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8 UNITED STATES DISTRICT COURT
DISTRICT OF OREGON AT PORTLAND

9 TANYA ANDERSEN, Individually and as)
Representative of Others Similarly Situated)
10)
Plaintiff)
11)
v.)
12)
ATLANTIC RECORDING)
13 CORPORATION, a Delaware corporation;)
PRIORITY RECORDS, LLC, a California)
14 limited liability company; CAPITOL)
RECORDS, INC., a Delaware corporation;)
15 UMG RECORDINGS, INC., a Delaware)
corporation; and BMG MUSIC, a New)
16 York general partnership; RECORDING)
INDUSTRY ASSOCIATION OF)
17 AMERICA; SAFENET, INC., f/k/a)
18 MEDIA SENTRY, INC., a Delaware)
corporation; SETTLEMENT SUPPORT)
19 CENTER, LLC, a Washington limited)
liability company)
20 Defendants.)

No. CV 07-934 BR
PLAINTIFF’S STATUS REPORT
IN ANTICIPATION OF APRIL 21,
2008 STATUS CONFERENCE

21
22 **INTRODUCTION**

23 Pursuant to the Court’s Order dated March 31, 2008 (Doc. No. 53) and its Order dated
24 April 1, 2008 (Doc. No. 54), Plaintiff Tanya Andersen has filed her Third Amended Complaint.
25 Ms. Andersen’s Third Amended Complaint fully complies with FRCP 8 and 9, this Court’s
26 Orders, and its direction to the parties at the hearing which occurred on February 13, 2008. At

1 the Court's request, the allegations of the complaint have been streamlined and stated even
2 more simply and directly. The allegations also focus on Ms. Andersen's direct claims, leaving
3 additional claims on behalf of a broader class to be further stated and alleged after class
4 certification. Further delay or unnecessary process is unwarranted in view of the Court's prior
5 Orders and instructions. Ms. Andersen urges the Court to direct the parties to proceed with
6 scheduling long delayed discovery immediately.
7

8 **BACKGROUND**

9 Ms. Andersen filed her First Amended Complaint making claims against each of these
10 Defendants on August 15, 2007. On February 13, 2008 a hearing was held to consider
11 Defendants' FRCP 12(b)(6) motion filed on September 12, 2007. On March 14, 2008, plaintiff
12 filed her Second Amended Complaint (Doc. No. 50). In response, Defendants filed their
13 motion (Doc. Nos. 51, 52), nominally requesting a status conference and/or requesting
14 additional time to respond to the pleading. The Court directed that Ms. Andersen revise her
15 complaint to more specifically comply with this Court's February 19, 2008 Order and direction
16 at the February 13, 2008 hearing. She has done so.
17

18 Defendants' proposal that Ms. Andersen now be additionally required to "proffer"
19 evidence in addition to her now well pleaded Third Amended Complaint is without legal
20 authority, contrary to the court's February 19, 2008 Order prohibiting additional pleading
21 motions (Doc. No. 48), and is an obvious attempt to further avoid discovery. Discovery,
22 including interrogatories, requests for production, requests for admission, and the scheduling of
23 depositions, should be allowed to immediately commence.
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1 described conduct allows and fully comply with Rule 8 pleading standards.

2 Ms. Andersen's Third Amended Complaint also appropriately states a fraud claim and
3 RICO claims consistent with FRCP 9. Although Ms. Andersen never believed that she had
4 personally engaged in copyright infringement, she relied, to her detriment, on Defendants'
5 misrepresentations that they had actually invaded her computer and/or otherwise obtained
6 evidence from her personal computer that exposed her to legal liability and financial ruin. She
7 had little knowledge of computers and even less knowledge about file sharing, digital spoofing,
8 or Defendants' flawed and illegal investigations and their larger campaign of intimidation.
9 These claims are clearly and appropriately pleaded and are consistent with the holding of
10 Oregon Public Employees' Retirement Bd. ex rel. Oregon Public Employees' Retirement Fund
11 v. Simat, Helliesen & Eichner, 191 Or.App. 408, 427-428, 83 P.3d 350, 361-362 (Or. App.
12 2004)(considering for reliance purposes whether or not a party is "a large and sophisticated
13 organization that has at its disposal a small army of attorneys, accountants, and hired
14 experts...") Ms. Andersen's reliance on Defendants' fraudulent statements was reasonable and
15 understandable in light of Defendants' threats, adamant insistence, vastly superior resources,
16 sophistication and apparent means of support for their false claims.
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19 Similarly, Ms. Andersen has appropriately pleaded all elements of a claim for violation
20 of Oregon's Unlawful Trade Practices Act. She has identified the particular statutory provision
21 Defendants violated and the provision giving rise to her civil action. Again, any evidentiary
22 contention that Ms. Andersen was not in fact harmed by Defendants' deceptive practices as
23 alleged is untrue and also not appropriately considered at the pleadings stage.
24

25 Despite the Court's correct analysis and ruling that a special relationship is not required
26 to state a claim for intentional infliction of emotional distress (IIED), Ms. Andersen has deleted

1 this claim pending additional discovery. The facts alleged in the complaint demonstrate certain
2 conduct of Defendants which exceeds all bounds of social decency. Despite knowing of Ms.
3 Andersen's innocence, and the physical and psychological harm she was suffering as a result of
4 their persecution, Defendants continued to engage in defamation, threats of financial ruin,
5 humiliation, harassment, and other abuses. Ms. Andersen will seek to reallege a claim for IIED
6 once evidence revealing the full extent of Defendants' knowingly malicious and outrageous
7 conduct is disclosed in discovery.
8

9 **DISCOVERY PLAN**

10 The Court clearly instructed the parties to meaningfully participate in creating a joint
11 discovery plan. Ms. Andersen's counsel has attempted to discuss scheduling without success.
12 Defendants should be directed to answer the complaint and immediately participate in a
13 discovery conference with counsel. Continued attack on the pleadings through a vague
14 "proffer" of evidence process not cognizable under the Federal Rules of Civil Procedure will
15 accomplish nothing more than continued delay.
16

17 Ms. Andersen is entitled to allege all claims that are necessary and appropriate to obtain
18 full relief and compensation for the harm that Defendants have caused her to suffer. At this
19 stage, her well pleaded claims are necessarily deemed to be true and all inferences reasonable to
20 be drawn from them are to be granted in her favor. She is entitled to propound written
21 discovery and conduct depositions despite Defendants' desire for continued secrecy and delay.
22 She should not be subjected to extraordinary and unusual procedures (i.e. evidentiary "proffer")
23 or inordinate delay simply because Defendants are well-funded entities that do not wish to
24 answer her claims or to engage in appropriate discovery.
25
26

Weeks ago Ms. Andersen's counsel suggested to Defendants' counsel a very ordinary

1 plan for discovery consisting of written interrogatories and document production requests
2 followed by deposition of certain persons scheduled at mutually convenient times. Defendants
3 declined to discuss even setting aside time or future dates for discovery depositions. Instead,
4 counsel suggested that no discovery would be necessary because each of Ms. Andersen's claims
5 could be dismissed, even before any discovery is allowed. To support this arrogant proposal,
6 Defendants suggested that Ms. Andersen be required to provide evidentiary "proffers" to
7 support all aspects of her well pleaded claims. Such a process is without legal support, contrary
8 to the purpose of civil discovery, and an obvious effort to avoid this Court's direction to move
9 forward with discovery without additional delay.
10

11 As this court has directed, Ms. Andersen is prepared to conduct discovery initially only
12 on claims personal to her, deferring class action issues for later disposition. She is open to all
13 reasonable discussion leading to efficient completion of necessary discovery consistent with the
14 Court's direction.¹ She rejects Defendants' suggestion and their intent to unduly limit her rights
15 to discovery. Ms. Andersen is entitled to obtain discovery demonstrating Defendants'
16 conspiracy to develop and conduct a multiparty national enterprise for the purpose of harassing
17 and intimidating her, in part by pursuing sham litigations against her and others. Defendants'
18 knowledge of the illegality and technological flaws inherent in the scheme they devised and
19 employed is the subject of perfectly appropriate discovery.
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22 On this point, Ms. Anderson quotes counsel for the RIAA and Record Company
23 Defendants in his March 26, 2008 letter to the Honorable Robert Levy, U.S. Magistrate in an
24 RIAA case now pending in the Eastern District of New York. Mr. Gabriel writes:
25

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¹ However, she is also aware that the Court instructed the parties that any discovery plan would have to recognize that class claims are alleged in this action and would have to be addressed at some stage. See Doc. No.49 at 66:21

1 “Fed. R. Civ. P. 26(b)(1) provides that a party ‘may obtain discovery regarding
2 any matter, not privileged, that is relevant to the claim or defense of any
3 party....’ ‘Relevant information need not be admissible at the trial if the
4 discovery appears reasonably calculated to lead to the discovery of admissible
5 evidence.’ The scope of discovery under Fed. R. Civ. P. 26(b) is broad,
6 encompassing any matter that bears on, or that reasonably could lead to, other
7 matters that could bear on any issue that is or may be in the case. Accordingly,
8 the scope of discovery should be liberally construed.”

9 (citations omitted and emphasis added).

10 Mr. Gabriel’s characterization of the scope of appropriate discovery is correct. What is
11 good for the goose is good for the gander. Any discovery “plan” or procedure which prohibits
12 Ms. Andersen from obtaining the discovery she seeks regarding Defendants’ conspiracy and
13 their knowledge is contrary to the broad scope of appropriate discovery. Defendants’ discovery
14 proposal represents one more poorly disguised effort to deny Ms. Andersen her right to fairly
15 participate in the federal judicial process.

16 Ms. Andersen respectfully requests that this Court accept the filing of her Third
17 Amended Complaint and require Defendants to file their Answers to it. She also requests that
18 this Court reject the baseless proposal that she engage in additional unnecessary process by
19 “proffer” of evidence as is suggested by Defendants. Ms. Andersen proposes that the parties
20 immediately propound written discovery. She further proposes that the parties immediately
21 begin scheduling depositions of fact witnesses at mutually convenient times, to begin no later
22 than 60 days after written discovery is propounded.

23 Respectfully submitted this 17th day of April, 2008.

24 Lybeck Murphy, LLP

25 By: /s/ Lory R. Lybeck
26 Lory R. Lybeck (OSB #83276)
Attorneys for plaintiff

to 67:4.

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

I hereby certify that on the 17th day of April, 2008, I electronically filed the foregoing PLAINTIFF'S STATUS REPORT IN ANTICIPATION OF APRIL 21, 2008 STATUS CONFERENCE with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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

DATED at Mercer Island, Washington, this 17th day of April, 2008.

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