE"), by counsel, for its
3 Complaint against all of the defendants identified herein ("Defendants"), alleges on
4 knowledge as to its own actions, and otherwise Plaintiff is informed and believes and
5 thereon alleges, as follows:

6 **NATURE OF THE ACTION**

7 1. This is an action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201
8 and 2202, seeking a declaratory judgment that Plaintiff has not infringed any alleged
9 copyright rights of Defendants (including any of Defendants' predecessors and/or
10 successors in interest), directly, contributorily, or vicariously, and in the alternative, to
11 the extent it is found that HE has infringed any such alleged rights, that HE is shielded
12 from liability by Title II of the Digital Millennium Copyright Act (DMCA), 17 U.S.C. §
13 512, also known as the "safe harbor" provisions of the Online Copyright Infringement
14 Liability Limitation Act (OCILLA).

15 2. This action arises from Defendants' counsel serving a subpoena on HE
16 (listing one named Defendant but in the interest of all Defendants), to demand publicly-
17 available information from HE, then improperly using that subpoena in extensive *ex*
18 *parte* communications with HE to fish for additional information from HE. This led to
19 all Defendants making ever-growing copyright infringement allegations and demands
20 that HE must take action against alleged third-party copyright infringers unidentified to
21 and unknown to HE and with which HE has no relationship and no direct control over,
22 or face legal consequences.

23 3. Defendants' cease and desist letters are demanding that upstream service
24 providers like HE simply shut down entire Internet Service Providers (ISPs) that provide
25 Internet access to thousands and sometimes tens of thousands of people, based solely on
26 allegations of infringement by even a single unidentified end-user subscriber to an ISP.
27 Defendants are thus putting HE in an impossible situation, all based on an improper and
28 unlawful overextension of Defendants' alleged copyright rights. Defendants' letters and

1 demands directed to HE in the Northern District of California are abusive, tortious, are
2 otherwise wrongful, and constitute copyright misuse.

3 4. Accordingly, this is also an action for copyright misuse due to Defendants'
4 unlawful scheme to secure an exclusive right or limited monopoly not granted by the
5 Copyright Office pursuant to 17 U.S.C. § 102(b), which would be contrary to public
6 policy to grant, by, *inter alia*, alleging that HE is a copyright infringer and demanding
7 that HE take action against alleged third-party copyright infringers unidentified to and
8 unknown to HE, and with which HE has no relationship and no direct control.
9 Defendants' actions improperly extend their alleged copyrights to encompass HE's
10 procedures, processes, systems, and methods of operation.

11 **THE PARTIES**

12 **Plaintiff Hurricane Electric**

13 5. Plaintiff HE is a limited liability company organized and existing under the
14 laws of the State of Nevada, with its principal place of business in Fremont, California.

15 6. HE is a small privately-held company started in Silicon Valley by a start-
16 up individual entrepreneur. HE has grown, in a niche upstream service provider market,
17 to be a global provider of access to the backbone of the Internet, offering Internet
18 Protocol version 4 (IPv4) and Internet Protocol version 6 (IPv6) Internet access, transit,
19 tools, and network applications, as well as data center co-location services in San Jose,
20 California, and in Fremont, California, where the company is based.

21 7. HE operates a global IPv4 and IPv6 network and is considered the largest
22 IPv6 backbone in the world as measured by the count of peering interconnections to
23 other networks. Within its global network, HE is connected to over 200 major exchange
24 points and exchanges traffic directly with more than 7,500 different networks.
25 Employing a resilient fiber-optic topology, HE has no less than five redundant 100G
26 paths crossing North America, five separate 100G paths between the U.S. and Europe,
27 and 100G rings in Europe and Asia. Hurricane also has a ring around Africa, and a PoP
28 in Australia.

1 8. HE offers an IPv6 tunnel broker service, providing free connectivity to the
2 IPv6 Internet via 6-in-4 IPv6 transition mechanisms. As of May 7, 2018, the company
3 reported 97,067 provisioned tunnels spanning 197 countries via the IPv6 tunnel broker.
4 HE provides an online IPv6 certification program to further education and compliance
5 in IPv6 technology, with at least 15,382 individuals in 155 countries having reached the
6 highest level of the IPv6 certification.

7 9. In addition to its vast global network, HE owns and operates two data
8 centers / co-location facilities in Fremont, California, including HE Fremont 2, its
9 newest 200,000 square-foot facility. HE offers IPv4 and IPv6 transit solutions over the
10 same connection. Connection speeds available include 100GE (100 gigabits/second),
11 40GE, 10GE, and gigabit ethernet.

12 10. HE's primary business is as an upstream service provider (referred to in
13 some contexts as an Online Service Provider and its business model for this service does
14 not including "hosting" data on servers for customers accessible by third parties. HE, as
15 an upstream service provider, does not have access to, or have control over, the content
16 communicated through the Internet by its customers, which are account holders such as
17 ISPs, or by its customers' customers, such as end-user subscribers to an ISP.

18 11. As an upstream service provider, HE simply acts as a "highway" that
19 passively provides its customers, and thus its customers' customers, with Internet access.
20 HE Internet connections are business-to-business ("B2B") type connections and are most
21 often sourced from data centers, and include customers such as the Government,
22 including the U.S. Navy's Naval Research Labs which in turn provides service to
23 thousands or tens of thousands of end-users, and ISPs that provide Internet service to
24 thousands or tens of thousands of third-party subscribers over large geographic areas.

25 12. While HE's B2B connections at data centers are competitive with certain
26 aspects of major Internet providers like Cox, Comcast, Verizon, etc., HE does not have
27 the connections to go the "last mile" to end-users, and end-users must utilize a service
28 provider to connect to HE.

1 **Defendants**

2 13. HE is informed and believes and based thereon alleges that multiple
3 Defendants, many of which share the same addresses, managing agents, and/or agents
4 for service, are copyright assertion entities in the business of generating income
5 primarily from threats of infringement lawsuits against legitimate technology companies
6 that have nothing to do with any alleged infringements by unnamed end-users of Internet
7 connections.

8 14. HE is informed and believes and based thereon alleges that some, if not all,
9 of the Defendants are funded at least in part by litigation funding companies that have
10 no previous interest in Defendants’ lawsuits, but nonetheless finance Defendants’
11 lawsuits with a view to sharing the financial recovery if the suit succeeds.

12 15. Recent trends in the law have been against copyright assertion entities' use
13 of the court system to wrest nuisance settlements from poor and unsophisticated Internet
14 users who may have been baited into downloading media online in violation of copyright
15 laws. While copyright assertion entities would typically bully individual alleged
16 infringers *en masse* with threats of \$150,000 statutory damages awards and attorney-fee-
17 shifting penalties, courts, especially in the Ninth Circuit, have increasingly frustrated
18 that business model by limiting damages awards in such cases to \$750 with little or no
19 attorney fee awards. HE is informed and believes and based thereon alleges that
20 Defendants have been forced to adopt a new business model in view of these changes in
21 the law, and are now targeting technology companies higher up the Internet food chain,
22 like HE, who have nothing to do with any alleged infringements by unnamed end-users
23 of Internet connections provided to third-parties by HE's customers (or by HE's
24 customers' customers).

25 16. Defendants’ counsel claims to represent identified and unidentified owners
26 of various identified and unidentified copyright-protected motion pictures allegedly
27 infringed by HE, “including but not limited to” the present following-named Defendants,
28 which HE is informed and believes and thereon alleges are as follows:

1 17. Dallas Buyers Club, LLC, which is organized under the laws of the state of
2 California and has its principal place of business in the state of Texas.

3 18. Dallas Buyers Club, LLC, which is organized under the laws of the state of
4 Texas and has its principal place of business in the state of Texas.

5 19. Glacier Films 1, LLC, which is organized under the laws of the state of
6 Louisiana and has its principal place of business in the state Louisiana.

7 20. Double Life Productions, Inc., which is organized under the laws of the
8 state of California and has its principal place of business in California.

9 21. Voltage Pictures, LLC, which is organized under the laws of the state of
10 California and has its principal place of business in the state of California.

11 22. Orion Releasing, LLC, which is organized and existing under the laws of
12 the state California and has its principal place of business in California.

13 23. Cook Productions, LLC, which is organized under the laws of the state of
14 California and has its principal place of business in California.

15 24. WWE Studios Finance Corp., which is organized and existing under the
16 laws of the state of Delaware and has its principal place of business in Connecticut.

17 25. Mon, LLC, which is organized and existing under the laws of the state of
18 California and has its principal place of business in California.

19 26. TBV Productions, LLC, which is organized and existing under the laws of
20 the state of California and has its principal place of business in California.

21 27. CELL Film Holdings, LLC, which is organized and existing under the laws
22 of the state of Delaware and has its principal place of business in California.

23 28. Venice PI, LLC, which is organized and existing under the laws of the state
24 of California and has its principal place of business in California.

25 29. Survivor Productions, Inc. which is organized under the laws of the state of
26 California and has its principal place of business in California.

27 30. I am Wrath Production, Inc., which is organized and existing under the laws
28 of the state of California and has its principal place of business in California.

1 31. POW Nevada, LLC, which was organized under the laws of the state of
2 Nevada and has its principal place of business in California but is now dissolved.

3 32. Headhunter, LLC, which is organized and existing under the laws of the
4 state of Delaware.

5 33. Nicolas Chartier, who is the manager member of the dissolved POW
6 Nevada, LLC, has a principal place of business in California, and is a resident of the
7 state of California.

8 34. Craig J. Flores is a resident of the state of California.

9 35. Avi Lerner is a resident of the state of California.

10 36. Voltage Productions, Inc. which is organized under the laws of the state of
11 California and has its principal place of business in California.

12 37. Killing Link Distribution, LLC, which is organized under the laws of the
13 state of California and has its principal place of business in California.

14 38. Millenium Entertainment, LLC, California, which is organized under the
15 laws of the state of California and has its principal place of business in California.

16 39. HE is informed and believes and thereon alleges that DOES 1-20 include
17 presently-unidentified entities and/or individuals who claim an ownership interest in one
18 or more of the copyrights at-issue, and/or who claim rights to proceeds from the alleged
19 infringements of the copyrights at issue. (the foregoing named entities and persons,
20 along with the DOE defendants, are herein referred to as “Defendants”).

21 **JURISDICTION**

22 40. This court has original jurisdiction over the subject matter of this action
23 pursuant to the Copyright Act, 17 U.S.C. §§ 101 et seq., pursuant to 28 U.S.C. §§ 1331,
24 1332(a) and (c), 1338(a), and pursuant to the Declaratory Judgment Act, 28 U.S.C. §§
25 2201 and 2202.

26 **Declaratory Judgment Jurisdiction**

27 41. An actual case or controversy exists between the parties to this action.

28 42. Defendants, by counsel, have repeatedly asserted in writing and over the
COMPLAINT FOR COPYRIGHT MISUSE AND DECLARATORY JUDGMENT OF
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1 phone that HE has been and still is engaging in acts of copyright infringement, and have
2 repeatedly threatened to take legal action against HE (though Defendants' counsel has
3 not provided any specific, concrete indications that a suit by the Defendants is
4 imminent).

5 43. Attached as Exhibits 1, 2, 3, and 4 are true and correct copies of
6 correspondence between counsel for the parties to this action.

7 44. Defendants, by counsel, have repeatedly demanded in writing and over the
8 phone that HE immediately terminate the accounts of numerous third-parties over which
9 HE has no control, prospectively agree to take similar actions in the future whenever
10 Defendants' counsel sends future notices, and pay money damages well in excess of
11 \$500,000.

12 45. Defendants stated the damages are going up as time passes but that the
13 sooner money is paid along with an agreement to provide the name of the publicly
14 available (through WHOIS) customers of HE, the amount of HE's liability will then be
15 capped by agreement. Defendants undeniably recognize that HE cannot identify the
16 alleged infringers and does not have the ability to shut down service only to an alleged
17 infringer (without shutting down service to thousands or tens of thousands of innocent
18 end-users) but will agree to "go away" for a substantial payment with an agreement to
19 provide Defendants, in the future, with publicly available information.

20 46. Defendants, by counsel, have also sought additional information from HE
21 so that additional undisclosed copyright assertion entities could be represented by
22 counsel and seek additional damages from HE.

23 47. HE has refuted Defendants' allegations and repeatedly refused to comply
24 with Defendants' improper and impractical demands. Nonetheless, Defendants continue
25 to repeat their demands, creating a significant cloud of uncertainty over HE's business,
26 and causing HE to have a real and reasonable apprehension that it will eventually be
27 subject to suit.

28 48. The circumstances show that there is a substantial controversy between HE
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1 and Defendants, which have adverse legal interests, of sufficient immediacy and reality
2 to warrant the issuance of a declaratory judgment.

3 **Personal Jurisdiction**

4 49. Personal jurisdiction is proper in the Northern District of California over
5 Defendants identified herein either as organized in this state (whether as a corporation,
6 a limited liability company, a partnership, a joint venture, or an unincorporated
7 association), or as having their principal place of business in this state, because this Court
8 has general personal jurisdiction over those Defendants.

9 50. Specific personal jurisdiction is proper in the Northern District of California
10 over the non-resident Defendants, that is, Defendants identified herein neither as
11 organized in this state nor as having their principal place of business in this state, because
12 this Court has specific personal jurisdiction over those non-resident Defendants.

13 51. First, the non-resident Defendants, through counsel, have purposefully
14 directed their activities at, and consummated transactions with, HE in the Northern
15 District of California, and performed acts by which Defendants purposefully availed
16 themselves of the privilege of conducting activities in the Northern District of California,
17 thereby invoking the benefits and protections of its laws, for example as described
18 below:

19 (a) On July 12, 2019 counsel for Defendants opened miscellaneous
20 action number 1:19-mc-250 in the District of Hawaii entitled *In re Subpoena to*
21 *Hurricane Electric, LLC*, for the purpose of issuing a subpoena to HE under 17
22 U.S.C. § 512(h) to force HE “to identify alleged infringer(s) of Owner’s Copyright
23 protected motion pictures.” (hereafter collectively “the Subpoena”).

24 (b) Attached as Exhibit 8 is a true and correct copy of the Subpoena.

25 (c) The information requested in the Subpoena was information publicly
26 available via a WHOIS search online.

27 (d) The Subpoena which was issued and based upon two letters, dated
28 July 10, 2019 and July 12, 2019 regarding allegations of copyright infringement

1 by HE, was purportedly mailed to HE by counsel for Defendants.

2 (e) Counsel for Defendants served the Subpoena on HE in the Northern
3 District of California, namely on “Hurricane Electric LLC dba Hurricane Electric
4 Internet Services Registered Agent: MIKE LEBER 760 Mission Court, Fremont,
5 CA 94539.” The Subpoena required HE to take action in the Northern District of
6 California and to search its files in the Northern District of California and to
7 produce documents, all subject to the enforcement powers and penalties of the
8 U.S. District Court for the Northern District of California.

9 (f) By serving the Subpoena on HE in the Northern District of California
10 for production of documents, counsel for Defendants purposefully availed himself
11 and his clients for whom he was acting of the privilege of conducting activities in
12 the Northern District of California, thereby invoking the benefits and protections
13 of its laws. For example, the Subpoena stated in part that “the serving party
14 [Defendants by counsel] may move the court for the district where compliance is
15 required [the Northern District of California] for an order compelling production
16 or inspection.”

17 (g) Counsel for Defendants then improperly used the existence of the
18 Subpoena to communicate extensively with HE in the Northern District of
19 California, *ex parte*, such that the written communications between counsel for
20 Defendants and HE totaled forty-one (41) pages of documents. In these
21 communications counsel for Defendants fished HE for information regarding
22 other alleged infringements to assert against HE.

23 (h) When HE’s unrepresented Director of Infrastructure explained to
24 Defendants’ counsel that HE has no technological way to identify the alleged
25 infringer and that Defendants’ counsel must go HE’s customer – i.e., the ISP or
26 the U.S. Naval Research Labs – Defendants’ counsel responded by stating he was
27 under no obligation to go to the ISPs or to the US Navy and that “the buck stops
28 at HE.”

1 (i) This is not the first time that counsel for Defendants, in representing
2 one or more of the present Defendants, misused judicial process to search for new
3 alleged copyright infringements. In District of Hawaii case number 19-cv-169-
4 LEK-KJM, listed on some of Defendants' cease and desist letters (Exhibits 1, 2,
5 3 and 4), counsel for Defendants repeatedly misused judicial process by
6 purporting to serve process on non-parties. In docket entry number 51, dated
7 10/28/2019 (a true and correct copy of which is attached hereto as Exhibit 5), the
8 Hawaii Court stated:

9 The Court is aware that Mr. * * *, as the plaintiffs' counsel, has
10 engaged in the same conduct in at least two other cases: (1) *HB Prods.,*
11 *Inc. v. Doe, et al.*, Civil No. 19-00389 ACK-KJM; and (2) *Wicked Nev.,*
12 *LLC v. Doe, et al.*, Civil No. 19-00413 SOM-KJM. The Court cautions
13 Mr. * * * that similar actions in the future will result in the Court
striking the plaintiffs' filings.

14 (j) On or about March 19, 2020, counsel for Defendants sent to HE in
15 the Northern District of California a cease-and-desist letter (Exhibit 1), alleging
16 infringement by HE of copyrights allegedly owned by eight (8) different parties
17 for which HE is now seeking declaratory judgment.

18 (k) Counsel for HE responded on April 19, 2020 via email with a request
19 that counsel for Defendants identify, among other things, the clients he represents.

20 (l) On or about May 1, 2020, counsel for Defendants responded with a
21 new cease and desist letter (Exhibit 2 hereto) to HE, by counsel, this time alleging
22 infringement by HE of copyrights allegedly owned by thirty (30) different parties
23 for which HE is now seeking declaratory judgment and identifying approximately
24 2,300 IP addresses where such infringements allegedly took place.

25 (m) On or about May 15, 2020, counsel for HE responded to counsel for
26 Defendants with a letter (Exhibit 3) hereto, inadvertently misdated June 15, 2020),
27 explaining in detail why HE, as an Online Service Provider to ISP's, did not
28 infringe, and that in the alternative, HE was protected by the Safe Harbor

1 provisions of the DMCA.

2 (n) Notwithstanding HE's explanation of non-infringement and the
3 impossibility of complying with Defendants' demands, on May 20, 2020 counsel
4 for Defendants sent yet another cease and desist letter (Exhibit 4 hereto) to HE,
5 by counsel, reiterating Defendants' position that HE is infringing their copyrights
6 and indicating that as time went on, even "more of [his] clients' motion pictures
7 are infringed."

8 52. Second, the present claims arise directly out of and relate to the
9 Defendants' activities described herein, all of which were directed to HE in the Northern
10 District of California.

11 53. Third, the exercise of jurisdiction over the non-resident Defendants in the
12 Northern District of California to resolve these issues comports with fair play and
13 substantial justice, because it is reasonable, for at least the following reasons:

14 (a) The extent of Defendants' purposeful interjection into the Northern
15 District of California, by counsel, is significant, and includes not only a cease and
16 desist letter, but numerous unrelenting cease and desist letters directed into the
17 Northern District of California over a period of nearly eleven (11) months,
18 asserting ever-growing lists of alleged infringements, stemming from the Rule 45
19 Subpoena issued to HE in the Northern District of California subject to the
20 penalties of the Northern District of California, which led to 41 pages of
21 communications directly with HE in the Northern District of California, all of
22 which led directly to the present Defendants' allegations of infringement against
23 HE.

24 (b) Defendants' cease and desist letters are demanding that upstream
25 service providers like HE simply shut down entire service providers that provide
26 Internet access to thousands or tens of thousands of people, based solely on
27 allegations of infringement by even a single end-user subscriber to an ISP.
28

1 Defendants are refusing to contact the service providers providing service to end-
2 users who can identify the potential infringer and instead are putting upstream
3 service providers like HE in an impossible situation, all based on an improper and
4 unlawful overextension of Defendants' alleged copyright rights. Defendants'
5 cease and desist letters directed to HE in the Northern District of California are
6 thus abusive, tortious, constitute copyright misuse, and are otherwise wrongful.

7 (c) The burden on the non-resident Defendants to defend the suit in the
8 Northern District of California is minimal, for at least the reason that all of the
9 Defendants are represented by the same counsel, and this case will be going
10 forward with the California resident Defendants on the same legal and factual
11 issues with or without the non-resident Defendants. Accordingly, it would actually
12 be a substantially increased burden on the non-resident Defendants to make them
13 pay to duplicate elsewhere the efforts that their counsel will already be making
14 in this Court.

15 (d) Additionally, some or all of the non-resident Defendants from east of
16 California are already litigating one or more copyright infringement cases in
17 Hawaii, such as in Case Number: 19-cv-169-LEK-KJM (District of Hawaii),
18 listed on some of Defendants' cease and desist letters (Exhibits 1, 2 & 4). Since
19 Hawaii is far away and not the residence of any of the Defendants, but rather is
20 the location of Defendants' counsel, this tends to indicate that the location of
21 Defendants' counsel is actually the primary consideration for Defendants'
22 preference in venue. Since Defendants' counsel will be present in this Court
23 regardless to address the California-based Defendants, the burden on the non-
24 resident Defendants to likewise defend the suit in the Northern District of
25 California is minimal.

26 (e) Proceeding with this action against all Defendants presents no
27 conflict with the sovereignty of any of the non-resident Defendants' states,
28 because the issues here relate solely to federal copyright law, not local state law.

1 (f) California has a great interest in this dispute, because Defendants'
2 arguments seek to upend the established business model surrounding providing
3 access to the backbone of the Internet in and around Silicon Valley. Defendants
4 are demanding that upstream service providers like HE simply shut down entire
5 service providers that provide Internet access to thousands or tens of thousands of
6 people, based solely on allegations of infringement by just a single end-user
7 subscriber to an ISP. Decisions that could drastically affect Californians and
8 California's tech industry should not be left to courts of other states.

9 (g) Indeed, HE is physically located in San Jose and Fremont, California
10 and its service is part of the Internet backbone. As explained in
11 Wikipedia - https://en.wikipedia.org/wiki/Internet_backbone (a true and correct
12 copy is attached as Exhibit 6):

13
14 The Internet backbone may be defined by the principal data routes between large,
15 strategically interconnected computer networks and core routers of the Internet.
16 These data routes are hosted by commercial, government, academic and other
17 high-capacity network centers, the Internet exchange points and network access
18 points, that exchange Internet traffic between the countries, continents, and across
19 the oceans. Internet service providers, often Tier 1 networks, participate in
Internet backbone traffic by privately negotiated interconnection agreements,
primarily governed by the principle of settlement-free peering.

20 (h) HE provides the bulk of its traffic through IXPs (Internet Exchange
21 Points) -- thirteen (13) of which are in California.

22 (i) Indeed, Defendants' counsel has already negotiated resolutions with
23 some ISPs (not sourcing connections from HE) for large payments in exchange for
24 withholding further action for infringement. Specifically, Defendants' counsel
25 sued torrent site YTS in Hawaii. There, several of the same Defendants here were
26 plaintiffs represented by the same counsel, and received a payment of over
27 \$1,000,000 (One Million Dollars). As stated in a TechWorm article --
28 <https://www.techworm.net/2020/04/torrent-site-yts-piracy-lawsuit-online.html> --

1 notwithstanding the settlement, there are still hundreds of pirated movies on that
2 piratical site. (A true and correct screen-print of the web page
3 <https://www.techworm.net/2020/04/torrent-site-yts-piracy-lawsuit-online.html> is
4 attached hereto as Exhibit 7.)

5 (j) Defendants do not actually care about stopping the ongoing
6 infringements of their copyrights; they just want large immediate one-time
7 payments from each service provider they can associate with the still-allegedly-
8 infringing IP addresses.

9 (k) The Northern District of California is the most efficient forum for
10 judicial resolution of the dispute, because the vast majority of the present
11 Defendants are Californians and/or have California connections, and HE, the
12 technology at issue, pertinent documents and things, and likely experts all reside
13 in the Northern District of California.

14 (l) This forum is certainly important to HE's interest in convenient and
15 effective relief, since HE, the technology at issue, pertinent documents and things,
16 and likely experts all reside in the Northern District of California.

17 (m) Finally, there is no alternative forum that would be more convenient
18 for HE and the present Defendants as a whole, or better suited to decide the matter.

19 **VENUE**

20 54. Venue is proper in this district under 28 U.S.C. § 1391(b) and (d). As
21 explained herein, a substantial part of the events or omissions giving rise to the present
22 claims occurred in the Northern District of California. A substantial part of HE's property
23 and systems that are the subject of the action is situated in the Northern District of
24 California. Also, at least for the reasons explained herein with respect to specific personal
25 jurisdiction, the California resident Defendants' contacts, through counsel, would be
26 sufficient to subject them to personal jurisdiction in the Northern District of California if
27 it were a separate state.

INTRADISTRICT ASSIGNMENT

1
2 55. This action is an Intellectual Property proceeding and is to be assigned on a
3 district-wide basis as set forth in LR 3-2(c).

GENERAL ALLEGATIONS

4
5 56. HE's primary business model is as an upstream service provider that
6 provides its account-holder customers, such as ISPs, with access to the backbone of the
7 Internet. HE does not have access to, or have control over, any content communicated
8 through the Internet by its customers, also called account holders, or by its customers'
9 customers, such as subscribers to a ISP account holder, or other end-users.

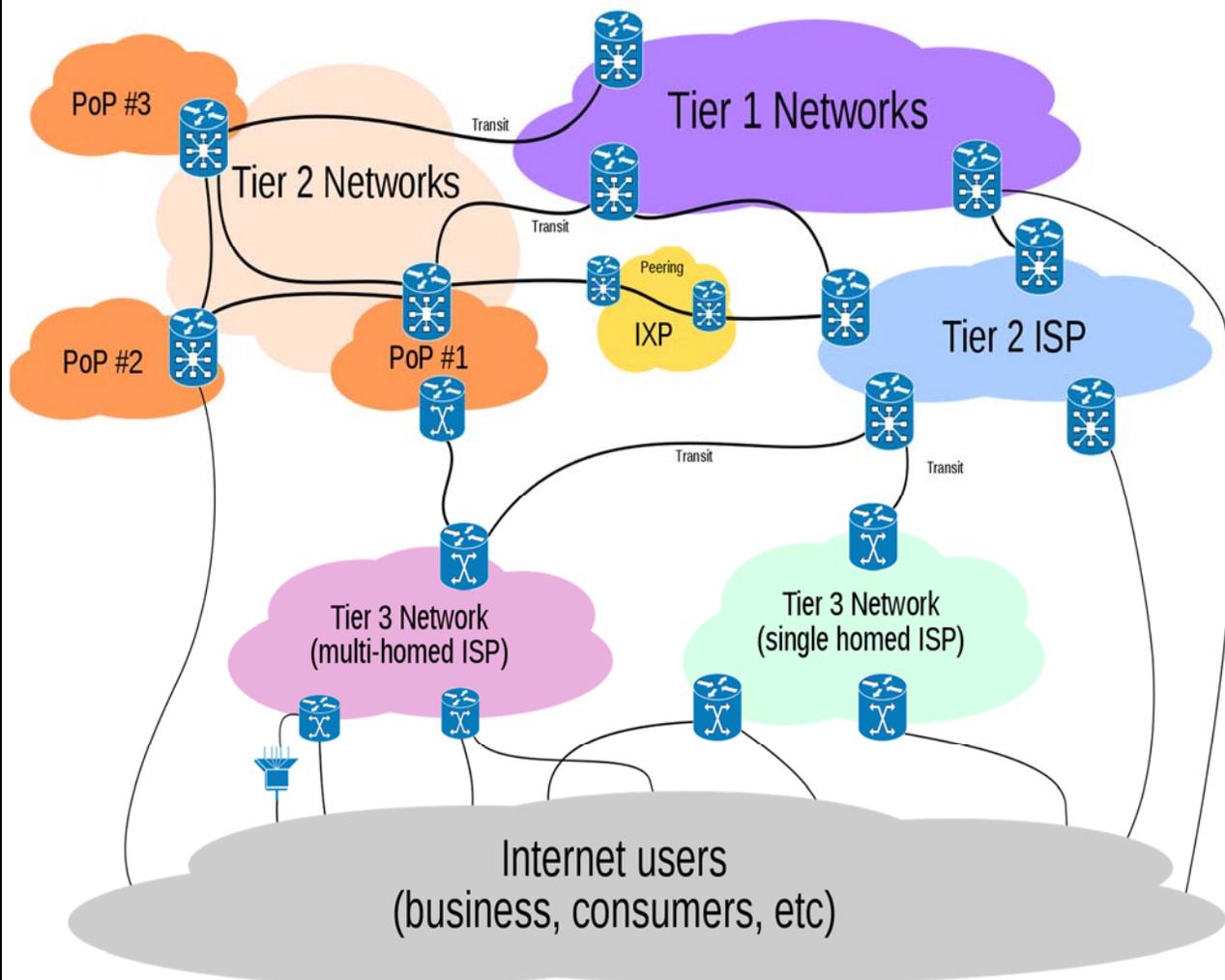
10 57. HE provides a passive conduit to the backbone of the Internet, and does not
11 engage in any volitional conduct with respect to any content that does or does not pass
12 through its Internet connections including allegedly copyrighted material, such that HE
13 is not the proximate cause of any copyright infringement alleged by Defendants.

14 58. Defendants allege that one or more end-users to one or more account holders
15 (including subscribers to ISPs) that obtain access to the backbone of the Internet from HE
16 have committed copyright infringement by downloading copies of Defendants'
17 copyrighted motion pictures using the Internet connections provided to those subscribers
18 by those ISPs.

19 59. There is no causal nexus between HE's conduct and the alleged copyright
20 violations by end-user subscribers, who have no relationship with HE.

21 60. HE's conduct in providing account holders such as ISPs with passive
22 conduits to the backbone of the Internet is not the proximate cause of any alleged
23 infringement by any end-user subscribers who are customers of the account holders.

24 61. A depiction of the Internet transit can be found at:
25 [https://en.wikipedia.org/wiki/Internet_transit#/media/File:Internet_Connectivity_Distrib](https://en.wikipedia.org/wiki/Internet_transit#/media/File:Internet_Connectivity_Distribution_&_Core.svg)
26 [ution_&_Core.svg](https://en.wikipedia.org/wiki/Internet_transit#/media/File:Internet_Connectivity_Distribution_&_Core.svg)



19 By User: Ludovic.ferre - Internet Connectivity Distribution & Core.svg, CC BY-SA 3.0.
20 <https://commons.wikimedia.org/w/index.php?curid=10030716>

21 62. HE's business is largely at the IXP (yellow) level. In order for an end-user
22 to be connected through HE at the IXP level, that end-user must have a service provider
23 who can connect to the IXP. As shown in the diagram, this could be a Tier 2 ISP (light
24 blue) or a Tier 3 Network (purple or light green).

25 63. HE has no control over how an ISP/service provider allocates connections
26 to end-users. As examples, (a): a service provider could break up a single version 4, IP
27 address to be used contemporaneously by tens of thousands of end-users, or (b) a service
28 provider may have hundreds (or more) of IP addresses and it can allocate the IP addresses

1 to customers on an as needed basis thereby allowing the service provider to have many
2 more end-users than IP addresses. This is like “timesharing” where one unit can be used
3 by many people at different times.

4 64. When a service provider divides up Internet service from a company like
5 HE, HE has no technological way to determine the identity of the end-user. However,
6 the service provider who controls the shared connection typically has logs and can
7 identify each of its end-users based upon which IP address, the date and the time (just
8 like a hotel can identify the person using a timeshare hotel suite on a given date but the
9 property owner who does not have the records/logs cannot).

10 65. HE has no relationship with, nor control over, any end-user subscribers to
11 the one or more ISPs and service providers that obtain access to the backbone of the
12 Internet from HE.

13 66. HE has no control over any content communicated through the Internet by
14 any end-user subscribers to the one or more ISPs and service providers that obtain access
15 to the backbone of the Internet from HE.

16 67. HE has no control over any content communicated through the Internet by
17 the one or more account holders, such as ISPs, that obtain access to the backbone of the
18 Internet from HE.

19 68. As explained above, HE does not even have the ability to identify the end-
20 user as the information required to do so is in the hands of the direct service providers,
21 which are publicly identified and known to Defendants, but which Defendants have
22 refused to contact or serve a subpoena under the DMCA.

23 69. The only way that HE could shut down a connection to the Internet of an
24 alleged infringing end-user subscriber who accesses the Internet through an account
25 holder such as an service provider that itself obtains access to the backbone of the Internet
26 from HE, would be to shut down all access to the Internet to that ISP, service provider
27 and/or account holder.

28 70. Shutting down all access to the Internet to an ISP or other account holder
COMPLAINT FOR COPYRIGHT MISUSE AND DECLARATORY JUDGMENT OF
NO COPYRIGHT INFRINGEMENT

1 would shut down not only a particular end-user subscriber's access to the Internet, but
2 would also shut down the Internet access of all the other end-user subscribers who gain
3 access to the Internet from that ISP or other account holder, which would typically mean
4 shutting down Internet access for thousands or tens of thousands (perhaps hundreds of
5 thousands if the account holder has multiple IP addresses) of innocent people across wide
6 geographic regions. It is simply not appropriate to shut down an entire city, a school
7 system, rural area with subscribers covering a 5-state region, or an airport internet
8 provider at such airports as LAX because defendants do not want to bother contacting the
9 ISP providing service from HE's backbone so that Defendants can obtain the information
10 identifying the specific infringer. Yet that is exactly what Defendants are demanding HE
11 do.

12 71. Illustrating the ridiculousness of Defendants' demands, HE's account
13 holders include, for example, ISP's, and even the U.S. Navy's Naval Research Labs.
14 Defendants know from publicly available records, and as set forth in communications
15 from the undersigned counsel, that these ISPs include companies such as the reportedly
16 leading Internet Service Provider in the Gilbert, Mesa, Queen Creek, San Tan Valley,
17 Coolidge, Eloy, Casa Grande and Florence Arizona Area, the reportedly fourth largest
18 fixed-wireless Internet Service Provider in the US servicing over 50,000 square miles in
19 Iowa, Minnesota, Nebraska, South Dakota, and Wisconsin, ISPs providing service
20 (sometimes the only service available) to major rural areas, ISPs providing service to
21 school districts, and a highly regarded provider of wireless internet services at airports,
22 buildings, stadiums, multifamily and student housing, and commercial real estate, as well
23 as many other similar entities. Defendants are insisting that HE unilaterally shut down all
24 access to the Internet for these account holders thereby shutting off tens of thousands of
25 innocent end-users, for example, just to stop an individual end-user from allegedly
26 improperly downloading movies. Such demands are inappropriate when all the
27 Defendants need to do to ascertain the identity of the allegedly infringing end-user is to
28 contact the ISP.

1 72. Defendants' attempt to use an upstream provider like HE to stop alleged
2 copyright infringement by far-removed downstream end-user subscribers of others' ISP
3 services is analogous to Defendants' threatening an electric utility power company and
4 arguing that it must shut off power to an entire city or region, because the power company
5 is infringing Defendants' copyrights by providing electricity, since an end user could not
6 download an unauthorized copy of a movie without electricity. The absurdity of this
7 analogy highlights the outrageous overbreadth of Defendants' demands on HE.

8 73. Defendants purport to have the IP addresses of HE's account holders where
9 actual end-users are allegedly downloading the infringing movies but it is technologically
10 impossible for HE to identify a specific end-user with an IP address as the records
11 identifying the downloader are exclusively in the hands of the ISP.

12 74. Nothing is stopping Defendants from directly pursuing the ISPs/service
13 providers associated with the allegedly offending IP addresses and serving subpoenas for
14 the identities of the end-users.

15 75. Nothing is stopping Defendants from pursuing the individuals associated
16 with the allegedly offending IP addresses by contacting HE's account holders/service
17 providers, who, unlike HE, typically would have the logs to identify the individual end-
18 user and the ability to shut down Internet access for that individual end-user without
19 affecting Internet service to the tens of thousands of innocent users obtaining service from
20 that service provider.

21 76. Notwithstanding Defendants' ability to effectively stop the alleged
22 infringement by directly pursuing the users of the offending IP addresses, Defendants are
23 instead pursuing HE, which has no relationship with, and no ability to control service to
24 the allegedly offending end-user.

25 77. HE is informed and believes and based thereon alleges that one or more
26 Defendants do not own the copyrights in the allegedly infringed material that counsel for
27 Defendants has indicated that Defendants own.

28 78. HE is informed and believes and based thereon alleges that one or more
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1 Defendants are not validly existing legal entities and thus cannot own copyrights in the
2 allegedly infringed material.

3 79. Defendants allege that HE has directly, contributorily, and vicariously
4 infringed Defendants' copyright rights.

5 80. Defendants allege that HE continues to directly, contributorily and
6 vicariously infringe Defendants' copyright rights.

7 81. Defendants allege that HE's infringement of Defendants' copyright rights
8 extends back to at least 2013, or earlier in that the statute of limitations for the alleged
9 acts of HE does not start until the Defendants' learned of the alleged infringements.

10 82. Defendants allege that HE's infringement of Defendants' copyright rights is
11 continuing.

12 83. Defendants' allegations of copyright infringement by HE are legally and
13 factually baseless.

14 84. HE's conduct has not and does not constitute direct copyright infringement,
15 because HE's conduct does not violate any exclusive right granted to copyright holders
16 under 17 U.S.C. § 106.

17 85. HE has not had, and does not have, knowledge of an identifiable person or
18 entity that has infringed any copyright owned by Defendants.

19 86. Even if HE had or has actual knowledge that specific infringing material is
20 available using its connection, there are no simple nor feasible measures that HE can take
21 to prevent further damage to the copyrighted works.

22 87. Even if HE had or has actual knowledge that specific infringing material is
23 available using its connection, it would not be appropriate to shut down service to tens of
24 thousands or hundreds of thousands of innocent end-users when Defendants could easily
25 contact and/or issue a subpoena to the service provider who is HE's account holder,
26 determine the identity of the alleged infringing end-user and have the downstream service
27 provider shut down only that alleged infringing end-user.

28 88. HE has not and does not materially contribute to another's infringement of

1 any copyright owned by Defendants.

2 89. HE has not and does not provide its services, including providing ISPs and
3 other account holders with access to the backbone of the Internet, with the object of
4 promoting or advertising its use to infringe copyrights claimed by Defendants.

5 90. HE has not and does not advertise, promote or express an intent to promote
6 infringement, nor affirmatively take steps to foster the alleged copyright infringement.

7 91. HE has not and does not induce another's infringement of any copyright
8 owned by Defendants.

9 92. HE's conduct has not and does not contributorily infringe any copyright
10 owned by Defendants.

11 93. HE has not had, and does not have, the right or ability to supervise the
12 alleged infringement of any copyright owned by Defendants.

13 94. The alleged infringement of any copyright owned by Defendants has not and
14 does not constitute a draw for subscribers to HE's services.

15 95. HE has not, and does not, engage in advertising or promoting of services for
16 facilitating the alleged infringement of any copyright owned by Defendants.

17 96. HE has not had, and does not have, a direct financial interest in the alleged
18 infringement of any copyright owned by Defendants.

19 97. HE has not and does not vicariously infringe any copyright owned by
20 Defendants.

21 98. HE's conduct has not and does not constitute vicarious copyright
22 infringement.

23 99. Not only is HE not an infringer of any copyright rights of Defendants, but
24 Defendants have neither demonstrated nor alleged that any of HE's account holders have
25 infringed any copyright rights of Defendants.

26 100. Nonetheless, HE has adopted and reasonably implemented, and informs
27 account holders of the HE's system or network of, a policy that provides for the
28 termination in appropriate circumstances of HE's account holders, if any, who are repeat

1 infringers. Indeed, Judge Fogel of the Northern District of California has in a written
2 opinion recognized Hurricane's policy to terminate infringers in appropriate
3 circumstances.

4 101. HE has a notification system for copyright infringement allegations and a
5 procedure for dealing with DMCA-compliant notifications. HE does not actively prevent
6 copyright owners from collecting information needed to issue such notifications.

7 102. Under appropriate circumstances, HE has or would terminate account
8 holders who repeatedly or blatantly infringe copyrights.

9 103. Accordingly, even if HE were somehow found liable for some type of
10 copyright infringement, which is emphatically denied, HE, as an upstream service
11 provider which does not provide any intermediate or transient storage (as defined in
12 17 U.S.C. § 512(k)(1)(B)), would not have any liability to Defendants due to the safe
13 harbor limitation of liability under 17 U.S.C. § 512(i).

14 104. Defendants have suffered no, and will not suffer any, legally cognizable
15 damages as a result of HE's conduct.

16 105. Defendants are not entitled to any injunctive, monetary, or other relief from
17 HE.

18 **FIRST CLAIM FOR RELIEF**

19 **(Declaratory Judgment of No Direct Copyright Infringement)**

20 106. HE repeats and realleges the allegations contained in paragraphs 1 to 105 of
21 this Complaint as if fully set forth herein.

22 107. Defendants claim that HE's conduct directly violates at least one exclusive
23 right granted to Defendants as alleged copyright holders under 17 U.S.C. § 106.

24 108. Under an ongoing threat of litigation, Defendants demand that HE terminate
25 the accounts of account holders and service providers for alleged violations of end-users
26 over which HE has no control, prospectively agree to take similar actions in the future
27 whenever Defendants' counsel sends future notices, and pay money damages well in
28 excess of \$500,000.

1 109. HE refutes Defendants' allegations of direct copyright infringement and
2 refuses to comply with Defendants' improper and impractical demands.

3 110. Defendants' continued and repeated assertions of direct copyright
4 infringement and related demands create a significant cloud of uncertainty over HE's
5 business, and cause HE to have a real and reasonable apprehension that it will eventually
6 be subject to suit.

7 111. The circumstances show that there is an actual, present, substantial, and
8 justiciable controversy between HE and Defendants, which have adverse legal interests,
9 of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

10 112. HE seeks a declaratory judgment that one or more Defendants do not own
11 the copyrights in the allegedly infringed material that counsel for Defendants has
12 indicated that Defendants own.

13 113. HE seeks a declaratory judgment that one or more Defendants are not validly
14 existing legal entities and thus cannot own copyrights in the allegedly infringed material.

15 114. HE seeks a declaratory judgment that HE provides a passive conduit to the
16 backbone of the Internet, that HE engages in no volitional conduct with respect to any
17 allegedly copyrighted material, and that HE is not the proximate cause of any copyright
18 infringement alleged by Defendants.

19 115. HE seeks declaratory judgment that HE's conduct has not and does not
20 constitute direct copyright infringement, because HE's conduct does not violate any
21 exclusive right granted to copyright holders under 17 U.S.C. § 106.

22 116. HE seeks declaratory judgment that Defendants have suffered no, and will
23 not suffer any, legally cognizable damages as a result of HE's conduct.

24 117. HE seeks declaratory judgment that Defendants are not entitled to any
25 injunctive, monetary, or other relief from HE.

26 ///

27 ///

SECOND CLAIM FOR RELIEF

(Declaratory Judgment of No Contributory Copyright Infringement)

118. HE repeats and realleges the allegations contained in paragraphs 1 to 117 of this Complaint as if fully set forth herein.

119. Defendants claim that HE's conduct constitutes contributory infringement of Defendants' alleged copyrights.

120. Under an ongoing threat of litigation, Defendants demand that HE terminate the accounts of account holders and service providers over which HE has no control, prospectively agree to take similar actions in the future whenever Defendants' counsel sends future notices, and pay money damages well in excess of \$500,000.

121. HE refutes Defendants' allegations of contributory copyright infringement and refuses to comply with Defendants' improper and impractical demands.

122. Defendants' continued and repeated assertions of contributory copyright infringement and related demands create a significant cloud of uncertainty over HE's business, and cause HE to have a real and reasonable apprehension that it will eventually be subject to suit.

123. The circumstances show that there is an actual, present, substantial, and justiciable controversy between HE and Defendants, which have adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

124. HE seeks a declaratory judgment that one or more Defendants do not own the copyrights in the allegedly infringed material that counsel for Defendants has indicated that Defendants own.

125. HE seeks a declaratory judgment that one or more Defendants are not valid legal entities and thus cannot own copyrights in the allegedly infringed material.

126. HE seeks a declaratory judgment that HE has not had, and does not have, knowledge of another's infringement of any copyright owned by Defendants.

127. HE seeks a declaratory judgment that even if HE had or has actual knowledge that specific infringing material is available using its system, there are no

1 simple or feasible measures that HE can take to prevent further damage to the
2 copyrighted works.

3 128. HE seeks a declaratory judgment that even if HE had or has actual
4 knowledge that specific infringing material is available using its system, there are no
5 reasonable or appropriate measures that HE can take to prevent further damage to the
6 copyrighted works.

7 129. HE seeks a declaratory judgment that HE has not and does not materially
8 contribute to another's infringement of any copyright owned by Defendants.

9 130. HE seeks a declaratory judgment that Defendants cannot prove that HE
10 provides its services, including providing ISPs and other account holders with access to
11 the backbone of the internet, with the object of advertising or promoting its use to
12 infringe copyrights.

13 131. HE seeks a declaratory judgment that Defendants cannot prove that HE
14 clearly expressed an intent to promote infringement or affirmatively took steps to foster
15 copyright infringement.

16 132. HE seeks a declaratory judgment that HE provides a passive conduit to the
17 backbone of the Internet, that HE engages in no volitional conduct with respect to any
18 allegedly copyrighted material, and that HE is not the proximate cause of any copyright
19 infringement alleged by Defendants.

20 133. HE seeks a declaratory judgment that HE has not and does not induce
21 another's infringement of any copyright owned by Defendants.

22 134. HE seeks declaratory judgment that HE's conduct has not and does not
23 constitute contributory copyright infringement.

24 135. HE seeks declaratory judgment that Defendants have suffered no, and will
25 not suffer any, legally cognizable damages as a result of HE's conduct.

26 136. HE seeks declaratory judgment that Defendants are not entitled to any
27 injunctive, monetary, or other relief from HE.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment of No Vicarious Copyright Infringement)

137. HE repeats and realleges the allegations contained in paragraphs 1 to 136 of this Complaint as if fully set forth herein.

138. Defendants have suggested, and expressly not waived their argument that, HE's conduct constitutes vicarious infringement of Defendants' alleged copyrights.

139. Under an ongoing threat of litigation, Defendants demand that HE terminate the accounts of account holders and service providers where end-users allegedly infringe Defendants' right, but over which HE has no control. Defendants demand that HE prospectively agree to take similar actions in the future whenever Defendants' counsel sends future notices, and pay money damages well in excess of \$500,000.

140. HE refutes Defendants' allegations of vicarious copyright infringement and refuses to comply with Defendants' improper and impractical demands.

141. Defendants' assertions of vicarious copyright infringement and related demands create a significant cloud of uncertainty over HE's business, and cause HE to have a real and reasonable apprehension that it will eventually be subject to suit.

142. The circumstances show that there is an actual, present, substantial, and justiciable controversy between HE and Defendants, which have adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

143. HE seeks a declaratory judgment that one or more Defendants do not own the copyrights in the allegedly infringed material that counsel for Defendants has indicated that Defendants own.

144. HE seeks a declaratory judgment that one or more Defendants are not valid legal entities and thus cannot own copyrights in the allegedly infringed material.

145. HE seeks a declaratory judgment that HE has not had, and does not have, the right or ability to supervise the alleged infringement of any copyright owned by Defendants.

1 146. HE seeks a declaratory judgment that the alleged infringement of any
2 copyright owned by Defendants has not and does not constitute a draw for subscribers
3 to HE's services.

4 147. HE seeks a declaratory judgment that it has not, and does not, engage in
5 advertising or promoting of services for facilitating the alleged infringement of any
6 copyright owned by Defendants.

7 148. HE seeks a declaratory judgment that HE has not had, and does not have, a
8 direct financial interest in the alleged infringement of any copyright owned by
9 Defendants.

10 149. HE seeks a declaratory judgment that HE has not and does not vicariously
11 infringe any copyright owned by Defendants.

12 150. HE seeks declaratory judgment that HE's conduct has not and does not
13 constitute vicarious copyright infringement.

14 151. HE seeks declaratory judgment that Defendants have suffered no, and will
15 not suffer any, legally cognizable damages as a result of HE's conduct.

16 152. HE seeks declaratory judgment that Defendants are not entitled to any
17 injunctive, monetary, or other relief from HE.

18 **FOURTH CLAIM FOR RELIEF**

19 **(In the Alternative, Declaratory Judgment that Safe Harbor Applies)**

20 153. HE repeats and realleges the allegations contained in paragraphs 1 to 152
21 of this Complaint as if fully set forth herein.

22 154. HE seeks a declaratory judgment that HE has adopted and reasonably
23 implemented, and informs account holders of the HE's system or network of, a policy
24 that provides for the termination in appropriate circumstances of HE's account holders
25 who are repeat infringers.

26 155. HE seeks a declaratory judgment that HE has a working notification system
27 for copyright infringement allegations and a procedure for dealing with
28 DMCA-compliant notifications. HE seeks a declaratory judgment that HE does not

1 actively prevent copyright owners from collecting information needed to issue such
2 notifications.

3 156. HE seeks a declaratory judgment that under appropriate circumstances, HE
4 has or would terminate account holders who repeatedly or blatantly infringe copyrights.

5 157. Even if HE were somehow found liable for some type of copyright
6 infringement, which is emphatically denied, HE seeks, in the alternative, a declaratory
7 judgment that HE is an online service provider that does not provide any intermediate or
8 transient storage as defined in 17 U.S.C. § 512(k)(1)(B), and that HE does not have any
9 liability to Defendants due to the safe harbor limitation of liability under
10 17 U.S.C. § 512(i).

11 158. HE seeks declaratory judgment that Defendants have suffered no, and will
12 not suffer any, legally cognizable damages as a result of HE's conduct.

13 159. HE seeks declaratory judgment that Defendants are not entitled to any
14 injunctive, monetary, or other relief from HE.

15 **FIFTH CLAIM FOR RELIEF**
16 **(Copyright Misuse)**

17 160. HE repeats and realleges the allegations contained in paragraphs 1 to 159 of
18 this Complaint as if fully set forth herein.

19 161. Defendants' cease and desist letters and related communications demand that
20 HE, an upstream service provider of access to the backbone of the Internet to account
21 holders like ISPs, simply shut down entire ISPs and other commercial and governmental
22 account holders that provide Internet access to thousands or tens of thousands of innocent
23 people, based solely on allegations of infringement by an individual end-user subscriber
24 to the ISP or account holder. Defendants are thus putting HE in an impossible situation,
25 all based on an improper and unlawful overextension of Defendants' alleged copyright
26 rights. Defendants' letters and demands to HE are abusive, tortious, and otherwise
27 wrongful.

28 162. Defendants' unlawful scheme seeks to secure an exclusive right or limited
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1 monopoly not granted by the Copyright Office pursuant to 17 U.S.C. § 102(b), which
2 would be contrary to public policy to grant, by, inter alia, alleging that HE is a copyright
3 infringer and demanding that HE take action against alleged third-party copyright
4 infringers with which HE has no relationship and no direct control over. Defendants'
5 actions improperly extend their alleged copyrights to encompass HE's procedures,
6 processes, systems, and methods of operation, and thus constitute copyright misuse.

7 163. Defendants' misuse of their alleged copyrights against HE renders them
8 unenforceable against HE.

9 164. Since Defendants' alleged copyrights are unenforceable against HE, HE's
10 conduct has not and does not constitute infringement of exclusive rights, if any, granted
11 to Defendants under 17 U.S.C. § 106 in connection with Defendants' alleged copyrights,
12 neither directly, contributorily, vicariously, nor otherwise.

13 165. Defendants have suffered no, and will not suffer any, legally cognizable
14 damages as a result of HE's conduct.

15 166. Defendants are not entitled to any injunctive, monetary, or other relief from
16 HE.

17 **SIXTH CLAIM FOR RELIEF**
18 **(Attorney Fees under 17 U.S.C. § 505)**

19 167. HE repeats and realleges the allegations contained in paragraphs 1 to 166
20 of this Complaint as if fully set forth herein.

21 168. Defendants' allegations of copyright infringement and its demands against
22 HE are frivolous and objectively unreasonable, and are not motivated by protecting their
23 copyrights, which could be effectively protected by pursuing the actual alleged end-user
24 infringers, or even the service providers that control the Internet access of the actual
25 alleged infringers, but cannot be reasonably protected by attacking HE, which provides
26 passive access to the backbone of the Internet to account holders such as ISPs. In these
27 circumstances there is a need to award HE its costs including its attorney fees to deter
28 copyright assertions entities like Defendants from abusing the system and frustrating the

1 legitimate purposes of the Copyright Act.

2 **WHEREFORE**, HE requests judgment against Defendant as follows:

3 With respect to the **FIRST CAUSE OF ACTION**, an order declaring that:

4 A. HE has not and does not directly infringe any copyright rights of
5 Defendants;

6 B. Defendants have suffered no, and will not suffer any, legally cognizable
7 damages as a result of HE's actions;

8 C. Defendants are not entitled to any injunctive relief or damages against HE;

9 D. HE is awarded its costs, expenses and attorneys' fees in this action; and

10 E. Awarding such other further relief to which HE may be entitled as a matter
11 of law or equity, as the Court deems just and proper.

12 With respect to the **SECOND CAUSE OF ACTION**, an order declaring that:

13 F. HE has not and does not contributorily infringe any copyright rights of
14 Defendants;

15 G. Defendants have suffered no, and will not suffer any, legally cognizable
16 damages as a result of HE's actions;

17 H. Defendants are not entitled to any injunctive relief or damages against HE;

18 I. HE is awarded its costs, expenses and attorneys' fees in this action; and

19 J. Awarding such other further relief to which HE may be entitled as a matter
20 of law or equity, as the Court deems just and proper.

21 With respect to the **THIRD CAUSE OF ACTION**, an order declaring that:

22 K. HE has not and does not vicariously infringe any copyright rights of
23 Defendants;

24 L. Defendants have suffered no, and will not suffer any, legally cognizable
25 damages as a result of HE's actions;

26 M. Defendants are not entitled to any injunctive relief or damages against HE;

27 N. HE is awarded its costs, expenses and attorneys' fees in this action; and

28 O. Awarding such other further relief to which HE may be entitled as a matter

1 of law or equity, as the Court deems just and proper.

2 With respect to the **FOURTH CAUSE OF ACTION**, in the alternative to the
3 relief sought with respect to any or all of the first, second, and third causes of action, an
4 order declaring that:

5 P. HE is an online service provider that does not provide any intermediate or
6 transient storage as defined in 17 U.S.C. § 512(k)(1)(B), and that HE does not have any
7 liability to Defendants due to the safe harbor limitation of liability under
8 17 U.S.C. § 512(i);

9 Q. Defendants have suffered no, and will not suffer any, legally cognizable
10 damages as a result of HE's actions;

11 R. Defendants are not entitled to any injunctive relief or damages against HE;

12 S. HE is awarded its costs, expenses and attorneys' fees in this action; and

13 T. Awarding such other further relief to which HE may be entitled as a matter
14 of law or equity, as the Court deems just and proper.

15 With respect to the **FIFTH CAUSE OF ACTION**, an order declaring that:

16 U. Defendants misused their alleged copyrights against HE, and thus rendered
17 them unenforceable against HE;

18 V. Defendants have suffered no, and will not suffer any, legally cognizable
19 damages as a result of HE's actions;

20 W. Defendants are not entitled to any injunctive relief or damages against HE;

21 X. HE is awarded its costs, expenses and attorneys' fees in this action;

22 Y. Awarding such other further relief to which HE may be entitled as a matter
23 of law or equity, as the Court deems just and proper; and

24 Z. Entry of an injunction ordering that Defendants, their officers, agents,
25 members, and servants, and all persons acting in concert with them, including
26 Defendants' counsel, be permanently restrained from alleging that HE is liable for
27 alleged copyright infringement by downstream users of Internet access provided by HE,
28 and be permanently restrained from demanding that HE take action against any such

1 alleged copyright infringements.

2 With respect to the **SIXTH CAUSE OF ACTION:**

3 AA. An award to HE of its costs including its attorney fees incurred in
4 connection with defending against Defendants' copyright infringement allegations, with
5 interest; and

6 BB. An award of such other and further relief as the Court deems just and
7 proper.

8
9 DATED: June 10, 2020

NEIL D. GREENSTEIN
MARTIN R. GREENSTEIN
TECHMARK

10
11 By: /Neil D. Greenstein/
12 Attorneys for Plaintiff
13 HURRICANE ELECTRIC LLC

14
15 **JURY TRIAL DEMAND**

16
17 Plaintiff, Hurricane Electric LLC, hereby requests a trial by jury on all issues
18 triable of right by a jury

19
20 DATED: June 10, 2020

NEIL D. GREENSTEIN
MARTIN R. GREENSTEIN
TECHMARK

21
22 By: /Neil D. Greenstein/
23 Attorneys for Plaintiff
24 HURRICANE ELECTRIC LLC