

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

CAPITOL RECORDS, INC., a Delaware corporation; SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership; ARISTA RECORDS LLC, a Delaware limited liability company; INTERSCOPE RECORDS, a California general partnership; WARNER BROS. RECORDS INC., a Delaware corporation; and UMG RECORDINGS, INC., a Delaware corporation,

Plaintiffs,

vs.

Jammie Thomas,

Defendant.

Case No.: 06-cv-1497-MJD-RLE

JUDGE: Michael J. Davis

MAGISTRATE: Raymond L. Erickson

**PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY**

Plaintiffs respectfully submit the attached decision in *Atlantic Recording Corp. v. Anderson*, Case No. H-06-3578 (S.D. Tex.), as supplemental authority in support of Plaintiffs' position that the jury's award of statutory damages in this case is constitutional and that Defendant's request for a new trial or remittitur should be denied. In *Anderson*, the Court rejected the defendant's claim that the plaintiff record companies' actual damages were ninety-nine cents per sound recording and held as follows:

Defendant asserts that Plaintiffs' actual damages per infringed Copyrighted Recording are approximately ninety-nine cents, because the songs can be readily purchased online for that price. Yet, the true cost of Defendant's harms in distributing Plaintiffs' Copyrighted Recordings for download by other users on KaZaA is incalculable. That is, there is no way to ascertain the precise amount of damages caused by Defendant's actions in not only improperly downloading Plaintiffs' Copyrighted Recordings himself but also subsequently distributing some or all of Plaintiffs' Copyrighted Recordings to a vast community of other persons on KaZaA. Clearly, under such circumstances, Plaintiffs' actual damages exceed ninety-nine cents per Copyrighted Recording.

Anderson, Case No. H-06-3578, slip op. at 16, attached as Exhibit A hereto.

Respectfully submitted this 14th day of March 2007.

	<p><u>s/ Leita Walker</u> Felicia J. Boyd (No. 186168) Leita Walker (No. 387095) FAEGRE & BENSON LLP 2200 Wells Fargo Center 90 South Seventh Street Minneapolis, Minnesota 55402-3901 Telephone: (612) 766-7000 Facsimile: (612) 766-1600</p> <p>Richard L. Gabriel (pro hac vice) Timothy M. Reynolds (pro hac vice) David A. Tonini (pro hac vice) Andrew B. Mohraz (pro hac vice) HOLME ROBERTS & OWEN LLP 1700 Lincoln, Suite 4100 Denver, Colorado 80203 Telephone: (303) 861-7000 Facsimile: (303) 866-0200</p> <p>ATTORNEYS FOR PLAINTIFFS</p>
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