

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA**

MALIBU MEDIA, LLC,

Plaintiff,

v.

CURT VANDENHEUVEL,

Defendant.

**CASE NO. 3:13-cv-01579-PDB**

**PLAINTIFF’S NOTICE OF FILING SUPPLEMENTAL DECLARATION IN FURTHER  
SUPPORT OF ITS OPPOSITION TO DEFENDANT’S MOTION FOR PROTECTIVE  
ORDER [CM/ECF 87] AND ITS MOTION FOR LEAVE TO AMEND [CM/ECF 94]**

Plaintiff Malibu Media LLC (“Plaintiff”), by and through undersigned, files this Supplemental Declaration in further support of its Opposition to Defendant’s Motion for Protective Order [CM/ECF 87] and its Motion for Leave to Amend [CM/ECF 94], and states:

1. This copyright infringement lawsuit concerns the use of Defendant Curt Vandenheuvel’s (“Defendant”) password-protected wireless internet connection, the BitTorrent protocol, and one or more computers to illegally download and redistribute twenty nine (29) of Plaintiff’s copyrighted works.

2. Discovery has yielded evidence that (1) Defendant received more than two hundred and seventy (>270) copyright infringement notifications and warnings, advising him that his Internet was continuously being used to unlawfully download copyrighted content through BitTorrent; (2) that many of the copyrighted works downloaded from BitTorrent prior to and contemporaneously with Plaintiff’s works correspond to Defendant’s daughter Amber’s favorite movies and television shows; and (3) that Defendant’s Samsung 250 Hard Drive once

had BitTorrent software installed on it and contained a file path called “\Users\Amber\Downloads\Torrents\Music.”

3. Based on the foregoing, Plaintiff is attempting to depose Amber to ascertain the extent of her involvement in the at-issue copyright infringement, and has moved for leave to amend its complaint in order to add a count against Defendant for contributory infringement.

4. Defendant opposes Plaintiff’s requests, claiming that the file directory “\Users\Amber\Downloads\Torrents\Music” likely never existed. Defendant’s testimony is that the profile “\Amber\” never existed and that although his daughter Amber used the Samsung computer, she only accessed it using Defendant’s login. *See* Def. Depo. at 38:24–39:9. Indeed, Defendant, through counsel, has represented that “the possibility that there once existed a user ‘Amber’ [on Defendant’s Samsung computer] is unlikely.” CM/ECF 90 at p. 3.

5. Plaintiff has discussed these assertions with its forensic computer expert, who has determined with *absolute certainty* that Defendant’s claims are provably false. The computer evidence definitively establishes that Defendant’s Samsung computer was regularly accessed and used during the period of infringement by a user named ‘amber.’ That is to say, the evidence conclusively shows that the username “Amber” existed and was in use on the computer that had BitTorrent software installed from July 2012 through July 2014. And, in light of the voluminous copyright infringement warnings he received, Defendant was actually or constructively aware of the extensive copyright infringement.

6. Since this revelation is materially relevant to Plaintiff’s Opposition to Defendant’s Motion for Protective Order [CM/ECF 87] and its Motion for Leave to Amend [CM/ECF 94], Plaintiff now files the attached Supplemental Declaration of its computer expert, Patrick Paige.

Respectfully submitted,

LIPSCOMB EISENBERG & BAKER, PL

By: /s/ Daniel C. Shatz

**M. Keith Lipscomb, Esq.**

Florida Bar No. 429554

[klipscomb@lebfirm.com](mailto:klipscomb@lebfirm.com)

**Daniel C. Shatz, Esq.**

Florida Bar No. 94696

[dshatz@lebfirm.com](mailto:dshatz@lebfirm.com)

2 South Biscayne Blvd.

Penthouse 3800

Miami, FL 33131

Telephone: (786) 431-2228

Facsimile: (786) 431-2229

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 17, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ Daniel C. Shatz