1	Lory R. Lybeck Lybeck Murphy, LLP		
2	7525 SE 24 th Street, Ste. 500		
. 3	Mercer Island, WA 98040-2334 206-230-4255 /phone		
4	206-230-7791 /fax Lybeck – <u>lrl@lybeckmurphy.com</u>		
5	Lybeck – OSB #83276 Attorney for defendant		
	Thomas for defendant		
6			
7			
8 ,			
9			
10	UNITED STATES I DISTRICT OF OREG		
11	Atlantic Recording Corporation, a)	No. CV 05-933 AS	
12	Delaware corporation; Priority Records,) LLC, a California limited liability)	Defendant's Answer, Affirmative	
13	company; Capitol Records, Inc., a	Defenses and Counterclaims	
14	Delaware corporation; UMG Recordings, Inc., a Delaware corporation; and BMG Music, a New York general partnership,		
15	Plaintiffs,	AND DEMAND	
16	v. ,	FOR JURY TRIAL	
17	5		
18	Tanya Andersen,		
19	Defendant.)		
20	T AT	NCWED	
	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			
25	Andersen has no ability to determine the accuracy of plaintiffs' claimed corporate forms,		
26	principle locations, interest in copyrighted materials and publication of notices of copyright,		

Defendant's Answer, Affirmative Defenses and Counterclaims - 1 andersen\answer.cc.final

Lybeck Murphy 1
7525 SE 24th Street, Ste.
Mercer Island, WA 98040
206-230-4255 Fax 206-23

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 remaind	er of the allegations of plaintiffs' complaint.
4		
5		II. AFFIRMATIVE DEFENSES
6		
7	Ms.	Andersen hereby asserts the following Affirmative Defenses in this case:
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.
1	4.	Plaintiffs have failed to state a claim upon which relief can be granted.
12 13	5.	Plaintiffs have failed to join necessary and indispensable parties.
13	6.	The action is barred by the doctrine of laches.
15	7.	Plaintiffs' claims are not supported by fact or warranted by law.
16		
17	,	III. RESERVATION
8	Me An	dersen reserves the right to assert third party claims should discovery so indicate.
9	1915. All	delicen reserves the right to assert third party claims should discovery so indicate.
20		
21		IV. COUNTERCLAIMS
22		
23		Factual Background
24	Α.	The Record Companies' "John Doe" Lawsuits
25	1.	For a number of years, a group of large, multinational, multi-billion dollar
26	record comp	panies, including these plaintiffs, have been abusing the federal court judicial

Defendant's Answer, Affirmative Defenses and Counterclaims - 2 andersen `answer.cc.final

Lybeck♦Murphy LLP 7525 SE 24th Street, Stc. 500 Mercer Island, WA 98040-2334 206-230-4255 Fax 206-230-7791



1

2

3

4

5

6

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

- 2. The anonymous "John Doe" lawsuits are filed for the sole purpose of information farming and specifically to harvest personal internet protocol addresses from internet service providers.
- 3. After an individual's personal information is harvested, it is given to the record companies' representatives and the anonymous "John Doe" information farming suits are then typically dismissed.
- 4. The record companies provide the personal information to Settlement Support Center, which engages in prohibited and deceptive debt collection activities and other illegal conduct to extract money from the people allegedly identified from the secret lawsuits. Most of the people subjected to these secret suits do not learn that they have been "sued" until demand is made for payment by the record companies' lawyers or Settlement Support Center.

B. Tanya Andersen has Never Downloaded Music

- Tanya Andersen is a 42-year-old single mother of an eight-year-old daughter living in Tualatin, Oregon. Ms. Andersen is disabled and has a limited income from Social Security.
- 6. Ms. Andersen has never downloaded or distributed music online. She has not infringed on any of plaintiffs' alleged copyrighted interest.

Defendant's Answer, Affirmative Defenses and Counterclaims - 3 andersen\answer.cc.final

Lybeck ♠ Murphy LLP 7525 SE 24th Street, Ste. 500 Mercer Island, WA 98040-2334 206-230-4255 Fax 206-230-7791



C. Tanya Andersen was Secretly Sued

- 7. Ms. Andersen has, however, been the victim of the record companies' public threat campaign. The threats started when the record companies falsely claimed that Ms. Andersen had been an "unnamed" defendant who was being sued in federal court in the District of Columbia. She was never named in that lawsuit and never received service of a summons and complaint.
- 8. Neither did Ms. Andersen receive any timely notice that the suit even existed. That anonymous suit was filed in mid-2004. Ms. Andersen first learned that she was being "sued" when she received a letter dated February 2, 2005, from the Los Angeles, California, law firm Mitchell Silverberg & Knupp, LLP. The LA firm falsely claimed that Ms. Andersen had downloaded music, infringed undisclosed copyrights and owed hundreds of thousands of dollars. Ms. Andersen was understandably shocked, fearful, and upset.

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

- 9. After receiving the February 2, 2005 letter, Ms. Andersen contacted the record companies' "representative," which turned out to be Settlement Support Center, LLC. This company was formed by the record companies for the sole purpose of coercing payments from people who had been identified as targets in the anonymous information farming suits. Settlement Support Center is a Washington State phone solicitation company which engages in debt collection activities across the country.
- 10. When Ms. Andersen contacted Settlement Support Center, she was advised that her personal home computer had been secretly entered by the record companies' agents, MediaSentry.

Defendant's Answer, Affirmative Defenses and Counterclaims - 4 andersen\answer.cc.final

Lybeck◆Murphy LLP 7525 SE 24th Street, Ste. 500 Mercer Island, WA 98040-2334 206-230-4255 Fax 206-230-7791

Defendant's Answer, Affirmative Defenses and Counterclaims - 5 and ersen `lanswer, cc. final

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Lybeck◆Murphy LLP 7525 SE 24th Street, Stc. 500 Mercer Island, WA 98040-2334 206-230-4255 Fax 206-230-7791

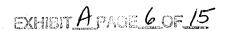


The record companies' conduct resulted in significant damages, including harm

Defendant's Answer, Affirmative Defenses and Counterclaims - 6 andersen\answer.cc.final

23.

Lybeck Murphy ILP 7525 SE 24th Street, Ste. 500 Mercer Island, WA 98040-2334 206-230-4255 Fax 206-230-7791



Defendant's Answer, Affirmative Defenses and Counterclaims - 7

andersen\answer.cc.final

Lybeck Murphy LLP

7525 SE 24th Street, Ste. 500

Mercer Island, WA 98040-2334 206-230-4255 Fax 206-230-7791

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 7	invaded by MediaSentry after she was identified with a nine digit code (an Internet Protoco	
8	Address ("IPA")) obtained from the anonymous information farming lawsuits. MediaSentry	
9	did not have permission to inspect Ms. Andersen's private computer files. It gained access	
10	only by illegal acts of subterfuge.	
11	32.	The record companies' agent has falsely represented that information obtained
12 13	in this invasive and secret manner is proof of Ms. Andersen's alleged downloading. M	
14	Andersen nev	ver downloaded music but has been subjected to public derision and
15	embarrassmen	t associated with plaintiffs' claims and public relations campaign.
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 oppo	ortunity offered by Ms. Andersen to inspect her computer.
19	34.	The record companies' conduct resulted in damages including harm to her
20	health and proj	perty in an amount to be specifically proven at trial.
21		Count 4
23		Abuse of Legal Process
24	35.	Defendant realleges and incorporates herein by reference each of the allegations
25 .		
26	set forth above	
	36.	Despite knowing that infringing activity was not observed, the record companies

Defendant's Answer, Affirmative Defenses and Counterclaims - 8

andersen\answer.cc.final

Lybeck◆Murphy LLP 7525 SE 24th Street, Stc. 500

Mercer Island, WA 98040-2334 206-230-4255 Fax 206-230-7791

Defendant's Answer, Affirmative Defenses and Counterclaims - 9 andersen\answer.cc.final

26

home computer.

Lybeck◆Murphy LLP 7525 SE 24th Street, Ste. 500 Mercer Island, WA 98040-2334 206-230-4255 Fax 206-230-7791



1	42.	The record companies intended that Ms. Andersen believe their false statements
2	and rely on	their omissions so that she would be frightened and coerced into paying them
3	thousands of dollars.	
4	43.	Ms. Andersen had no access to the information that the record companies falsely
5	claimed to have received from MediaSentry. Ms. Andersen had no way of knowing that the	
6 7	record companies were withholding and omitting information from her, on which they intended	
8	she rely.	
9	44.	The record companies had a duty to conduct a reasonable investigation into the
10	information tl	hat it was representing as true. The record companies breached that duty.
11	45.	The record companies' conduct resulted in damages and harm to her health and
12	property in an amount to be specifically proven at trial.	
13		Count 6
1.4		Count o
14		
15		Outrage
	46.	Outrage Defendant realleges and incorporates herein by reference each of the allegations
15 16 17	46.	Defendant realleges and incorporates herein by reference each of the allegations
15 16 17 18		Defendant realleges and incorporates herein by reference each of the allegations
15 16 17 18	set forth above	Defendant realleges and incorporates herein by reference each of the allegations we.
15 16 17 18 19 20	set forth above	Defendant realleges and incorporates herein by reference each of the allegations we. The record companies' outrageous conduct, including threats, intimidate, and
15 16 17 18	set forth above 47. coercion, was 48.	Defendant realleges and incorporates herein by reference each of the allegations we. The record companies' outrageous conduct, including threats, intimidate, and a intended to and actually caused Ms. Andersen extreme emotional distress.
15 16 17 18 19 20 21	set forth above 47. coercion, was 48.	Defendant realleges and incorporates herein by reference each of the allegations ve. The record companies' outrageous conduct, including threats, intimidate, and a intended to and actually caused Ms. Andersen extreme emotional distress. The record companies' conduct was without any reasonable basis and reckless
15 16 17 18 19 20 21 22	set forth above 47. coercion, was 48. in that it did 1	Defendant realleges and incorporates herein by reference each of the allegations we. The record companies' outrageous conduct, including threats, intimidate, and intended to and actually caused Ms. Andersen extreme emotional distress. The record companies' conduct was without any reasonable basis and reckless not investigate its claims.
15 16 17 18 19 20 21 22 23	set forth above 47. coercion, was 48. in that it did it 49. Ms. Anderset	Defendant realleges and incorporates herein by reference each of the allegations we. The record companies' outrageous conduct, including threats, intimidate, and intended to and actually caused Ms. Andersen extreme emotional distress. The record companies' conduct was without any reasonable basis and reckless not investigate its claims. Despite having never observed any downloading or distribution associated with

Defendant's Answer, Affirmative Defenses and Counterclaims - 10 andersen\answer.cc.final

Lybeck◆Murphy LLP 7525 SE 24th Street, Stc. 500 Mercer Island, WA 98040-2334 206-230-4255 Fax 206-230-7791



1	50.	The record companies pursued debt collection activities for the inappropriate
2	purpose of ille	egally threatening Ms. Andersen and many thousands of others. This tortious
3	abuse was me	otivated by and was a central part of a public relations campaign targeting
4	electronic file	sharing.
5	51.	An employee of Settlement Support Center admitted to Ms. Andersen that he
6 7	believed that s	the had not downloaded any music. He explained that Settlement Support Center
8	and the record	companies would not quit the debt collection activity against her because to do
9	so would enco	urage other people to defend themselves against the record companies' claims.
10	52.	The record companies were aware of Ms. Andersen's disabilities and her serious
11	health issues.	Settlement Support Center knew that its conduct would cause extreme distress in
12	Ms. Andersen. As a result of defendant's conduct, Ms. Andersen suffered severe physical and	
13	emotional distress and health problems.	
14		The record companies' conduct resulted in damages, including harm to Ms.
15	53.	•
16	Andersen's he	alth and property in an amount to be specifically proven at trial.
17		Count 7
18		Deceptive Business Practices
19 20	54.	Defendant realleges and incorporates herein by reference each of the allegations
21	set forth above.	
22	55.	Oregon's Unlawful Trade Practices Act prohibits those in trade or commerce
23	from engaging	g in unfair or deceptive practices in the course of business with consumers. ORS
24	646.605 et seq	
25	_	The record companies' agent, Settlement Support Center, is a company doing
26	56.	ashington which was established to engage in debt collection activities in many
	business in W	ashington which was established to engage in debt confection activities in himly

EXHIBIT A PAGE! OF 15

information and images showed Ms. Andersen's downloading and distributing over 1,000

audio files. The record companies falsely claimed that Ms. Anderson owed hundreds of

Defendant's Answer, Affirmative Defenses and Counterclaims - 12 andersen\answer.cc.final

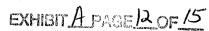
thousands of dollars in an attempt to coerce and extort payment from her.

24

25

26

Lybeck Murphy LLP
7525 SE 24th Street, Ste. 500
Mercer Island, WA 98040-2334
206-230-4255 Fax 206-230-7791



1	63. The record companies directed its agents to unlawfully break into private	
2	computers and engage in extreme acts of unlawful coercion, extortion, fraud, and other	
3	criminal conduct.	
4	64. The record companies and their agents stood to financially benefit from these	
5	1	
6	deceptive and unlawful acts. Proceeds from these activities are used to fund the operation of	
7.	the record companies' continued public threat campaigns.	
8	65. These unlawful activities were not isolated. The record companies have	
9	repeated these unlawful and deceptive actions with many other victims throughout the United	
10	States.	
11	66. The record companies' conduct resulted in damages, including harm to Ms.	
12	00. The record companies conduct resulted in damages, morading name to 1935.	
13	Andersen's health and property in an amount to be specifically proven at trial.	
14		
15	V. PRAYER FOR RELIEF	
16	WHEREFORE, the plaintiff prays for:	
17	a. Dismissal of the plaintiffs' claims with prejudice;	
18	b. An order that plaintiffs shall take no relief from their complaint herein;	
19	b. An order that planting shall take no rener from their complaint notein,	
20	c. All direct and consequential damages;	
21	d. Declaratory and Injunctive relief;	
22	e. Statutory and punitive damages awardable under ORS 646.605 et seq and ORS	
23	166.715 et seq;	
24	f. Attorneys' fees and costs awardable under ORS 646.605 et seq., ORS 166.715 et	
25	seq.,17 U.S.C. § 505;	
26	seq.,17 0.0.0. 8 300,	

1	g. For post-judgment interest on	the entire judgment until paid in full; and
2	h. For such other and further reli	ief as the Court may deem just and equitable.
3		
4	DW1.64.20	D HOD WINLEDIA
5	DEMAN	D FOR JURY TRIAL
6		
7	Respectfully submitted this 30 th day	y of September, 2005.
8		Lybeck Murphy, LLP
9		D //Y D'Y L L
10		By: <u>/s/ Lory R. Lybeck</u> Lory R. Lybeck (OSB #83276) Attorneys for plaintiffs
11		Attorneys for plaintiffs
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		·
22		
) 2		

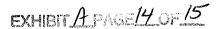
Defendant's Answer, Affirmative Defenses and Counterclaims - 14 andersen\answer.cc.final

24

25

26

Lybeck Murphy LLP 7525 SE 24th Street, Ste. 500 Mercer Island, WA 98040-2334 206-230-4255 Fax 206-230-7791



IN THE UNITED STATES DISTRICT COURT 1 FOR THE DISTRICT OF OREGON 2 AFFIDAVIT OF SERVICE 3 State of Washington 4) ss. County of King I hereby certify and declare that on the 30th day of September, 2005, I electronically filed the 6 foregoing Defendant's Answer, Affirmative Defenses and Counterclaims with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following: 8 Atty/Plaintiffs: Kenneth R. Davis, II 9 William T. Patton Lane Powell PC 10 601 SW Second Avenue, Suite 2100 Portland, OR 97204 11 503-778-2100/phone 12 503-778-2200/fax Email: davisk@lanepowell.com /Davis 13 pattonw@lanepowell.com /Powell 14 All parties are registered as CM/ECF participants for electronic notification. 15 DATED at Mercer Island, Washington, this 30th day of September, 2005. 16 /s/ Lory R. Lybeck 17 Lory R. Lybeck (OSB #83276) Attorneys for defendant 18 Lybeck Murphy, LLP 7525 SE 24th Street, Ste. 500 19 Mercer Island, WA 98040 20 (206) 230-4255 /phone (206) 230-7791 /fax 21 lrl@lybeckmurphy.com 22 SUBSCRIBED AND SWORN TO before me this 30th day of September, 2005. 23 /s/ R. L. Jardine 24 Print Name: R. L. Jardine Notary Public in and for the State of 25 Washington, residing at Monroe. My commission expires: 5/30/07 26

Defendant's Answer, Affirmative Defenses and Counterclaims - 15 andersen\answer.cc.final

Lybeck

Murphy ILP

7525 SE 24th Street, Ste. 500

Mercer Island, WA 98040-2334

206-230-4255 Fax 206-230-7791

