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10 UNITED STATES DISTRICT COURT
DISTRICT OF OREGON AT PORTLAND

11 Atlantic Recording Corporation, a) No. CV 05-933 AS
12 Delaware corporation; Priority Records,)
13 LLC, a California limited liability) Defendant’s Answer, Affirmative
14 company; Capitol Records, Inc., a) Defenses and Counterclaims
Delaware corporation; UMG Recordings,)
15 Inc., a Delaware corporation; and BMG)
16 Music, a New York general partnership,)
Plaintiffs,) **AND DEMAND**
17 v.) **FOR JURY TRIAL**
18 Tanya Andersen,)
19 Defendant.)

20 **I. ANSWER**

21 1. Answering paragraphs 1-12 and 14 of the Complaint, Ms. Andersen admits that
22 she is a resident of Oregon and that jurisdiction and venue are proper. She specifically denies
23 she downloaded or distributed any music or that any acts of infringement occurred. Ms.
24 Andersen has no ability to determine the accuracy of plaintiffs’ claimed corporate forms,
25 principle locations, interest in copyrighted materials and publication of notices of copyright,
26

1 and on that basis denies these allegations.

2 2. Ms. Andersen denies the allegations contained in paragraphs 13 and 15-17 and
3 the remainder of the allegations of plaintiffs' complaint.
4

5 **II. AFFIRMATIVE DEFENSES**

6 Ms. Andersen hereby asserts the following Affirmative Defenses in this case:
7

- 8 1. Plaintiffs are not entitled to equitable relief under the doctrine of unclean hands.
- 9 2. Some or all of plaintiffs' claims are barred by the statutes of limitations.
- 10 3. Plaintiffs have failed to comply with filing requirements.
- 11 4. Plaintiffs have failed to state a claim upon which relief can be granted.
- 12 5. Plaintiffs have failed to join necessary and indispensable parties.
- 13 6. The action is barred by the doctrine of laches.
- 14 7. Plaintiffs' claims are not supported by fact or warranted by law.
15
16

17 **III. RESERVATION**

18 Ms. Andersen reserves the right to assert third party claims should discovery so indicate.
19
20

21 **IV. COUNTERCLAIMS**

22 **Factual Background**

23 **A. The Record Companies' "John Doe" Lawsuits**

24 1. For a number of years, a group of large, multinational, multi-billion dollar
25 record companies, including these plaintiffs, have been abusing the federal court judicial
26

1 system for the purpose of waging a public relations and public threat campaign targeting digital
2 file sharing activities. As part of this campaign, these record companies retained MediaSentry
3 to invade private home computers and collect personal information. Based on private
4 information allegedly extracted from these personal home computers, the record companies
5 have reportedly filed lawsuits against more than 13,500 anonymous “John Does.”
6

7 2. The anonymous “John Doe” lawsuits are filed for the sole purpose of
8 information farming and specifically to harvest personal internet protocol addresses from
9 internet service providers.

10 3. After an individual’s personal information is harvested, it is given to the record
11 companies’ representatives and the anonymous “John Doe” information farming suits are then
12 typically dismissed.
13

14 4. The record companies provide the personal information to Settlement Support
15 Center, which engages in prohibited and deceptive debt collection activities and other illegal
16 conduct to extract money from the people allegedly identified from the secret lawsuits. Most
17 of the people subjected to these secret suits do not learn that they have been “sued” until
18 demand is made for payment by the record companies’ lawyers or Settlement Support Center.
19

20 **B. Tanya Andersen has Never Downloaded Music**

21 5. Tanya Andersen is a 42-year-old single mother of an eight-year-old daughter
22 living in Tualatin, Oregon. Ms. Andersen is disabled and has a limited income from Social
23 Security.

24 6. Ms. Andersen has never downloaded or distributed music online. She has not
25 infringed on any of plaintiffs’ alleged copyrighted interest.
26

1 **C. Tanya Andersen was Secretly Sued**

2 7. Ms. Andersen has, however, been the victim of the record companies’ public
3 threat campaign. The threats started when the record companies falsely claimed that Ms.
4 Andersen had been an “unnamed” defendant who was being sued in federal court in the District
5 of Columbia. She was never named in that lawsuit and never received service of a summons
6 and complaint.
7

8 8. Neither did Ms. Andersen receive any timely notice that the suit even existed.
9 That anonymous suit was filed in mid-2004. Ms. Andersen first learned that she was being
10 “sued” when she received a letter dated February 2, 2005, from the Los Angeles, California,
11 law firm Mitchell Silverberg & Knupp, LLP. The LA firm falsely claimed that Ms. Andersen
12 had downloaded music, infringed undisclosed copyrights and owed hundreds of thousands of
13 dollars. Ms. Andersen was understandably shocked, fearful, and upset.
14

15 **D. Record Companies Demand that Tanya Andersen Pay them Thousands of**
16 **Dollars**

17 9. After receiving the February 2, 2005 letter, Ms. Andersen contacted the record
18 companies’ “representative,” which turned out to be Settlement Support Center, LLC. This
19 company was formed by the record companies for the sole purpose of coercing payments from
20 people who had been identified as targets in the anonymous information farming suits.
21 Settlement Support Center is a Washington State phone solicitation company which engages in
22 debt collection activities across the country.
23

24 10. When Ms. Andersen contacted Settlement Support Center, she was advised that
25 her personal home computer had been secretly entered by the record companies’ agents,
26 MediaSentry.

1 11. Settlement Support Center also falsely claimed that Ms. Andersen had “been
2 viewed” by MediaSentry downloading “gangster rap” music at 4:24 a.m. Settlement Support
3 Center also falsely claimed that Ms. Andersen had used the login name
4 “gotenkito@kazaa.com.” Ms. Andersen does not like “gangster rap,” does not recognize the
5 name “gotenkito,” is not awake at 4:24 a.m. and has never downloaded music.
6

7 12. Settlement Support Center threatened that if Ms. Andersen did not immediately
8 pay them, the record companies would bring an expensive and disruptive federal lawsuit using
9 her actual name and they would get a judgment for hundreds of thousands of dollars.

10 **E. The Record Companies Refused to Investigate the False Claim Of Debt**

11 13. Ms. Andersen explained to Settlement Support Center that she had never
12 downloaded music, she had no interest in “gangster rap,” and that she had no idea who
13 “gotenkito” was.
14

15 14. Ms. Andersen wrote Settlement Support Center and even asked it to inspect her
16 computer to prove that the claims made against her were false.

17 15. An employee of Settlement Support Center admitted to Ms. Andersen that he
18 believed that she had not downloaded any music. He explained, however, that Settlement
19 Support Center and the record companies would not quit their debt collection activities because
20 to do so would encourage other people to defend themselves against the record companies’
21 claims.
22

23 16. Instead of investigating, the record company plaintiffs filed suit this against Ms.
24 Andersen.
25

26 **F. The Record Companies have no Proof of Infringement.**

 17. Despite making false representations to Ms. Andersen that they had evidence of

1 infringement and evidence of Ms. Andersen's identity, plaintiffs knew that they had no factual
2 support for their claims.

3 18. No downloading or distribution activity was ever actually observed. None ever
4 occurred. Regardless, the record companies actively continued their coercive and deceptive
5 debt collection actions against her. Ms. Andersen was falsely, recklessly, shamefully, and
6 publicly accused of illegal activities in which she was never involved.
7

8 **Count 1**

9 **Electronic Trespass**

10 19. Defendant realleges and incorporates herein by reference each of the allegations
11 set forth above.

12 20. Entering a person's personal computer without their authorization to snoop
13 around, steal information, or remove files is a violation of the common law prohibition against
14 trespass to chattels.
15

16 21. The record company plaintiffs employed MediaSentry as their agent to break
17 into Ms. Andersen's personal computer (and those of tens of thousands of other people) to
18 secretly spy on and steal information or remove files. MediaSentry did not have Ms.
19 Andersen's permission to inspect, copy, or remove private computer files. If MediaSentry
20 accessed her private computer, it did so illegally and secretly. In fact, Ms. Andersen was
21 unaware that the trespass occurred until well after she was anonymously sued.
22

23 22. According to the record companies, the agent, Settlement Support Center used
24 the stolen private information allegedly removed from her home computer in their attempt to
25 threaten and coerce Ms. Anderson into paying thousands of dollars.
26

23. The record companies' conduct resulted in significant damages, including harm

1 to Ms. Andersen's health, in amounts which will to be proven at trial.

2 **Count 2**

3 **Computer Fraud and Abuse Act**

4 24. Defendant realleges and incorporates herein by reference each of the allegations
5 set forth above.

6
7 25. Under the provisions of the Computer Fraud and Abuse Act (18 U.S.C. § 1030)
8 it is illegal to break into another person's private computer to spy, steal or remove private
9 information, damage property, or cause other harm.

10 26. Ms. Andersen regularly used her personal computer to communicate with
11 friends and family across the country and for interstate e-commerce. Ms. Andersen had
12 password protection and security in place to protect her computer and personal files from
13 access by others.

14
15 27. The record company plaintiffs employed MediaSentry as their agent to bypass
16 Ms. Andersen's computer security systems and break into her personal computer to secretly
17 spy and steal or remove private information. MediaSentry did not have her permission to
18 inspect, copy, or remove her private computer files. It gained access secretly and illegally.

19
20 28. According to the record companies' agent, Settlement Support Center, used this
21 stolen private information in their attempt to threaten and coerce Ms. Andersen into paying
22 thousands of dollars.

23 29. The record companies' conduct resulted in direct and consequential damages
24 and harm to Ms. Andersen in excess of \$5,000.

25 ///

26 ///

1 **Count 3**

2 **Invasion of Privacy**

3 30. Defendant realleges and incorporates herein by reference each of the allegations
4 set forth above.

5 31. According to the record companies, Ms. Andersen's personal computer was
6 invaded by MediaSentry after she was identified with a nine digit code (an Internet Protocol
7 Address ("IPA")) obtained from the anonymous information farming lawsuits. MediaSentry
8 did not have permission to inspect Ms. Andersen's private computer files. It gained access
9 only by illegal acts of subterfuge.
10

11 32. The record companies' agent has falsely represented that information obtained
12 in this invasive and secret manner is proof of Ms. Andersen's alleged downloading. Ms.
13 Andersen never downloaded music but has been subjected to public derision and
14 embarrassment associated with plaintiffs' claims and public relations campaign.
15

16 33. The record companies have used this derogatory, harmful information to
17 recklessly and shamefully publicly accuse Ms. Andersen of illegal activities without even
18 taking the opportunity offered by Ms. Andersen to inspect her computer.
19

20 34. The record companies' conduct resulted in damages including harm to her
21 health and property in an amount to be specifically proven at trial.

22 **Count 4**

23 **Abuse of Legal Process**

24 35. Defendant realleges and incorporates herein by reference each of the allegations
25 set forth above.

26 36. Despite knowing that infringing activity was not observed, the record companies

1 used the threat of expensive and intrusive litigation as a tool to coerce Ms. Andersen to pay
2 many thousands of dollars for an obligation she did not owe. The record companies pursued
3 their collection activities and this lawsuit for the primary purpose of threatening Ms. Andersen
4 (and many others) as part of its public relations campaign targeting electronic file sharing.

5
6 37. The record companies have falsely represented and pleaded that information
7 obtained in this invasive and secret manner is proof of Ms. Andersen's alleged downloading
8 and distribution of copyrighted audio recordings. Ms. Andersen never downloaded music but
9 has been subjected to public derision and embarrassment.

10 38. The record companies' conduct resulted in damages and harm to Ms. Andersen
11 and her property in an amount to be specifically proven at trial.

12 **Count 5**

13 **Fraud and Negligent Misrepresentation**

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15 39. Defendant realleges and incorporates herein by reference each of the allegations
16 set forth above.

17 40. The record companies knowingly represented materially false information to
18 Ms. Andersen in an attempt to extort money from her.

19
20 41. For example, between February and March 2005, the record companies, through
21 their collection agent Settlement Support Center, falsely claimed that they had proof that Ms.
22 Andersen's IPA had been "viewed" downloading and distributing over 1,000 audio files for
23 which it sought to collect hundreds of thousands of dollars. This statement was materially
24 false. Ms. Andersen never downloaded or distributed any audio files nor did the record
25 companies or any of their agents ever observe any such activity associated with her personal
26 home computer.

1 states, including Washington and Oregon.

2 57. Settlement Support Center acting as the record companies' agent made false and
3 deceptive statements to Ms. Andersen in an attempt to mislead, threaten, and coerce her into
4 paying thousands of dollars.

5 58. Settlement Support Center acting as the record companies' agent has made
6 similar false and deceptive statements to many other residents of Washington and Oregon, and
7 across the country. The public interest has been and continues to be directly impacted by
8 plaintiffs' deceptive practices.

9 59. The record companies' conduct resulted in damages and harm to Ms. Andersen
10 and her property in an amount to be specifically proven at trial.

11
12 **Count 8**

13
14 **Oregon Racketeer Influenced and Corrupt Organization Act**

15 60. Defendant realleges and incorporates herein by reference each of the allegations
16 set forth above.

17 61. The Oregon Racketeer Influenced and Corrupt Organization Act prohibits
18 companies from engaging in organized racketeering or criminal activities. ORS 166.715 *et seq.*

19 62. As fully set forth above, the record companies hired MediaSentry to break into
20 private computers to spy, view files, remove information, and copy images. The record
21 companies received and transmitted the information and images to Settlement Support Center.
22 As the record companies' agent, Settlement Support Center then falsely claimed that the stolen
23 information and images showed Ms. Andersen's downloading and distributing over 1,000
24 audio files. The record companies falsely claimed that Ms. Anderson owed hundreds of
25 thousands of dollars in an attempt to coerce and extort payment from her.
26

- 1 g. For post-judgment interest on the entire judgment until paid in full; and
2 h. For such other and further relief as the Court may deem just and equitable.
3

4 **DEMAND FOR JURY TRIAL**
5

6
7 Respectfully submitted this 30th day of September, 2005.

8 Lybeck Murphy, LLP

9 By: /s/ Lory R. Lybeck
10 Lory R. Lybeck (OSB #83276)
11 Attorneys for plaintiffs
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1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF OREGON**

3 AFFIDAVIT OF SERVICE

4 State of Washington)
5) ss.
6 County of King)

7 I hereby certify and declare that on the 30th day of September, 2005, I electronically filed the
8 foregoing Defendant's Answer, Affirmative Defenses and Counterclaims with the Clerk of the Court
9 using the CM/ECF system, which will send notification of such filing to the following:

10 **Atty/Plaintiffs:**

11 Kenneth R. Davis, II
12 William T. Patton
13 Lane Powell PC
14 601 SW Second Avenue, Suite 2100
15 Portland, OR 97204
16 503-778-2100/phone
17 503-778-2200/fax
18 Email: davisk@lanepowell.com /Davis
19 pattonw@lanepowell.com /Powell

20 All parties are registered as CM/ECF participants for electronic notification.

21 DATED at Mercer Island, Washington, this 30th day of September, 2005.

22 _____/s/ Lory R. Lybeck_____
23 Lory R. Lybeck (OSB #83276)
24 Attorneys for defendant
25 Lybeck Murphy, LLP
26 7525 SE 24th Street, Ste. 500
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27 SUBSCRIBED AND SWORN TO before me this 30th day of September, 2005.

28 _____/s/ R. L. Jardine_____
29 Print Name: R. L. Jardine
30 Notary Public in and for the State of
31 Washington, residing at Monroe.
32 My commission expires: 5/30/07