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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**DALLAS BUYERS CLUB, LLC**, a Texas  
Limited Liability Company

Plaintiff,

v.

**RYAN UNDERWOOD**,

Defendant.

Case No.: 3:15-cv-05537-LB

PLAINTIFF’S OPPOSITION TO  
DEFENDANT’S MOTION TO REQUIRE  
UNDERTAKING PURSUANT TO  
CCP § 1030

SUPPLEMENTAL FACTS OF THE CASE

The Plaintiff, Dallas Buyers Club, LLC, (“DBC”) is the proper party to bring this litigation and has filed over 300 cases, none of which have required a bond. Exhibit 1, DBC’s Copyright Certificate; Declaration of James S. Davis (“Decl.”) ¶4.

Defendant, Ryan Underwood (“Underwood”) a/k/a Media Buddy PC, LLC, (“Media Buddy”) is a producer and seller of equipment that is designed to facilitate infringing activity,

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including the very acts that give rise to liability in this action. Media Buddy is a company owned by Underwood, apparently run out of his home, that sells and distributes a computer, the Media Buddy PC. Exhibit 2, Business Entity record of Media Buddy P.C. LLC. The Media Buddy PC is designed to access the internet using BitTorrent software to provide free access, downloading and distribution, of copyrighted material, such as, movies, TV shows, video games, and music. Exhibit 3, the webpage of Media Buddy P.C. <http://www.mediabuddypc.com>. Ryan Underwood states on the Media Buddy website that this is “my side business.” Exhibit 3, Shipping policies, page 7. Comcast Communications identified Ryan Underwood personally, and his home address as the subscriber assigned IP address (“IPA”) 50.76.49.97. Exhibit 4, Comcast subpoena response.

In monitoring the on-line distribution of *Dallas Buyers Club*, IPA 50.76.49.97 was tracked distributing the motion picture consistently from August 9, 2015 through February 13, 2016 with 411 instances of distribution confirmed<sup>1</sup>. Exhibit 5, Capture Data. In addition to the 411 confirmed acts of distribution of plaintiff’s motion picture, the Defendant’s IPA was also tracked through a secondary source, Cross Reference Data (X-Ref Data), which observed the associated IPA address with the BitTorrent trafficking of over 2000 other copyrighted works<sup>2</sup>. Exhibit 6, X-Ref Data. With this amount of observed data, it is reasonable to assume there were additional unobserved acts. In order to view the over 2000 copyrighted works, as tracked in this case, it would take an individual over a year of watching 16 hours a day. The volume of BitTorrent traffic and number of titles associated with Underwood in the observed period of time

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<sup>1</sup> Capture Data and X-Ref data will be explained DBC’s Litigation Practices, *infra*.

<sup>2</sup> At this time that number has been increased to over 2400 copyrighted works.

is more than anyone could reasonably watch, giving indication that Underwood's BitTorrent activity was not for personal use, but in support of his Media Buddy commercial enterprise.

Underwood has submitted a declaration stating he is not the actual individual responsible for downloading and distributing the film *Dallas Buyers Club*, however, he failed to include any reference to his "side business" Media Bubby in the declaration. See Declaration of Ryan Underwood, Ecf 42-2. Unfortunately, a corporate veil is not sufficient to shield Underwood, and the semantic parsing of the declaration should be disregarded.

## **I. DALLAS BUYERS CLUB'S LITIGATION PRACTICE**

### **1. ENFORCEMENT EFFORTS**

This Court, as well as others, have expressed concerns over certain plaintiffs failing to properly investigate or perform discovery before naming parties when enforcing The Copyright Act. Judge Otis D. Wright identified what was described as a "porno-trolling collective" that was taking advantage of the copyright laws to "plunder the citizenry." *Ingenuity 13, LLC v. John Doe*, 2:12-cv-8333, C.D. Cal., May 6, 2013, Judge Otis D. Wright, Sanctions Order. Judge Wright noted there appeared to be a number of porn studios created to exploit individuals for the downloading of pornographic videos. *Id.* In the porn cases, plaintiffs would offer settlements for a sum calculated to be just below the cost of defense, creating a situation in which a defendant would reluctantly pay rather than have their names associated with illegally downloaded porn. *Id.*

As per Judge Wright, the porno-trolls utilized fear tactics in order to secure settlements often using the threat of being publicly associated with pornography as leverage, regardless if any actual liability was at issue. Their litigation strategy consisted of recording IPA's, filing suit in federal court to subpoena Internet Service Providers ("ISP"s) for the identity of the subscriber

to the IPA, and then sending settlement demands without any further investigation. *Id.* The porno-trolls had no desire to proceed in these lawsuits and when challenged they dismissed a case rather than face any scrutiny of the judicial process.

Unlike the porn-trolls, plaintiff's motion picture, *Dallas Buyers Club*, is an acclaimed Academy Award (Oscars) winning production. Plaintiff's motion picture also won numerous Screen Actors Guild Awards, Golden Globes and other awards. The motion picture is currently offered for sale in commerce and plaintiff is focused on stopping the seeding or distribution of its motion picture by those such as Underwood, not merely pursuing occasional downloaders. More importantly, Plaintiff has attempted to be transparent in working with this Court, and other courts, in the enforcement of its copyrights and implemented a litigation strategy to stop the practice of seeding or distribution.

In its efforts to stop the piracy and illegal distribution of its motion picture and the works of other artists, Plaintiff has evaluated many different plans of action and has determined a cost efficient and effective method is to seek both statutory damages and injunctions from the courts to further the purposes of the Copyright Act. This is very different from the actions of the porno-trolls which are focused on monetizing, or profiting from illegal downloading. The litigation may initially appear to be similar as the same basic laws (and largely exclusive remedy due to preemption) are utilized, however the actions and end results are very different.

Plaintiff's demonstrated strategy is to:

- 1) Identify IPA's that are confirmed as distributing Plaintiff's motion picture at a high level through the BitTorrent distribution system, often persistently for weeks or even months. These are the parties that are not simply downloading a motion picture, but are regularly distributing or "seeding" motion pictures to others. At any one time there are

tens of thousands of infringers in this District. Plaintiff directs its actions at the “worst of the worst.”

- 2) Investigate and identify the actual individual responsible for the infringing activities, not necessarily the subscriber.
- 3) Negotiate a settlement with the actual liable party, often declining offers from non-liable subscribers and when proper obtain an injunction or otherwise terminate the infringing activity. An injunction against a non-liable mere subscriber fails to address plaintiff’s concerns.
- 4) Pursue, and if necessary litigate to trial with infringers with whom the termination of infringing activity and/or settlement cannot be reasonably obtained.

In fact, the courts are finding that DBC’s enforcement practices are not “Leveraging the Cost of Litigation in to a Dubious ‘Settlement,’” monetizing, or profiting from illegal downloading, but truly motivated by Plaintiff’s desire to protect its copyrights interests and fight piracy.

As per the findings in similar cases:

"The action was not frivolous, was motivated by Dallas’s desire to protect its copyright interests, and reasonably sought to recover compensation for, and deter future, copyright infringement. The relevant factors justify an award of attorney fees in this case." Order allowing costs and fees following \$10k judgment. *Dallas Buyers Club v. Vladamir Ivashentsev*, 3:15-cv-00220-AC, Ecf, 40 (D. OR. Feb. 11, 2016)

"The action was not frivolous, was motivated by Dallas’s desire to protect its copyright interests, and reasonably sought to recover compensation for, and deter future, copyright infringement." Order allowing costs and fees following \$10k judgment. *Dallas Buyer Club v. Justin Klemmer*, 6:15-cv-00612-AC, Ecf. 33 (D. OR. Feb. 16, 2016)

And in accord with DBC's goals and the true purpose of legitimately addressing the root problem of piracy, DBC has often forgone the financial side of its enforcement program as evidenced in a number of settlements and consent judgments entered in its favor, including:

In recognition of the financial hardship of DOE-98.232.132.220, with compliance with this Consent Judgment and Permanent Injunction plaintiff waives all claims for damages.  
*Dallas Buyers Club v. Doe-98.232.231.220*, 3:15-cv-00174-AC, Ecf. 16 (D. OR. May 20, 2015)

In recognition of the financial hardship and extenuating circumstances in this case, plaintiff agrees that though the below Money Judgment shall be entered and enforceable, plaintiff will not execute or enforce the Money Judgment so long as the defendant complies with the below Permanent Injunction and is not involved with any future downloading, publishing or BitTorrent activity in violation of copyright law.  
*Dallas Buyers Club v. Krystal Krause*, 6:15-cv-00219-AC, Ecf. 16 (D. OR. May 22, 2015)

While the below Money Judgment is valid and fully enforceable, in recognition of the financial hardship of the defendant plaintiff agrees to not execute on the below Money Judgment so long as there is compliance with the terms of the settlement agreement and this Consent Judgment.  
*Dallas Buyers Club v. Ramon Fernandez*, 3:15-cv-00444-AC, Ecf. 34 (D. OR. Nov. 17, 2015)

In recognition of the financial hardship and extenuating circumstances in this case, plaintiff agrees that though the below Money Judgment shall be entered and enforceable, plaintiff will not execute or enforce the Money Judgment so long as the defendant complies with the parties Settlement Agreement and below Permanent Injunction and is not involved with any future downloading, publishing or BitTorrent activity in violation of copyright law.  
*Dallas Buyers Club v. Kent Deberry*, 6:15-cv-00611-AC, Ecf. 10 (D. OR. June 11, 2015)

In recognition of the financial hardship and extenuating circumstances in this case, plaintiff agrees that though the below Money Judgment shall be entered and enforceable, plaintiff will not execute or enforce the Money Judgment so long as the defendant complies with the below Permanent Injunction and is not involved with any future downloading, publishing or BitTorrent activity in violation of copyright law.

*Dallas Buyers Club v. Victoria Ditzkovsky*, 6:15-cv-00696-AC, ECF 13 (D. OR. July 24, 2015)

In recognition of the financial hardship of DOE-24.22.0.68, with compliance with this Consent Judgment and Permanent Injunction plaintiff waives all claims for damages.

*Dallas Buyers Club v. Doe-24.22.0.68*, 3:15-cv-00729-AC, Ecf. 8 (D. OR. June 3, 2015)

In consideration for the economic hardship of Doe 1103 I Doe-24.20.145.186, plaintiff waives all claims for damages.

*Dallas Buyers Club v. Anonymous User of Popcorn Time*, 3:15-cv-01779-AC, Ecf. 11 (D. OR. Nov. 9, 2015)

The false narratives propounded by Underwood that “[t]he plaintiff’s goal in these matters is not to reach a judgment on the merits, but rather to secure a dubious settlement in any amount...” is just an outright misstatement of the fact as seen by the above cases. Even in this case, early on when the defendant was offering settlement (and a release of Media Buddy) while denying any liability, Plaintiff clearly informed Underwood that “nuisance settlements” by a party that denied liability would be rejected. Exhibit 7, e-mail between counsel Feb. 15 – 18, 2016.

## **2. PLAINTIFF INVESTIGATION AND IDENTIFICATION ARE SUCCESSFUL**

As opposed to Underwood’s claim, DBC has a demonstrated reliability in identifying actual infringers. As one court found on examination: "Based on Plaintiffs’ successful identification of defendants in the vast majority of the cases it has filed in 2014, the court finds it likely that the requested discovery will uncover the identity of the defendant in this case as well.” *Voltage Pictures and Dallas Buyers Club v. Doe-50.141.97.4*, 3:14-cv-01872-AC, ECF 21 (April 9, 2015).

DBC obtains this success in part by utilizing and scrutinizing data from multiple sources and by pursuing persistent infringers not merely the occasional downloader.

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**a. BitTorrent Operation**

In general, BitTorrent operates with a number of parties joining in a swarm to both download files and share/upload files with other swarm members, commonly called peers. Members of a swarm broadcast, or register, their IP address with Trackers and Distributed Hash Tables (“DHT’s”) to allow them to be located and to locate other members sharing a distinct file. Both Trackers and DHT’s are publicly broadcasted resources for anyone who wishes to locate and join a swarm to download a file. Files can be movies, T.V. shows, software, games or any available information being uploaded or distributed. In essence, Trackers and DHT’s are lists of IP addresses where uploaders/peers register as being a resource for others to download a specific file, or to find lists of others from whom they may download a file.

Plaintiff utilizes investigator MaverickEye, UG (<http://www.maverickeye.de>) for its pre-filing investigations. MaverickEye provides plaintiff with two primary resources. The first is a tool of general observed activity, called Cross-Reference Data or X-Ref Data. The second is a direct investigation of IP addresses that are observed uploading plaintiff’s works called Capture Data. The investigative tools provided by MaverickEye are related but generate independent data and reflect distinct information. The two data sets are correlative only to the extent the two investigative tools might independently observe related events.

**b. Cross-Reference (X-Ref) Data - Indirect Observations.**

The Cross-Reference or “X-Ref” tool used by MaverickEye collects data from broadcast sources such as Trackers and DHT’s. The data of the X-Ref tool reflects third party registrations of IP addresses as being a resource for anyone that wishes to join a swarm to download a file. Trackers and DHT’s carry only limited registrations and are regularly updated. With hundreds of thousands of files being exchanged on BitTorrent and millions of IP addresses trafficking in



those files, the picture collected from Trackers and DHT's is a limited snapshot of files being trafficked at any one time. Any one Tracker or DHT's will not be a list of all files associated with any IP address any more than they will be a list of all IP addresses associated with any single file. Data collecting from Trackers and DHT's is commonly used in the industry for Digital Millennium Copyright Act (DMCA) notices and has been used as a basis for filing copyright infringement suits.

The X-Ref type of data, though valid, has a number of shortcomings.<sup>3</sup> While Trackers and DHT's are highly accurate, and this is the data that users of BitTorrent rely on to maintain the BitTorrent network, the data comes from unsecured third parties and only lists IP address that are registered as a resource for the distribution of files. There is no direct observation or bilateral confirmation of actual infringing activity. A second issue, if the registered IP address is reassigned between the time of registration and observation, the IP address might appear to belong to someone that has never infringed. Because of the shortcomings, plaintiff uses a second set of direct observation data as its basis for infringement complaints and uses the X-Ref indirect observation as secondary support evidence.

**c. Capture Data – Direct Observations.**

The primary data on which plaintiff relies in bringing its complaint is obtained through the Maverik Monitor™ investigative tool. The Maverik Monitor tool independently obtains IP addresses that are trafficking in plaintiff's motion picture. The Maverik Monitor tool then joins the swarm as a peer to make a direct TCP/IP connection with other swarm participants. In doing

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<sup>3</sup> Paitek, M., Kohno, T., Krishnamurthy, A: Challenges and Directions for Monitoring P2P File Sharing Networks– or –Why My Printer Received a DMCA Takedown Notice. In Proceedings of the USENIX Workshop on Hot Topics in Security, San Jose, CA, USA (2008). Ref: [http://dmca.cs.washington.edu/dmca\\_hotsec08.pdf](http://dmca.cs.washington.edu/dmca_hotsec08.pdf)

so it makes a direct peer-to-peer connection with an infringing computer and downloads (but does not upload) a portion of the copyrighted material being shared.

In making this direct peer-to-peer connection, the Maverik Monitor tool confirms the defendant's IP address is actively broadcasting/distributing the file and not simply registered with a Tracker or DHT's as having the file available. It verifies the data downloaded as infringing data, and records the exact time of the direct peer-to-peer connection with the infringing computer. Concerns about reassigned IP addresses and the theoretical malicious "spoofing" of an IP address are overcome as the communications with the infringer's IP address are time-specific and bilateral, verified as being received and acknowledged by the infringer's computer. The Maverik Monitor tool is currently observing and documenting over 200 distributions a day of the motion picture *Dallas Buyers Club*. Decl. of James S. Davis ¶ 5.

**d. Value and Utility of X-Ref Data.**

Plaintiff is only able to trace an IP address to a subscriber. Often a single household will have multiple occupants with access to the IP address. The broad data of the X-Ref tool continues to be very useful to both subscribers and plaintiff for identification purposes. X-Ref Data can confirm or eliminate the subscriber as the potential defendant, or provide a subscriber useful information on the types of shows, activities, or interests of the actual infringer and identify a pattern and practice of upload activity, narrowing the focus of any investigation of parties that may be actually infringing. In many cases, on review of the X-Ref Data the identity of the infringer or proper defendant becomes readily apparent. Moreover, this data is still the standard for many enforcement programs and has been found to be reliable evidence of infringing activity.

**e. Old Technology and Isolated Cases Are Out of Context.**

Defendant's motion relies on older court opinions by plaintiffs that only used X-Ref data or who failed to diligently review available data. Defendant is correct that Plaintiff "has filed more than 300 copyright lawsuits across the country in the past few years." But they skip over the fact that under the current investigative process used by the Plaintiff, the Courts have recognized the effectiveness of Plaintiff's investigations in the "vast majority" of the cases filed. *Voltage Pictures and Dallas Buyers Club v. Doe-50.141.97.4*, 3:14-cv-01872-AC, ECF 21 (April 9, 2015).

Based on Plaintiff's proven track record and the significant infringing activity in this action, which goes beyond any that might be attributable to a short-term guest or other party without permissive if not controlling access to the IPA observed, Plaintiff has a high likelihood to have correctly identified the defendant in this case also. In fact, based on the two investigation tools, Plaintiff was able to track the Defendant to the note of 411 captures and 2472 X-Ref observations. Exhibits 5, 6. The volume of copyrighted content associated with the Defendant's IPA could not be reasonably viewed by an individual or even family. This clearly supports Plaintiff's theory that the defendant was using BitTorrent software to load movies and other copyrighted materials onto the Media Buddy machines prior to selling them to customers as a commercial venture.

**3. IDENTITY OF THE DEFENDANT**

**a. RYAN UNDERWOOD AKA MEDIA BUDDY P.C. LLC**

Media Buddy advertises its media computer as a Theater Machine, Home Entertainment Hub in which you can get media for free:

Media Buddy P.C. will provide endless hours of multimedia fun for everyone in the family **without paying for cable channels. Most of this media is free** except Netflix and Hulu plus.

Ex. 3, Media Buddy Web page 4, Home entertainment hub.

On information and belief, Underwood, a/k/a Media Buddy was not only producing and selling devices designed to illegally download and then store pirated content, but was personally pirating content, including plaintiff's motion picture, for the purpose of pre-loading his machines for customers, selling his media machines with countless movies, games and other copyrighted materials.

In investigating IPA 50.76.49.97 and the over 400 captures and over 2,400 other associated titles, it was clear that the subscriber was not a normal individual. Exhibits 5, 6. The levels of observed activity were just too high. The number of captures and X-Ref data put the Defendant at a level Plaintiff's investigations might see at Universities with hundreds of students. Plaintiff is of the belief that not only do we have the right Defendant, but, this Defendant is profiting off the selling of copyrighted materials provided with his Media Buddy PC.

## **II. REASONABLENESS OF THE REQUESTED SECURITY**

### **1. LEGAL STANDARD AND AUTHORITIES**

Defendant has appeared to again omit essential information this Court needs to properly evaluate the need for a bond in this matter. A defendant seeking to require a plaintiff to file a bond must establish a "reasonable possibility that the moving defendant will obtain judgment in the action or special proceeding." Cal. Code of Civ. Proc. § 1030(b). This Court has previously noted that the "reasonable possibility" standard is relatively low. *See GeoTag, Inc. v. Zoosk*, No. C13-0217 EMC, 2014 WL 793526, at \*3 (N.D. Cal. Feb. 26, 2014). Thus, a defendant need not

show that there is "no possibility" that plaintiff would win at trial, "but only that it [is] reasonably possible that the defendant will win." *Baltayan v. Estate of Getemyan*, 90 Cal. App. 4th 1427, 1432 (2001).

At the same time, the "reasonable possibility" standard is not so low as to be non-existent. This Court declined to read section 1030 so broadly as to require every out-of-state litigant who brings a non-frivolous suit in California to post a bond simply because there is a reasonable chance the defendant *may* prevail. *Id. See also Wilson & Haubert, PLLC v. Yahoo! Inc.* (N.D. Cal., 2014), No. C-13-5879 (Dkt. 22, Order Denying Defendant's Motion to Require Plaintiff to Post an Undertaking to Secure Costs.) In cases where the parties simply hold strongly divergent views as to the success of a claim or the other litigant's position, this does not demonstrate a reasonable probability a party will prevail or give rise to a bond. *Ipx Patent Holdings, Inc. v. Voxernet, LLC* (N.D. Cal., 2014), Case No. 5:13-cv-01708 HRL.

As the Ninth Circuit, speaking generally about bond requirements such as section 1030, has noted, "[w]hile it is neither unjust nor unreasonable to expect a suitor to put his money where his mouth is, toll-booths cannot be placed across the courthouse doors in a haphazard fashion." *Simulnet*, 37 F.3 at 576 (quoting *Aggarwal v. Ponce Sch. of Medicine*, 745 F.2d 723, 727-28 (1st Cir. 1984)). This concern is rooted in the fact that courts must take care "not to deprive a plaintiff of access to the federal courts." *Id.*

Accordingly, this Court agreed with the district courts located in California which have held that, in applying section 1030, a court must consider not only the extent of the requested bond, but also the "degree of probability/improbability of success on the merits, and the background and purpose of the suit." *Gabriel Technologies*, 2010 WL 3718848, at \*2; *see also Susilo v. Wells Fargo Bank, N.A.*, No. CV 11-1814 CAS (PJWx), 2012 WL 5896577 (C.D. Cal.

Nov. 19, 2012) (same); *Plata v. Darbun Enterprises, Inc.*, No. 09cv44-IEG(CAB), 2009 WL 3153747, at \*12 (same). *Id.*

While not expressly articulated in section 1030, this Court has found as a second and as equally important factor, the requirement that a defendant must demonstrate that there is a risk that it would be unable to recover costs from Plaintiff in the event it prevails in an action. *Id. See Circle Click Media LLC v. Regus Mgmt. Grp. LLC (N.D. Cal., 2015), Case No. 3:12-CV-04000-SC; Susilo*, 2012 WL 5896577, at \*2 ("Without any particularized showing that there is a real risk of defendants being unable to recover costs and attorney's fees to which they are entitled, there is simply no basis on which to require plaintiff to post a bond."); *Plata*, 2009 WL 3153747, at \*12 (denying a section 1030 motion, in part, because "Defendant has not set forth any details regarding its legitimate need for the prophylaxis of a bond in its moving papers"). The defendant must put forth concrete evidence, not speculation, that there is a legitimate need for the Court to require a bond. In this matter, the Defendant has not provided a legitimate need for a bond, only conjecture.

## **2. PLAINTIFF'S INVESTIGATIONS HAVE BEEN PROVEN SUCCESSFUL**

Defendant states four reasons that it feels that it has a reasonable possibility of obtaining a judgment. First, an IP Address is insufficient to identify the infringer. In support of this, Plaintiff cites a number of older cases that base their investigation on older technology. On information and belief, the cases Defendant referenced used X-Ref Data, the same as is often used for Digital Millennium Copyright Act (DMCA) notices. While courts have found this to be accurate and have issued warrants based on its use, Maverik Monitor investigative tool uses a more advance method, by making a direct TCP/IP connection, similar to that being used by the FBI in fighting Child Porn. *See United States v. Carter*, 549 F. Supp. 2d 1257, 1260 (D. Nev.

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2008) (Defendant actually connected to a covert FBI computer in San Jose, California. The FBI computer captured the Internet Protocol (IP) address).

More importantly, the Oregon District Court has monitored the accuracy of Plaintiff's litigation and stated. "Based on Plaintiffs' successful identification of defendants in the vast majority of the cases it has filed in 2014, the court finds it likely that the requested discovery will uncover the identity of the defendant in this case as well." Defendant's allegations are simply not supported by the current views of the courts. Finally, in this case Plaintiff's investigation has uncovered the Defendant, through his home business, is distributing equipment that is designed to facilitate infringing activity using the Bit Torrent software and loading the machines with Plaintiff's and others copyrighted works prior to distribution. The 411 Captures, 2472 X-Ref Data, and the nature of the Defendant business support the accuracy of Plaintiff's investigation.

### **3. PLAINTIFF HAS IDENTIFIED THE PROPER DEFENDANT**

Defendant has taken a statement from Plaintiff's Motion for Early Discovery to support the allegation that Plaintiff does not know the identity of the defendant. This statement was early in this action and in support of a request to subpoena the ISP for the identity of the subscriber. At that time, Plaintiff had no idea who the Defendant was. However, once the ISP identified Underwood and he was investigated, Plaintiff believes it has correctly identified the proper defendant. Plaintiff's identification is supported by the tracked activities of Underwood, his Media Buddy business, the product it sells, the 411 Captures and 2472 X-Refs, the reinstatement of Media Buddy P.C. LLC after notice of this lawsuit, the statements of Underwood online and through his counsel, and 2 subsequent Offer of Judgments. Exhibits 8, 9, Defendants Offers of Judgments, April 5, 2016. While not known at the initial filing, the Defendant has now been correctly identified in this matter.

**4. RYAN UNDERWOOD’S DECLARATION OMITTED MEDIA BUDDY P.C. LLC**

Defendant has provided a sworn statement to the Court. However, Defendant has failed to include any information regarding Media Buddy, the “side business” run from his home. This omission clearly calls into question the statements and claims made by the Defendant. Plaintiff believes the Defendant was not only producing and selling devices designed to illegally download and then store pirate content, but was personally pirating content, including plaintiff’s motion picture, for the purpose of pre-loading his machines for customers, selling his media machines with countless movies, games and other copyrighted materials. Moreover, on April 5, 2016, counsel for the Defendant and Media Buddy, submitted 2 Offers of Judgment which would support knowledge of the infringing activity performed by Defendant in his “side business.” Defendant intentionally omitted this information in hopes the Court would not consider it in evaluating the reasonable possibility of Defendant recovering a judgment.

**5. DALLAS BUYERS CLUB LLC IS THE PROPER PARTY TO BRING THIS SUIT**

Underwood’s aspersions aside, DBC is the proper party to bring suit in this matter, as well as in the over 300 alleged cases referred to by the Defendant in his motion. Included as Exhibit 1 is the copyright certificate and Declaration of James S. Davis, submitted concurrently herewith. Mr. Davis affirms under oath that Dallas Buyers Club, LLC is his client and the proper party to bring suit in this matter. Decl. ¶ 3. As the Northern District recognized, a declaration is competent evidence in this context. See *AF Holdings LLC v. Navasca*, 2013 WL 450383, at\*3 (N.D. Cal Feb. 5, 2013) as cited by Defendant.

The copyright certificate alone is evidence of a parties’ right to enforce its right. The declaration is to confirm Plaintiff’s rights have been verified. 17 U.S.C. § 410(c), (“In any judicial proceedings the certificate of a registration ... shall constitute prima facie evidence of



the validity of the copyright and of the facts stated in the certificate.”) Indeed, were any other party named as plaintiff, Underwood would likely be before the court with a motion to dismiss as only DBC has standing to bring this claim. *Righthaven LLC v. Hoehn*, 716 F.3d 1166, 1171 (9th Cir., 2013).

Allegations from a dispute between parties not present in this action do not bear on the fundamental truth that DBC, as the registered copyright holder, is the proper plaintiff to bring this claim.

### **III. DEFENDANT HAS MADE NO SHOWING A BOND IS NECESSARY**

The Defendant must put forth concrete evidence, not speculation, that there is a legitimate need for the Court to require a bond. The Defendant has provided no evidence that there is a legitimate need for a bond. The Defendant appears to be making up reasons to require a bond such as speculative collection costs. DBC has filed over 300 lawsuits and no other court has required a bond. In the hundreds of law suits filed by DBC, there is not one instance where a defendant has had to pursue DBC for payment of costs and fees. Defendant states they want “*avoid becoming involved in a race for assets, or becoming a claimant in an ultimate bankruptcy action.*” Defendant has not provided a single piece of evidence that DBC is in any financial trouble. *Dallas Buyers Club* is a successful and noted motion picture and continues to be active in commerce both domestically and internationally. In fact, the dispute the Defendant continues to reference is not regarding any ownership rights but over the division of the revenue stream from the motion picture.

Defendant also, again, alleges frivolous claims and Plaintiff attempting to compel a settlement, which are clearly factually false. Courts have declined to find that a party is “automatically the villain simply because it brings infringement allegations against multiple

defendants." *Ipvx Patent Holdings, Inc. v. Voxernet, LLC* 5:13-cv-01708 HRL (N.D. Cal., 2014), (Denying defendant's motion to require an undertaking) citing, *Digitech Image Techs., LLC v. Newegg, Inc.*, No. 8:12-cv-01688-ODW (MRWx), 2013 WL 5604283 at \*5 (C.D. Cal., Oct. 11, 2013)). Moreover, Plaintiff has provided many examples of cases and the actual correspondence between counsel in this matter that does not support this proposition. Exhibit 7.

#### IV. **POTENTIAL FOR ABUSE BY DEFENDANT**

The Ninth Circuit has been very clear about bond requirements such as those of Section 1030 and the issues they can cause. This concern is rooted in the fact that courts must take care "not to deprive a plaintiff of access to the federal courts." Plaintiff has filed over 300 cases in the Federal Courts. The Maverik Monitor tool is observing and documenting **over 200 infringements a day** of the movie *Dallas Buyers Club*, in the United States. While DBC cannot pursue them all, at \$50,000 per case, this would be an additional burden of \$10 million per day to police the defendant and those similar to the defendant who are downloading and distributing Plaintiff's motion picture.

This is not the first Court to hear the false cries of defendant's that oppose copyright enforcement. In the District of Oregon defendants in mass opposed such actions making many of the same claims made here. And as then Chief Judge Aiken subsequently noted:

The court has addressed these concerns by requiring plaintiff to file separate cases against each alleged violator. This requirement adds hundreds of thousands of dollars in filing fees and substantially increases plaintiff's incentive to pursue only cases it intends to actually litigate. However, defendant in this case views the manner in which plaintiffs have pursued these cases as much more nefarious.

*Voltage Pictures and TCYK v. Haig Revitch* 6:14-cv-00301-AA, ECF 46 (D. OR. Jan 23, 2015)

What became abundantly clear was the BitTorrent Defense Bar would always complain.

A settlement demand that is too high would be unfair extortion, one that is too low would be  
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exploiting the costs of litigation and extracting mere nuisance value. A plaintiff that dismisses a case is accused of running away from a fight and refusing to litigate, and one that responds to a motion is leveraging litigation costs and imposing an unfair burden on a defendant driving up costs. As a result, after hundreds of cases, many of them by DBC, the District of Oregon saw through the hype and instituted Standing Orders to govern these types of cases and cautioned defendants and some defense counsel that, “contrary to information available through the Internet” these cases are real, and plaintiff’s claims are legitimate. Exhibit 10, D. Or. Standing Order 2016-7; See also Exhibit 11, D. Or. Standing Order 2016-8, granting initial discovery automatically and an initial FRCP 45 deposition of any identified subscriber.

Yet still, even in this case, Underwood claims “Plaintiff does not actually intend to secure a judgment against the actual infringers in these matters, but instead seeks to leverage the cost of federal litigation to compel settlement with whomever it decides to sue.” But as per the clear correspondence between counsel this is simply not true. Exhibit 7. By even filing this opposition DBC’s disproves Underwood’s claim.

### III. CONCLUSION

“While it is neither unjust nor unreasonable to expect a suitor to put his money where his mouth is, toll-booths cannot be placed across the courthouse doors in a haphazard fashion.” *Simulnet*, 37 F.3 at 576 (quoting *Aggarwal v. Ponce Sch. of Medicine*, 745 F.2d 723, 727-28 (1st Cir. 1984)). DBC in this case is putting his money where his mouth is by paying to file individual suit against individuals.

Requiring an additional \$50,000 bond will do nothing to address the well-known problem of piracy and will simply lock DBC and similar situated plaintiffs out of the courthouse and deny them the right to enforce their copyrights.

For the reasons set forth Underwood's request should be denied.

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