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9
10 UNITED STATES DISTRICT COURT
11 DISTRICT OF OREGON AT PORTLAND

12 TANYA ANDERSEN, Individually and as)
13 Representative of Others Similarly)
14 Situated,)

15 Plaintiff,)

16 v.)

17 ATLANTIC RECORDING)
CORPORATION, a Delaware corporation;)
18 PRIORITY RECORDS, LLC, a California)
limited liability company; CAPITOL)
19 RECORDS, INC., a Delaware corporation;)
UMG RECORDINGS, INC., a Delaware)
20 corporation; and BMG MUSIC, a New)
York general partnership; RECORDING)
21 INDUSTRY ASSOCIATION OF)
AMERICA; SAFENET, INC., f/k/a)
22 MEDIA SENTRY, INC., a Delaware)
corporation; SETTLEMENT SUPPORT)
23 CENTER, LLC, a Washington limited)
liability company,)

24 Defendants.)
25)
26)

No. CV 07-934 BR

**NATIONWIDE CLASS ACTION
ALLEGATION**

**PLAINTIFF’S THIRD
AMENDED COMPLAINT**

**DEMAND
FOR JURY TRIAL**

RELATED CASE NOTICE

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1 employ a seriously flawed and illegal investigation scheme that formed the basis of their larger
2 threat and intimidation campaign.

3 1.3 As a part of the scheme and enterprise Defendants falsely claimed that they
4 could identify individual copyright infringers. Defendants know this to be untrue but used
5 illegally obtained information to threaten, harass and intimidate thousands of individuals
6 including Ms. Andersen. The scheme and enterprise included as a component the filing of tens
7 of thousands of sham lawsuits without any consideration of whether any particular lawsuit was
8 actually supported by any admissible proof against the individual sued. The sham lawsuits
9 were filed first anonymously, clogging the federal courts with thousands of cases against “John”
10 and “Jane Doe”. Lawsuits were later filed against dead people, people without computers,
11 children and other totally innocent individuals including Tanya Andersen. The primary purpose
12 of the sham lawsuit filed against Tanya Andersen was not to petition the government to seek
13 appropriate relief from the Courts. Rather, the baseless sham lawsuit against her (and many
14 other thousands of individuals) was intended to spread public fear and intimidation by
15 harassment, extortion and coercion.
16

17
18 1.4 As an RIAA senior spokeswoman admitted early on in the campaign, the
19 lawsuits had no relationship to or regard for the evidence available against individual victims
20 like Tanya Andersen. The RIAA “explained” that the public campaign of intimidation being
21 waged by Defendants was like fishing with a “driftnet”: “When you fish with a net, you are
22 going to catch a few dolphin.”
23

24 1.5 Ms. Andersen like so many others was an innocent dolphin caught in the net of
25 Defendants enterprise and sham litigation. Federal judges around the country have noted the
26 serious harm caused to individuals and the federal judiciary as a result of the mechanical filings

1 of tens of thousands of baseless sham lawsuits.

2 1.6 A federal judge in California noted that **“the federal judiciary is being used as**
3 **a hammer by a small group of plaintiffs to pound settlements out of unrepresented**
4 **defendants”**.¹

5 1.7 Another federal judge in California noted the lack of merits to the sham
6 litigation, stating, **“Plaintiffs have presented no facts that this allegation [of copyright**
7 **infringement] is anything more than speculation”**.²

8 1.8 In Maine a federal judge recognized the improper abuse of the courts, stating
9 that **“it is difficult to ignore the kind of gamesmanship that is going on... these plaintiffs**
10 **have devised a clever scheme... but it troubles me that they do so with impunity”**.³

11 1.9 In Oregon it was specifically recognized that the courts were abused to threaten,
12 harass and intimidate Ms. Andersen. Judge Ashmanskas notes that **“copyright holders and**
13 **these plaintiffs specifically should be deterred from prosecuting infringement claims as**
14 **plaintiffs did in this case”**.⁴

15 1.10 Neither the *Noerr-Pennington* doctrine nor state litigation privileges create
16 immunity for these Defendants to act with impunity, harming the courts, innocent victims,
17 music consumers and artists. The pre-lawsuit conduct in these Defendants’ common
18 conspiracy is illegal. The anonymous lawsuits and the sham litigation scheme that follow were
19 cleverly devised as a component of the national enterprise of threat, coercion and extortion. As
20 federal courts have noted these cases are objectively baseless, automated, and pursued by the
21
22
23
24

25 ¹ Elektra Entertainment Group, et al v. O’Brien, 06-CV-05289 SJO (C.D. Cal. March 2, 2007)

26 ² Interscope Records, et al v. Rodriguez, No. 06cv2485-B (NLS)(S.D. Cal. August 17, 2007)

³ Arista Records, LLC, et al v. Does 1-27, 07-CV-00162 JAW (D. Me. January 25, 2008).

⁴ Atlantic Recording Corp., et al. v. Andersen, OS-CV-933AS (D. Or. September 21, 2007).

1 thousands without regard to their individual merits or the harm they cause. This enterprise
2 continues to engage in sham litigation as defined by our U.S. Supreme Court in *California*
3 *Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972) and subsequent cases and it
4 must be stopped. This enterprise harms innocent American citizens, including Tanya Andersen,
5 and deprives the federal judicial process of its legitimacy.
6

7 **II. RELATED ACTION**

8 **A. LR 42 Related Case Notice**

9 **1. Identity of Related Case**

10 2.1 Pursuant to Local Rule 42.2 this action is related to Atlantic Recording Corp., et
11 al v. Andersen, No. CV 05-933 AS (D. Or) which was pending before the Honorable Donald
12 C. Ashmanskas in the United States District Court, District of Oregon. After Judge
13 Ashmanskas' recent retirement this case was transferred to the Honorable John V. Acosta for
14 the sole remaining purpose of entry of an order and judgment setting the amount of attorneys
15 fees to be paid by plaintiffs in that action.
16

17 **2. Nature of Related Case**

18 2.2 On August 26, 2005, while Tanya Andersen and her daughter, who was then just
19 8 years old, were sitting down to dinner, a legal process server knocked on her door. When she
20 answered the door, she was served with a sham lawsuit caused to be filed in Oregon U.S.
21 District Court by several RIAA-controlled recording companies. Ms. Andersen was shocked,
22 afraid, and very distressed. In the sham lawsuit, the RIAA and the record companies falsely
23 claimed that Ms. Andersen owed hundreds of thousands of dollars as penalties for alleged
24 copyright infringement.
25
26

1 4.2 Defendants Atlantic Recording Corporation, a Delaware corporation; Priority
2 Records, LLC, a California limited liability company; Capitol Records, Inc., a Delaware
3 corporation; UMG Recordings, Inc., a Delaware corporation; and BMG Music, a New York
4 general partnership (hereinafter collectively “the Record Companies”) are companies in the
5 business of manufacturing and distributing recorded music. Each of these companies is also a
6 member of the Recording Industry Association of America. The Record Companies filed sham
7 lawsuit against Ms. Andersen, Atlantic Recording Corp., et al v. Andersen, No. CV 05-933 AS
8 (D. Or.), which remains pending in this court.

10 **2. Defendant RIAA**

11 4.3 Defendant Recording Industry Association of America (hereinafter “RIAA”)
12 claims to be a New York not-for-profit corporation. Its headquarters are located in Washington
13 D.C. It holds itself out as a “trade group” that directs and controls its member companies in
14 their filing of thousands of sham lawsuits against individuals in federal courts across the
15 country as part of a common scheme. These RIAA-controlled member companies are
16 subsidiaries of the “Big 4” major companies that monopolize and control the sale of over 90%
17 of all the music that is commercially distributed in the United States: EMI, Sony BMG,
18 Universal Music and Warner Music Group. Since at least 2003 the RIAA has engaged in a
19 coordinated enterprise to pursue a scheme of threatening and intimidating sham litigation in an
20 attempt to maintain its music distribution monopoly.

23 **3. Defendant MediaSentry**

24 4.4 Defendant SafeNet, Inc. f/k/a MediaSentry, Inc. (hereinafter “MediaSentry”), is
25 believed to be a Delaware corporation which maintains its principal place of business in
26 Maryland. It conspires with the RIAA and its controlled member companies in their

1 coordinated enterprise to pursue a common scheme of threatening and intimidating litigation
2 against tens of thousands of private U.S. citizens. Specifically, it has devised and continues to
3 conduct illegal, flawed and negligent investigations at the direction of the RIAA and the Record
4 Companies. At all relevant times, MediaSentry was acting as an agent of the RIAA and the
5 Record Companies.
6

7 **4. Defendant Settlement Support Center**

8 4.5 Defendant Settlement Support Center, LLC was a Washington limited liability
9 company that operated as the debt collection arm of Defendants' coordinated enterprise to
10 pursue a common scheme of threatening and intimidating litigation. At all relevant times,
11 Settlement Support Center was acting as an agent of the RIAA and the Record Companies.
12

13 **V. JURISDICTION AND VENUE**

14 5.1 The court has jurisdiction over the subject matter of this action under 28 U.S.C.
15 §§ 1331 and 1332.

16 5.2 This action asserts claims under the Racketeer Influenced and Corrupt
17 Organization Act, 18 U.S.C. § 1961, et seq., the Hobbs Act, 18 U.S.C. § 1951, the Travel Act,
18 18 U.S.C. § 1952, in addition to the other causes of action set forth below.

19 5.3 The parties are citizens of different states. The amount in controversy exceeds
20 \$5,000,000.
21

22 5.4 Venue is proper under 28 U.S.C. §1391.

23 **VI. CLASS ACTION ALLEGATIONS**

24 6.1 Ms. Andersen as the representative plaintiff brings this class action on behalf of
25 herself and all other individuals similarly situated as members of a proposed class pursuant to
26 Fed. R. Civ. P. 23. This action satisfies the numerosity, commonality, typicality, adequacy,

1 predominance and superiority requirements of those provisions.

2 6.2 This class action is brought against Defendants for conspiring to create an
3 enterprise for the purpose of perpetuating a “campaign of threat and intimidation”. This class
4 action seeks national injunctive relief and damages to be paid to the following class of
5 plaintiffs:
6

7 Those who were sued or were threatened with suit by Defendants for file-
8 sharing, downloading or other similar activities, who have not engaged in
violation of copyright laws.

9 6.3 The class is comprised of many thousands of individuals who are geographically
10 dispersed, making joinder impracticable. The disposition of the claims of these class members
11 in a single class action will provide substantial benefits to all parties and the Court. There is a
12 well-defined community of interest among members of the class. Ms. Andersen, like all class
13 members, was a target of the above-referenced “campaign of threat and intimidation”.
14

15 6.4 Ms. Andersen as the class representative, like all class members, has suffered
16 actual damages as a result of Defendants' misconduct, and will be required to incur court costs
17 and reasonable and necessary attorneys' fees in order to recover all sums due as a result of that
18 misconduct.
19

20 6.5 There are issues of law and fact common to Ms. Andersen and the proposed
21 class that predominate over any questions that may affect only the individual class members.
22 Proof on these issues includes, but is not limited to, the following:

- 23 a. that Defendants acted criminally in “investigating” and pursuing claims
24 against class members;
- 25 b. that Defendants were negligent in their pursuit of the class members;
- 26 c. that Defendants violated and/or conspired to violate the Federal
Racketeer Influenced and Corrupt Organizations Act (“RICO”);

- 1 d. that Defendants violated and/or conspired to violate the Oregon
- 2 Racketeer Influenced and Corrupt Organizations Act (“ORICO”);
- 3 e. that Defendants engaged in a civil conspiracy;
- 4 f. that Defendants wrongfully initiated civil proceedings;
- 5 g. that Defendants abused and/or conspired to abuse the legal process;
- 6 h. that Defendants violated the Oregon Unlawful Trade Practices Act;
- 7 i. that Defendants committed fraud on the class;
- 8 j. that Plaintiff and the class members are entitled to injunctive relief
- 9 stopping the illegal investigations and Defendants’ criminal enterprise;
- 10 and
- 11 k. that Plaintiff and the class members are entitled to compensatory and
- 12 punitive damages.

13 6.6 The interests of the class will be fairly and adequately protected. Plaintiff has
14 retained counsel with experience in prosecuting class actions involving wrongful conduct.
15 Furthermore, Plaintiff and the undersigned counsel are committed to vigorously prosecuting
16 this action on behalf of the class and have the financial resources to do so. Neither Plaintiff nor
17 her counsel have any interests adverse to the interests of the class.

18 6.7 Plaintiff and members of the class have suffered and will continue to suffer harm
19 and damages as a result of the unlawful and wrongful conduct of Defendants. A class action is
20 superior to other available methods for the fair and efficient adjudication of this controversy.
21 Absent a class action, most of the members of the class would find the cost of litigating their
22 individual claims prohibitive and would have no effective remedy at law or equity.

24 6.8 Absent a class action, class members will continue to incur damages and the
25 misconduct of Defendants will continue without remedy. The class treatment of common
26 questions of law and fact is superior to multiple individual actions or piecemeal litigation

1 because it affords the most efficient avenue for full redress of grievances, while simultaneously
2 conserving the resources of the courts and the litigants, and promoting consistency and
3 efficiency of adjudication.

4 **VII. THE CAMPAIGN OF INTIMIDATION AGAINST TANYA ANDERSEN**

5 **A. Ms. Andersen Victim of Flawed and Illegal Investigation Scheme**

6
7 7.1 Defendant MediaSentry is in the business of conducting illegal, flawed and
8 personally invasive private investigations of private citizens in many states throughout the
9 United States on behalf of the RIAA and its controlled member companies. MediaSentry has
10 advertised that its services include “investigation” and “litigation support”. It has for years
11 conducted secret investigations of private citizens in violation of the criminal laws of nearly
12 every state in the nation.

13
14 7.2 In or about 2002, the RIAA, the Big 4 and MediaSentry conspired to secretly
15 develop a clever scheme to operate a massive threat and sham litigation enterprise targeting
16 private citizens across the United States. Since then, the RIAA and the Big 4 have aggressively
17 acted to prevent disclosure of their secret agreement and other details of their conspiratorial
18 enterprise. Recently it has been discovered that as a part of this common enterprise
19 MediaSentry has conducted many thousands of illegal, flawed and negligent investigations of
20 private American citizens. These illegal and flawed investigations form the sole basis for the
21 enterprise’s pursuit of tens of thousands of threatened and actual sham lawsuits prosecuted
22 throughout the United States.

23
24 7.3 Until several weeks ago, MediaSentry publicly claimed to conduct “private
25 investigations” of American citizens. It claims to employ secret methods to enter individual
26 computers to surreptitiously and illegally gather information without authorization or

1 knowledge of the computer owner. In reality and at best, MediaSentry is only capable of
2 identifying an internet protocol (IP) address that may have been associated with or assigned to a
3 particular computer or routing device. MediaSentry is paid to provide the IP addresses to the
4 RIAA. The RIAA and the Big 4 then use this illegally obtained information in its public threat
5 and sham litigation enterprise. In June 2003, the RIAA publicly announced that it would begin
6 a campaign that would involve thousands of threats and sham lawsuits against individuals.
7 This criminal conduct continues to date.

9 **B. Criminal Investigations**

10 7.4 The illegality of the private investigations is well known to Defendants. The
11 RIAA was advised in writing years ago that the “private investigations” its enterprise was
12 conducting were illegal. To protect American citizens, nearly every state in the country
13 requires licensing or registration of private investigators. Oregon laws subject unlicensed
14 investigators to both civil and criminal penalties. ORS 703.405; ORS 703.993. Reputable
15 investigators are aware of and comply with these licensing laws and regulations. MediaSentry
16 and its investigators are not and have not been licensed to conduct private investigations of
17 private citizens in Oregon or any other state. Recently, the Massachusetts State Police issued to
18 MediaSentry a cease-and-desist notice requiring it to stop its unlicensed investigation activities
19 in the Commonwealth. The state of Michigan has also notified the public that MediaSentry
20 investigations must stop and could be prosecuted as a criminal felony. Other states have also
21 objected to MediaSentry’s illegal activities.

24 **C. Flawed Investigation**

25 7.5 MediaSentry and the RIAA have also known for years that their investigations
26 are fundamentally flawed. On September 14, 2003, an RIAA spokesperson admitted in a media

1 report that the investigative process of the criminal enterprise inevitably results in the wrongful
2 implication of innocent individuals. The RIAA has explained that when they fish with a
3 “driftnet” occasionally they will catch a “dolphin”.

4 7.6 In a March 2004 sworn deposition MediaSentry’s then president admitted to
5 various serious flaws in the investigative scheme forming the basis of Defendants’ criminal
6 enterprise. All Defendants know that these flaws result in misidentification of individuals.
7 Despite this knowledge, Defendants continue to falsely represent to many tens of thousands of
8 people that they have been definitively and personally identified as copyright infringers.

9 7.7 In recent weeks, an international expert in internet processes and forensics
10 explained under oath that the RIAA investigation process demonstrated “borderline
11 incompetence” and was unprofessional. MediaSentry’s former president also admitted that
12 MediaSentry cannot actually differentiate actual copyrighted recordings from bogus or
13 inoperative files, or decoys.
14

15 7.8 Defendants cloak the private investigations in great secrecy. Many of the
16 technical details of their private investigation protocol remain guarded and unknown. What is
17 known is that both MediaSentry and the RIAA’s chief computer consultant have claimed in
18 numerous sworn statements submitted in cases across the country that MediaSentry has in fact
19 invaded the personal computers of many thousands of private American citizens to an extent
20 and has viewed, manipulated and removed files. MediaSentry and the RIAA have in at least
21 one case removed embarrassing and personal files from an Iraq War veteran’s computer in an
22 effort to humiliate, coerce and harass him.
23

24 7.9 The flaws in MediaSentry’s investigations have been well known to Defendants
25 for years. In Brein et al v. UPC Nederland B.V. et al., No. 194741/KGZA-05-462/BL/EV at
26

1 4.30-31 (2005), a Dutch court ruled that that MediaSentry’s investigation protocol was
2 insufficient to state a claim for copyright infringement because it was unable to identify an
3 actual individual allegedly engaged in copyright infringement.

4 7.10 In BMG Canada, Inc. v. John Doe, 2005 FCA 193 (2005), the Canadian Federal
5 Court ruled that the investigation protocol used by MediaSentry is so deficient that the
6 “evidence” gathered fails to establish even a prima facie case of infringement.
7

8 7.11 RIAA-controlled member companies have filed and dismissed meritless cases
9 across the country after being forced to admit that they had sued the wrong people. See, e.g.,
10 Atlantic v. Zuleta, Case No. 06-CV-1221 (N.D. Ga.); BMG Music v. Thao, Case No. 07-CV-
11 143 (E.D. Wis.); Capitol Records, Inc., et al v. Foster, Case No. Civ. 04-1569-W (W.D. Okla.);
12 Interscope Records v. Leadbetter, Case No. C05-1149-RSL-MJP (W.D. Wash.); Priority
13 Records, LLC v. Chan, Case No. 04-CV-73645-DT (E.D. Mich.); Virgin Records America, Inc.
14 v. Marson, Case No. 05-CV-03201 RGK (C.D. Cal.).
15

16 7.12 In Ms. Andersen’s case, she was simply erroneously identified by MediaSentry
17 and Verizon, her ISP. The enterprise, however, elected not to admit its error and wrongfully
18 persecuted her, falsely insisting that she was “gotenkito”, a music pirate.
19

20 **D. Enterprise Engaged in Mail Fraud**

21 7.13 In February 2005, Tanya Andersen received a letter from the Los Angeles,
22 California law firm *Mitchell Silverberg & Knupp, LLP* on behalf of certain undisclosed “record
23 companies”. The letter falsely claimed that Ms. Andersen had illegally downloaded music,
24 infringed undisclosed copyrights and that “[t]he evidence necessary for the record companies to
25 prevail in this action has already been secured.” It threatened Ms. Andersen with a lawsuit and
26 absolute financial ruin.

1 **E. Enterprise Engaged in Wire Fraud**

2 7.14 After receiving this letter, Ms. Andersen immediately contacted Defendants and
3 their agent, Settlement Support Center. She explained that their claims were in error and that
4 she had never downloaded or shared music or used any file-sharing program. She told them
5 that she did not even know how to use such a program. According to Defendants' scheme,
6 during telephone conversations in February and March 2005 Settlement Support Center
7 repeated Defendants' joint threat that unless Ms. Andersen immediately paid them \$4,000-
8 5,000 Defendants would ruin her financially. Settlement Support Center also falsely asserted
9 that Ms. Andersen had been "viewed" engaging in infringing acts. Defendants then knew or
10 should have known that Ms. Andersen was innocent.
11

12 7.15 During telephone conversations in February and March 2005, an employee of
13 Settlement Support Center actually admitted to Ms. Andersen that he believed that she had not
14 infringed any copyrights. He explained, however, that Defendants would not quit their attempts
15 to force payment from her because to do so would encourage other people to defend
16 themselves. He stated that Ms. Andersen could pay thousands of dollars to defend herself
17 against a federal lawsuit or take the less expensive option of "settling" with Defendants.
18

19 7.16 Ms. Andersen wrote to Settlement Support Center again explaining her
20 innocence. She even invited an inspection of her computer to prove that the claims made
21 against her were false or in error.
22

23 7.17 Instead of inspecting her computer, the RIAA and the Record Companies caused
24 suit to be filed against Ms. Andersen on June 24, 2005.

25 **F. Enterprise Identified Real "Gotenkito"**

26 7.18 The Defendant Record Companies later falsely claimed that MediaSentry had

1 caught Ms. Andersen sharing files online at 4:20 A.M. PST, on May 20, 2004, and identified
2 her as “gotenkito@kazaa.”

3 7.19 Ms. Andersen explained that she did not know “gotenkito” or anyone else who
4 used that name. Ms. Andersen also explained that she was not awake at 4:20 AM on May 20,
5 2004. She again explained that her computer was never used to share files online. Ms.
6 Andersen offered this information once again in a sworn declaration she provided in October
7 2006.

9 7.20 Defendants knew that Ms. Andersen was not engaged in copyright infringement.
10 In fact, a simple 2-minute search for “gotenkito” on the Google search engine in March 2007
11 confirmed that a young man in Everett, Washington had been using the name gotenkito on
12 various internet sites. This man’s MySpace webpage, “Chad’s Wacky Life Stories”, described
13 his interest in computers and music and even admitted downloading copyrighted materials:
14 “Doe’s [sic] anyone else watch Drawn Together? That show is so funny. I downloaded about
15 14 episodes and i can’t stop watching them.”

17 7.21 In an attempt to end Defendants’ persecution of her, in March 2007, Ms.
18 Andersen provided the man’s name, location, and phone number to the Defendant Record
19 Companies. Along with everything else she had done, she hoped this would result in their
20 admitting that she had been misidentified and falsely accused and that the claims against her
21 would be dismissed.

23 7.22 Ms. Andersen later learned that lawyers for the RIAA and the Record
24 Companies had actually already known of the man for several months. In a September 2006
25 email, one RIAA lawyer had asked whether Ms. Andersen “had any connection with a 30-
26 something year old man named Chad”. She did not know any such person. No later than April

1 2007, the RIAA lawyer had located and made contact with this man. Despite having more
2 substantial evidence to support claims against him, the Record Companies and their lawyers
3 chose to persist in their vexatious campaign against Ms. Andersen instead.

4 **G. Enterprise Publicly Humiliated Ms. Andersen**

5 7.23 Instead of dismissing their false claims, the Record Companies persisted in their
6 malicious prosecution of Ms. Andersen. They publicly humiliated her with demeaning and
7 repulsive accusations. In their June 24, 2005 public filing of their complaint, they claimed that
8 Ms. Andersen stole and possessed songs with titles such as “Shake That Ass Bitch”, “Dope
9 Nose”, “Die Motherfucker Die”, “Bullet in the Head”, “Fuck y’all Hoes”, “Nigger Fucker”, and
10 “I Stab People”. From June 24, 2005 to the present, in various published documents, the
11 Record Companies and the RIAA have continuously and publicly asserted that contents of their
12 original accusations were accurate and true. In a massive public relations blitz launched on
13 September 26, 2002 and described by one RIAA member executive as “propaganda”, the RIAA
14 portrayed those accused of copyright infringement as criminals and unsavory “pirates”,
15 “thieves”, and “shoplifters”. During the time that the RIAA and the Record Companies were
16 specifically accusing Ms. Andersen of theft of misogynistic and racist music, these additional
17 disparaging statements and innuendo appeared in major newspapers, were continuously
18 broadcast on national television and radio, and were included in trailers before feature films in
19 theaters nationwide. More recently, on a [September 17, 2007 nationwide broadcast of a National](#)
20 [Public Radio program \(“Marketplace”\) RIAA Chairman and CEO Mitch Bainwol accused Ms.](#)
21 [Andersen of lying when he stated to millions of listeners: “I would remind you that folks, when](#)
22 [they have a legal dispute, often can be creative with the way they portray the facts.”](#) Even after
23 they abandoned their false claims against Ms. Andersen, their public attacks and humiliation of
24
25
26

1 her continued.

2 7.24 Ms. Andersen remains understandably offended and outraged by Defendants
3 conduct. She has no interest in the violent, profane, misogynistic, and racist music that the
4 RIAA and its controlled member companies monopolize. Defendants knew that Ms. Andersen
5 listens to only country music and soft rock. In fact, had they investigated they would have
6 known that Ms. Andersen had avidly purchased music from RIAA member companies' mail
7 order CD clubs and was a loyal customer for many years.
8

9 **H. Enterprise Knew About Ms. Andersen's Health Problems**

10 7.25 Defendants were also aware that their false claims and the federal lawsuit were
11 significantly damaging to Ms. Andersen. In May 2004, for health reasons Ms. Andersen had
12 been forced to leave her position as a case manager at the Department of Justice. At the time
13 she was targeted by Defendants, she was surviving on disability benefits for painful physical
14 illness, which contributed to stress related anxiety and depression.
15

16 7.26 Before the lawsuit, Ms. Andersen had hoped to return to work, but her
17 psychological and physical symptoms seriously worsened due to Defendants' malicious and
18 outrageous conduct. Rather than completing a return to work program she had to seek
19 additional medical and psychiatric care. Defendants have been aware of the deleterious effect
20 their acts have had on Ms. Andersen's physical and psychological conditions since March 6,
21 2005, when she wrote to Settlement Support Center advising of the harm she was suffering.
22

23 7.27 Because the mechanical litigation enterprise was not interested in the truth of
24 their individual claims, Defendants refused to undertake any reasonable investigation into the
25 propriety of their claims against Ms. Andersen. They repeatedly refused to even inspect her
26 computer hard drive. After a court order required it and the inspection was finally done in

1 September and October 2006, the RIAA's own expert determined that Ms. Andersen's
2 computer had not been used to infringe copyrights. No files or remnants of any files allegedly
3 containing copies of the Record Companies' copyrighted recordings were ever found on her
4 computer.

5
6 7.28 Even then and despite their own experts' determination and all the other proof of
7 her innocence, the RIAA and its member companies refused Ms. Andersen's renewed pleas in
8 December 2006 that the litigation and persecution of her stop.

9 7.29 Rather than ending their abuse of her, in January 2007, RIAA-controlled lawyers
10 renewed their threats--they would not dismiss their false claims unless Ms. Andersen paid them
11 some undisclosed amount of money. They wanted it to appear publicly that they had prevailed.

12
13 **I. Enterprise Stepped Up Harassment**

14 7.30 When Ms. Andersen declined to pay them, Defendants stepped up their
15 intimidation. In January 2007, lawyers for the RIAA and the Record Companies demanded the
16 deposition of Ms. Andersen's 10 year-old daughter Kylee. The demand came after Defendnats
17 knew who Gotenkito was and after the computer inspection and other evidence showed that Ms.
18 Andersen's computer has not been used for infringement; the purpose of the deposition was to
19 distress, upset and intimidate Ms. Andersen. Ms. Andersen remained outraged. The RIAA and
20 its agents knew that Ms. Andersen was very concerned about her daughter and, as they
21 intended, the threat of taking her deposition was causing Ms. Andersen a great deal of physical
22 and emotional distress.

23
24 7.31 Knowing of her distress, the RIAA and its agents even attempted to directly
25 contact Kylee. In February 2007, a paralegal from a law firm retained by the RIAA and the
26 Record Companies called Ms. Andersen's apartment building looking for Kylee. In April 2007,

1 phone calls were also made to Kylee's former elementary school under false pretenses. The
2 voice of the woman on the phone claimed to be Kylee's grandma inquiring as to her attendance.
3 Ms. Andersen learned of these tactics and was even more frightened and distressed.

4 7.32 Later, and not until nearly two years after their reckless suit was filed, RIAA
5 lawyers offered to voluntarily dismiss the claims against Ms. Andersen, but only if she
6 abandoned her legal counterclaims against them. They also emphasized that if she did not
7 abandon her legal rights, they would continue to persecute her and her young daughter, and in
8 March 2007 again demanded to interrogate and confront her little girl at the offices of RIAA
9 lawyers. Again, this was done after Defendants had identified Gotenkito and after the computer
10 inspection had cleared Ms. Andersen. Despite her distress, Ms. Andersen did not give in. On
11 March 27, 2007, the court even was compelled to enter an order protecting Kylee and Ms.
12 Andersen from the aggressive facial confrontation threatened by the RIAA and its agents.
13
14

15 7.33 In April and May 2007, the Record Companies' lawyer conducted the
16 depositions of Kylee and several other friends and relatives of Ms. Andersen. Given the
17 computer inspection and the other exculpatory evidence the Record Companies already had,
18 these depositions were taken for the sole purpose of harassing and intimidating Ms. Andersen.
19 Their goal was to apply further financial and psychological pressure on Ms. Andersen so that
20 she would abandon her counterclaims.
21

22 **J. Enterprise Was Caught -- Cuts and Runs**

23 7.34 In May 2007, Ms. Andersen was ultimately able to file a motion for summary
24 judgment. This motion required the Defendant Record Companies to submit proof of their
25 claims. The Record Companies repeatedly delayed the hearing and extended the time deadlines
26 to submit proof they knew never existed. In late May, they made one last demand that Ms.

1 Andersen dismiss her counterclaims. When she again refused, the Record Companies had no
2 option and were forced to finally dismiss their case with prejudice on June 1, 2007. Like many
3 others, Ms Andersen had by then been subjected to the Defendants' abuse, intimidation and
4 humiliation for over two years.

5
6 7.35 On September 21, 2007, U.S. Magistrate Judge Donald Ashmanskas, who had
7 presided over the case, ordered that Ms. Andersen was entitled to an award of attorney's fees
8 incurred in defending the Record Companies' false claims against her. In his findings, Judge
9 Ashmanskas concluded that throughout the pendency of this action the Record Companies
10 **"unreasonably rejected or sought to suppress evidence to the extent it tended to exonerate"**
11 Ms. Andersen, and **"exerted a significant amount of control over the course of discovery"**.
12 The court also concluded that the Record Companies claims were objectively unreasonable and
13 improperly motivated, explaining that **"[w]hatever [the Record Companies'] reasons for the**
14 **manner in which they have prosecuted this case, it does not appear to be justified as a**
15 **reasonable exploration of the boundaries of copyright law."** On January 16, 2008, the Senior
16 U.S. District Judge adopted the Magistrate Judge's Findings and Recommendation and granted
17 Ms. Andersen an award of her attorney's fees.

18
19 **K. Economic Losses and Other Harms Suffered**

20
21 7.36 Ms. Andersen, like other class members, knew she had not engaged in copyright
22 infringement as Defendants falsely claimed. Because of their aggressive and relentless claims
23 that they had actual proof, their superior technological knowledge and economic domination,
24 Ms. Andersen reasonably relied upon Defendants' representations that some data supporting the
25 Record Companies' claims may have somehow been added to her computer. In reasonable
26 reliance on the materially false statements of the RIAA and the Record Companies, Ms.

1 Andersen invested substantial resources into investigating the integrity of her computer and
2 investigating the claims of infringement at the request of the RIAA and the Record Companies.

3 Ms. Andersen also spent additional time and resources locating and consulting attorneys
4 regarding the false claims. Defendants' false threat that they actually possessed proof that
5 would be used in a lawsuit to ruin her financially caused her great distress. The conduct of the
6 RIAA and the Record Companies caused her medical condition to worsen, requiring that she
7 return to her doctor and caused her to be unable to return to work. Like many others in these
8 horrible circumstances, Ms. Andersen did not possess the sophisticated knowledge of copyright
9 law or of computer technology claimed by Defendants. She, like thousands of others, was
10 without reasonable means to even investigate the false claims and justifiably relied on
11 Defendants' false statements to her personal and financial detriment.
12
13

14 **VIII. CLAIMS FOR RELIEF**

15 **FIRST CLAIM FOR RELIEF**
16 **CIVIL CONSPIRACY**

17 Oregon Law
18 *All Defendants*

19 8.1 Defendant RIAA characterizes itself as a "trade group". It is funded by the Big
20 4, major multinational music recording companies: EMI, Sony BMG, Universal Music and
21 Warner Music Group. Each of these companies has many subsidiary member companies. The
22 RIAA publicly claims that these companies together exercise an actual monopoly and control of
23 the distribution of over 90% of the sound recordings sold in the United States. The RIAA's
24 primary function is to act however it decides is necessary to maintain its monopoly.
25 Maintaining a monopoly has become a difficult endeavor since advances in technology during
26 the last 10 years have rendered the RIAA's antiquated business model for distribution of music

1 virtually useless and obsolete. MP3 music storage and players are now over 10 years old.
2 Musicians can now self-publish, self-produce and distribute their art to their fans and customers
3 without the burden of the enormous and unfair payments demanded by the RIAA's member
4 companies. Music consumers can buy only the music they want. The actions of the RIAA and
5 the Big 4 in their desperate attempt to maintain their monopoly have caused great harm to the
6 courts, consumers and significantly to the artists they purport to represent. Within just the last
7 few weeks, EMI's new president has publicly recognized that filing tens of thousands of
8 lawsuits against its customers without regard to proof or actual damages is not a "sustainable
9 business model".

11 8.2 Defendant MediaSentry is in the business of conducting illegal, flawed and
12 personally invasive private investigations of private citizens in many states throughout the
13 United States for the RIAA and its controlled member companies. MediaSentry has advertised
14 that its services include "investigation" and "litigation support". It has for years conducted
15 secret private investigations of private citizens in violation of the criminal laws of nearly every
16 state in the nation.

18 8.3 In or about 2002, the RIAA, the Big 4 and MediaSentry secretly met and
19 conspired to develop a clever scheme to operate a massive threat and sham litigation enterprise
20 targeting private citizens across the United States. Since then, the RIAA and the Big 4 have
21 aggressively acted to prevent disclosure of their secret agreement and other details of their
22 conspiratorial enterprise. Recently it has been discovered that, as a part of this common
23 enterprise, the many thousands of private investigations reportedly conducted by MediaSentry
24 are illegal, flawed and negligent. These illegal and flawed investigations form the sole basis for
25 the enterprise's pursuit of tens of thousands of threatened and actual sham lawsuits prosecuted
26

1 throughout the United States. The ultimate object of the Defendants' conspiracy was to allow
2 the RIAA to maintain and preserve as long as possible the "Big 4" RIAA member companies'
3 monopoly over the distribution of recorded music.

4 8.4 Until several weeks ago, MediaSentry publicly claimed to conduct "private
5 investigations" of American citizens. It claimed to employ secret methods to enter individual
6 computers to surreptitiously and illegally gather information without authorization or
7 knowledge of the computer owner. In reality and at best, MediaSentry is only capable of
8 identifying an internet protocol (IP) address that may be associated with or assigned to one or
9 more computers or router devices. MediaSentry is paid to provide the IP addresses to the
10 RIAA. The RIAA and the Big 4 then use this illegally obtained information in its public threat
11 and sham litigation enterprise. In June 2003, the RIAA publicly announced that it would begin
12 a campaign that would involve thousands of threats and sham lawsuits against individuals. The
13 investigations are criminal and this criminal conduct continues to date.

14 8.5 As part of Defendants' criminal enterprise, a rotating list of record companies
15 file information farming lawsuits against anonymous "John Doe" parties in order to obtain
16 private IP addresses from internet service providers (ISPs). Because only John Doe defendants
17 are "named", the targeted individuals are deprived of basic due process and often receive little
18 or no notice or information about the defendants' scheme to harvest their personal and private
19 information.

20 8.6 After an individual's personal and private information is harvested, the
21 anonymous "John Doe" lawsuits are typically immediately dismissed, often before the
22 individuals who have been secretly "sued" have had any meaningful opportunity to appear or to
23 otherwise protect their privacy or participate in the federal judicial process.

1
2 8.7 Defendants know that the subpoenaed private information is often flawed and
3 mistaken and that it will be later misused to threaten and harass American citizens. Some ISPs
4 years ago informed their customers of the potential for errors in identifying suspected
5 infringers. After learning that ISPs were disclosing known flaws in its investigations, the RIAA
6 threatened the ISPs and demanded that they immediately stop.
7

8 Threats from RIAA Lawyers

9 8.8 After the RIAA extracts the ISP customers' private information in the secret
10 lawsuit, RIAA-controlled law firms send threatening and misleading letters containing false
11 allegations and material omissions to individuals whose names and addresses were disclosed.
12

13 8.9 These law firm letters are intended to intimidate, confuse, and mislead claiming
14 that the recipient has "already been sued". At the same time the letters state that the recipients
15 "have not yet been named as a defendant", in a lawsuit.

16 8.10 These letters also falsely allege that "[t]he evidence necessary for the record
17 companies to prevail in this action [against an individual] has already been secured."

18 8.11 These letters typically demand that the recipient contact the RIAA's unnamed
19 "representatives" and threaten that if the recipient does not make contact within 10 days of the
20 letter, a federal lawsuit will be filed against them personally.
21

22 8.12 The short 10 day notice period is intended to deny the recipient any meaningful
23 opportunity to obtain counsel or to investigate the false assertions contained in the letter and is
24 inconsistent with the pre-suit "breathing room" concept discussed in cases construing the
25 Noerr-Pennington Doctrine.
26

 8.13 These letters never advise the recipient that he or she was the victim of an illegal

1 private investigation. Further, these letters never disclose the known error rate or reality of
2 mistaken identity. The letters also never disclose that the investigations provide no actual proof
3 that a specific individual engaged in any of the alleged acts of copyright infringement. Instead,
4 these letters falsely claim that the RIAA has actual proof necessary to prevail on direct
5 copyright infringement claims against the recipient.
6

7 Coercion by Debt Collectors

8 8.14 These letters instruct the recipients to contact the Settlement Support Center, the
9 collection agent for the common enterprise. The nature of the Settlement Support Center's
10 association with the RIAA and other Defendants in their common enterprise was never
11 specifically disclosed in these or other communications.
12

13 8.15 Settlement Support Center was paid by the RIAA and involved with the criminal
14 enterprise in coercing payments from individuals identified by MediaSentry's illegal, flawed
15 and negligent private investigations.
16

17 8.16 In their communications, Settlement Support Center representatives never
18 disclosed the fact of the illegal investigation. Nor did they acknowledge the possibility of
19 mistaken identity due to the known flaws inherent in MediaSentry's private investigation
20 protocol. Moreover, they never disclosed that no proof actually existed of infringement by any
21 specific individual actually existed.
22

23 8.17 Defendants are aware that Settlement Support Center did not disclose the illegal
24 private investigation, the possibility of misidentification or the inability of the investigation to
25 identify specific individuals.
26

Sham Litigation

8.18 When a targeted individual does not bow to Defendants' demands for payment,

1 the scheme developed by Defendants’ enterprise requires sham lawsuits be filed against the
2 individual in a federal district court. To date, public estimates are that as many as 30,000 sham
3 lawsuits have been filed. These sham lawsuits are nearly always identical in their claims.
4 Invariably, the allegations are stated vaguely, in reliance upon “information and belief”. Few if
5 any factual allegations are made against a particular real person. These boilerplate sham
6 complaints are filed with little thought or regard, in an automated manner as part of
7 Defendants’ criminal enterprise.
8

9 8.19 Nearly all of the sham complaints include claims for infringement of unspecified
10 “additional” copyrighted sound recordings claimed to be owned by or licensed to the named
11 companies’ “affiliate record labels”. These claims are typically unsupported by any proof that
12 the RIAA member companies named as plaintiffs actually own the rights to the works or have
13 standing to bring suit for alleged infringement of these “additional” recordings. These
14 allegations are included to artificially and fraudulently inflate the dollar amount of the damages
15 claimed in order to increase the intimidation of the targeted individual.
16

17 8.20 The automated sham complaints also falsely allege that the targeted individual
18 used “an online media distribution system” to “download” or “distribute”, copyrighted
19 recordings. They also falsely claim that this conduct violates the RIAA member companies’
20 “exclusive rights of reproduction and distribution”. In truth, the member companies typically
21 have neither evidence of downloading, nor evidence of “distribution”.
22

23 8.21 The RIAA’s monopoly and the conspiratorial criminal enterprise that
24 Defendants developed to maintain it harms artists (including songwriters and musicians), the
25 music-consuming public, and the many individuals like Tanya Andersen victimized by abusive
26 sham litigation. Defendants’ illegal enterprise also unfairly clogs the courts at great cost to

1 American citizens.

2 8.22 In furtherance of the conspiracy, one or more of the Defendants have committed
3 overt unlawful acts which are described in detail above and herein, and include illegal
4 investigations, mail fraud, wire fraud, violations of the Hobbs Act, violations of the Travel Act,
5 and Oregon criminal coercion.
6

7 8.23 Each of the Defendants and their agents financially benefited from their
8 participation in the common conspiracy. Accordingly, each of Defendants must be held liable to
9 Plaintiff and all others similarly situated for the wrongful acts committed by one or more of the
10 others. Defendants' conduct resulted in damages to Plaintiff and all others similarly situated in
11 an amount to be specifically proven at trial. Ms. Andersen has suffered economic and personal
12 injury damages that will be fully proved at trial.
13

14 **SECOND CLAIM FOR RELIEF**
15 **NEGLIGENCE / NEGLIGENCE *PER SE***
16 **Oregon Law**
17 ***All Defendants***

18 **A. Negligence *Per Se***

19 8.24 Plaintiff realleges and incorporates herein by reference each of the allegations set
20 forth above. Plaintiff makes this claim against all Defendants, with allegations particular to
21 each Defendant set forth below. Each Defendant is presumed negligent and each is negligent
22 *per se* as each devised and/or participated in the common scheme and enterprise which had at
23 its foundation an illegal private investigation conducted in violation of ORS 703.405 which is a
24 misdemeanor crime. ORS 703.993. The purpose of these laws is to protect the public including
25 Ms. Andersen from the very harm which Defendants caused her to suffer. Virtually every state
26 in the nation has laws regulating private investigations and the doctrine of negligence *per se*

1 applies to all similarly situated class members.

2 **B. RIAA Negligence / Negligence Per Se**

3 8.25 The RIAA publicly claims to have special expertise in conducting investigations
4 and influencing politicians, and has experience in filing sham lawsuits against thousands of
5 private American citizens. In fact, the RIAA's president, Cary Sherman, is a 1971 graduate of
6 Harvard Law School. He was formerly senior partner in one of this country's best known law
7 firms. The RIAA publicly proclaims that Mr. Sherman is "one of the top copyright attorneys in
8 the country." Mr. Sherman and the RIAA know what is legally permissible, what is criminal
9 and what is a sham.
10

11 8.26 The RIAA owed a duty to Plaintiff and the class members to act legally,
12 reasonably and responsibly to avoid foreseeable harm to them. This duty arose when it decided
13 to engage in criminal, invasive and personally threatening activities which it knew or should
14 have known would result in foreseeable, improper harm to Plaintiff and the class. These
15 activities, which are described in detail above and herein below, include the RIAA's role in
16 designing, implementing, overseeing and controlling the criminal and flawed private
17 investigation scheme which improperly misidentified Plaintiff and the class members as
18 copyright infringers, causing harm to Plaintiff and the class when they were later subjected to
19 improper threats, coercion, extortion and sham litigation as a result.
20
21

22 8.27 Because of their illegal conduct, specialized knowledge and expertise in the
23 realm of copyright law and computer technology and because they provided legal advice (albeit
24 false and misleading) to Plaintiff and other class members, the RIAA owed a heightened duty to
25 Plaintiff and the class to avoid foreseeable harm to them. As a result of the RIAA's criminal
26 activity and active deceit as well as its vastly superior resources and sophistication, Plaintiff

1 was understandably intimidated and without reasonable ability to understand and evaluate the
2 complex false accusations of copyright infringement made against her. The extraordinary
3 financial leverage and procedural control exercised by Defendants through their common
4 enterprise including their investigation, threat and sham litigation campaign left Plaintiff no
5 choice but to rely upon at least some of the information and legal advice provided by the RIAA
6 and its agents. These unusual factual circumstances and the very significant economic disparity
7 created a heightened duty for the RIAA to avoid harm to Plaintiff and other similarly situated
8 class members.
9

10 8.28 In addition to its negligence *per se* and its heightened duty, the RIAA owed
11 Plaintiff and the class a duty, common to all, to avoid harm based on general negligence
12 principles of the foreseeability of harm under applicable common law.
13

14 8.29 Despite its specialized knowledge, the RIAA acted negligently in one or more of
15 the following ways:

- 16 a. When it conspired and coordinated with MediaSentry to devise a
17 criminal scheme and common enterprise to conduct illegal private
18 investigations of Plaintiff and other class members that it knew were
19 flawed and prone to erroneously identify innocent private citizens.
- 20 b. When it retained MediaSentry to conduct illegal private investigation of
21 Plaintiff and other class members' personal information when it knew or
22 should have known that MediaSentry was not licensed to conduct private
23 investigations.
- 24 c. When it conspired and coordinated with MediaSentry to devise a
25 criminal scheme and common enterprise to conduct private
26 investigations of Plaintiff and other class members that it knew or should
have known were flawed in that they were not capable of identifying the
individuals who actually engaged in alleged copyright infringement.
- d. When it continued to use the illegal and flawed investigations in its
enterprise of threatening and intimidating litigation against Plaintiff and
other members of the class even after repeated reports of illegality and

1 flaws in the investigations surfaced in cases across the country.

- 2 e. When it sent communications to Plaintiff and other class members
3 which failed to disclose the illegality of the investigation, the possibility
4 of misidentification, and the true nature of “evidence” against them
5 which had “already been secured”.
- 6 f. When it directed and controlled the Record Companies in threatening,
7 instigating, and/or prosecuting baseless sham litigation against Plaintiff
8 and other members of the class.
- 9 g. When it failed to properly investigate the true identity of “gotenkito”,
10 both before first threatening Plaintiff, and after his true identity was
11 supplied to the RIAA by her and was otherwise known to the RIAA.

12 8.30 The RIAA’s negligent conduct described above proximately caused direct
13 damages to Plaintiff and all others similarly situated in an amount to be proven at trial.

14 **C. MediaSentry Negligence / Negligence Per Se**

15 8.31 MediaSentry was and is an agent of the RIAA. It also owed a direct duty to
16 Plaintiff and the class members to act reasonably, responsibly, and to avoid foreseeable harm to
17 them. This duty arose when it decided to engage in invasive and personally threatening
18 activities which it knew or should have known would result in foreseeable, improper harm to
19 Plaintiff and the class. These activities, which are described in detail above and herein, include
20 MediaSentry’s role in designing, implementing, overseeing and controlling the flawed and
21 illegal private investigation scheme which improperly misidentified Plaintiff and the class
22 members as copyright infringers.

23 8.32 Because of its claimed knowledge and expertise in computer technology, and
24 investigation, MediaSentry owed a heightened duty to Plaintiff and the class to avoid
25 foreseeable harm to them. As a result of MediaSentry’s vastly superior knowledge, resources
26 and sophistication, Plaintiff was placed in a position of reliance on MediaSentry with respect to

1 understanding and evaluating the nature of MediaSentry’s investigation and the nature of the
2 alleged “evidence” produced by the investigation. Moreover, the extraordinary financial
3 leverage and procedural control exercised by Defendants through the operation of their illegal
4 investigation, threat and sham litigation enterprise left Plaintiff no choice but to rely upon some
5 of the representations of the RIAA and its common agents, including MediaSentry. These
6 unusual factual circumstances gave rise to a special relationship and a heightened duty owed by
7 MediaSentry to Plaintiff and other class members.
8

9 8.33 In addition to negligence *per se* and this heightened duty, MediaSentry owed
10 Plaintiff and the class a duty to avoid harm based on general negligence principles of
11 foreseeability of harm under applicable common law.
12

13 8.34 MediaSentry acted negligently in one or more of the following ways:

- 14 a. When it failed to comply with private investigation licensing laws in
15 Oregon, Massachusetts, Michigan and many other states.
- 16 b. When it conspired and coordinated with the RIAA to devise a scheme
17 and common enterprise to conduct private investigations of Plaintiff and
18 other class members that it knew or should have known were flawed in
19 that they could not identify the individuals who actually engaged in
20 alleged copyright infringement.
- 21 c. When it conspired and coordinated with the RIAA to operate an illegal
22 and flawed private investigation scheme that wrongfully implicated
23 Plaintiff and other members of the class.
- 24 d. When it failed to properly investigate the true identity of “gotenkito”,
25 both before first threatening Plaintiff, and after his true identity was
26 supplied to Defendants by her and was otherwise known to Defendants.

8.35 MediaSentry’s negligent conduct described above proximately caused direct
damages to Plaintiff and all others similarly situated in an amount to be proven at trial.

D. Record Companies Negligence / Negligence Per Se

1 8.36 The Record Companies owed a duty to Plaintiff and the class members to act
2 reasonably, responsibly, and legally to avoid foreseeable harm to them. This duty arose when
3 the Record Companies conspired with the RIAA and Settlement Support Center and engaged in
4 criminal, invasive and personally threatening activities which it knew or should have known
5 would result in foreseeable, improper harm to Plaintiff and the class. These activities, which are
6 described in detail above and herein, include the Record Companies' threatening, instigating,
7 and/or prosecuting baseless sham litigation against Plaintiff and other members of the class.
8

9 8.37 In view of their specialized knowledge and expertise in the realm of copyright
10 law and computer technology and because they provided legal advice (albeit false and
11 misleading) to Ms. Andersen and other class members, the Record Companies owed a
12 heightened duty to Ms. Andersen and the class to avoid foreseeable harm to them. As a result
13 of the Record Companies' vastly superior knowledge, resources and sophistication, Plaintiff
14 was placed in a position of reliance on the Records Companies with respect to understanding
15 and evaluating the complex accusations of copyright infringement made by the RIAA and the
16 Record Companies. Moreover, the extraordinary financial leverage and procedural control
17 exercised by Defendants through their joint operation of their investigation, threat and sham
18 litigation campaign left Plaintiff no choice but to rely upon information provided by the Record
19 Companies and their agents. These unusual factual circumstances gave rise to a special
20 relationship and a heightened duty to Plaintiff and other class members.
21
22

23 8.38 In addition to their negligence *per se* and this heightened duty the Record
24 Companies owed Ms. Andersen and the class a duty to avoid harm based on general negligence
25 principles of foreseeability under applicable common law.
26

 8.39 The Record Companies acted negligently in one or more of the following ways.

- 1
- 2 a. When they directed false and coercive communications to Ms. Andersen
- 3 and other class members which failed to disclose the illegality of the
- 4 investigation, the possibility of misidentification, and the true nature of
- 5 “evidence” against them which had “already been secured”.
- 6 b. When they relied on criminal and flawed information collected and
- 7 provided by Defendants RIAA and MediaSentry in filing and pursuing
- 8 lawsuits against Plaintiff and other members of the class.
- 9 c. When they failed to properly investigate the true identity of “gotenkito”,
- 10 both before first threatening Plaintiff, and after his true identity was
- 11 supplied to them by her and was otherwise known to them.

12 8.40 The defendant Record Companies’ negligent conduct described above

13 proximately caused direct damages to Plaintiff and all others similarly situated in an amount to

14 be proven at trial.

15 **E. Settlement Support Center Negligence**

16 8.41 Settlement Support Center owed a duty to Plaintiff and the class members to act

17 reasonably, responsibly, and legally to avoid foreseeable harm to them.

18 8.42 Settlement Support Center acted negligently in one or more of the following

19 ways.

- 20 a. When it made false and misleading oral and/or written communications
- 21 to Plaintiff and other class members which failed to disclose the
- 22 illegality of the investigation, the possibility of misidentification, and the
- 23 true nature of “evidence” against them which had “already been
- 24 secured”.
- 25 b. When it relied on flawed information illegally collected and provided by
- 26 Defendants RIAA and MediaSentry in communicating with Plaintiff and
- the class in attempt to coerce payments.

8.43 Settlement Support Center’s negligent conduct described proximately caused

1 direct damages to Plaintiff and all others similarly situated in an amount to be proven at trial.

2 **THIRD CLAIM FOR RELIEF**
3 **WRONGFUL INITIATION OF CIVIL PROCEEDINGS**
4 Oregon Law
Defendants RIAA and Record Companies

5 8.44 Plaintiff realleges and incorporates herein by reference each the allegations set
6 forth above. Plaintiff makes this claim against the RIAA and the Record Companies.

7 8.45 Despite knowing that their faulty and illegal investigation protocol did not
8 provide proof of individual infringement and did give rise to probable cause for commencing
9 and then prosecuting civil proceedings against Plaintiff and the other class members, the RIAA
10 and the Record Companies relied upon the same illegal and flawed investigation as the sole
11 asserted basis for their false claims.
12

13 8.46 Prior to commencing their abusive sham litigation against Plaintiff, the RIAA
14 and the Record Companies were aware that Plaintiff's physical and psychological conditions
15 were deteriorating and worsening as a result of their threats of imminent litigation and financial
16 ruin.
17

18 8.47 Despite her repeated offers, the RIAA and the Record Companies refused to
19 inspect Plaintiff's computer prior to commencing litigation. After a court order required it, the
20 inspection was finally done in September and October 2006. Thereafter, the RIAA and the
21 Record Companies willfully refused to disclose the results of the inspection. This was because
22 the RIAA's own expert had determined that Plaintiff's computer had not been used to infringe
23 copyrights. No files or remnants of any files allegedly containing copies of the Record
24 Companies' copyrighted recordings were ever found on her computer.
25

26 8.48 Despite their own expert's determination and all the other proof of Ms.

1 Andersen's innocence, the RIAA and the Record Companies refused to abandon their claims.

2 8.49 Since at least September 2006, the RIAA and the Record Companies had known
3 of a 30 year-old man who had widely used the name "gotenkito" on various websites. The
4 same man had also admitted to downloading copyrighted materials on the internet. Even after
5 Plaintiff independently discovered this man and supplied his contact information to the RIAA
6 and the Record Companies, they willfully refused to investigate and pursue him in the same
7 manner as they did Plaintiff, and instead continued their vexatious sham litigation against
8 Plaintiff.
9 Plaintiff.

10 8.50 The RIAA and the Record Companies abusively filed and then prosecuted this
11 baseless sham litigation against Plaintiff for nearly two years, ignoring her many pleas that the
12 sham litigation cease. They were at all times aware of the total lack of probable cause for
13 commencing and prosecuting it, and the serious harm it caused to Plaintiff.
14

15 8.51 The proceedings terminated in Ms. Andersen's favor upon the unconditional
16 dismissal with prejudice of the claims against her on June 1, 2007.

17 8.52 U.S. Magistrate Judge Donald Ashmanskas concluded in his September 21,
18 2007 findings that the Record Companies' prosecution of the litigation against Plaintiff had
19 been objectively unreasonable and improperly motivated. Specifically, the court found:
20

21 **[the Record Companies'] failure to contact a third party, who potentially**
22 **was the actual infringer, until April 2007, as well as their position that his**
23 **denials were credible, while defendant's were not, are also relevant to the**
24 **third Fogerty factor—objective unreasonableness. Without applying the**
25 **benefit of hindsight, these facts indicate that, in significant ways, [the**
26 **Record Companies] did not conduct themselves in an objectively**
reasonable manner, i.e., in a manner to be expected from a reasonable
copyright holder pursuing relief from a party it believed to be infringing.

...

An objectively reasonable copyright holder would seek to hold liable and
deter the person who actually violated the Copyright Act.

1 ...

2 **Whatever [the Record Companies'] reasons for the manner in which they**
3 **have prosecuted this case, it does not appear to be justified as a reasonable**
4 **exploration of the boundaries of copyright law.**

5 In January 2008, the Senior U.S. District Judge adopted the Magistrate Judge's findings.

6 8.53 Defendants' conduct was malicious, and was intended to serve the primary
7 purpose of intimidating, coercing, and threatening Plaintiff and others similarly situated, not
8 securing an adjudication of any copyright claims.

9 8.54 The conduct of the RIAA and the Record Companies described above
10 proximately caused direct and consequential monetary, physical, and psychological harms to
11 Plaintiff and all others similarly situated, resulting in damages in an amount to be proven at
12 trial.
13

14 **FOURTH CLAIM FOR RELIEF**

15 **ABUSE OF LEGAL PROCESS**

16 Oregon Law

17 *Defendants RIAA and Record Companies*

18 8.55 Plaintiff realleges and incorporates herein by reference each of the allegations set
19 forth above. Plaintiff makes this claim against the RIAA and the Record Companies.

20 8.56 As detailed above and herein, the RIAA and the Record Companies pursued
21 litigation against Plaintiff, and many processes attendant to litigation, not for purposes of
22 protecting or vindicating the copyrights purportedly at issue, but instead for the primary
23 unlawful purpose of intimidating Plaintiff and the general public in order to maintain and
24 preserve as long as possible their monopolistic control over the national market for the
25 distribution of sound recordings.

26 8.57 That the RIAA and the Record Companies were abusing the litigation process to

1 achieve their ulterior purpose is demonstrated by their knowing reliance (as the sole basis for
2 their claims) on a flawed and illegal investigation that could not identify Plaintiff; their use of a
3 boilerplate complaint containing generic, vague claims; their willful refusal to investigate and
4 pursue an individual actually known as gotenkito and much more likely responsible for the
5 alleged infringing acts; their refusal dismiss the action even after obtaining substantial evidence
6 exculpating Plaintiff; and their misuse of the discovery process in order to coerce Plaintiff into
7 making an undeserved payment of money and/or abandoning her legal rights.

9 8.58 The RIAA and the Record Companies engaged in willful acts in the course of
10 the sham litigation which were aimed at achieving their illegitimate objectives. Although an
11 investigation of Plaintiff's computer prior to the litigation or at its outset could have yielded
12 critical evidence necessary to evaluation of their claims, the RIAA and the Record Companies
13 repeatedly refused Ms. Andersen's offer to inspect her computer hard drive. After a court order
14 required it, the inspection was finally done in September and October 2006. Thereafter, the
15 RIAA and the Record Companies willfully refused to disclose to Ms. Andersen the results of
16 the inspection of her computer. This was because the RIAA's own expert had determined that
17 Plaintiff's computer had not been used to infringe copyrights. No files or remnants of any files
18 allegedly containing copies of the Record Companies' alleged copyrighted recordings were ever
19 found on her computer.
20
21

22 8.59 Despite their own expert's determination and all the other proof of Plaintiff's
23 innocence, the RIAA and the Record Companies refused to voluntarily dismiss their claims.

24 8.60 Rather than ending their abuse of her, RIAA-controlled lawyers renewed their
25 threats. They would not dismiss their false claims unless Plaintiff paid them some undisclosed
26 amount of money. They wanted it to appear publicly that they had prevailed.

1
2 8.61 When Plaintiff declined to pay them, in late January 2007 lawyers for the RIAA
3 and the Record Companies demanded the deposition of her 10 year-old daughter Kylee. The
4 demand came after the computer inspection and other evidence showed that Plaintiff's
5 computer has not been used for infringement; the deposition was totally unnecessary. The
6 RIAA and its agents knew that Plaintiff was very concerned about her daughter and the threat of
7 taking her daughter's deposition was causing her a great deal of distress.
8

9 8.62 Knowing of her distress, the RIAA and its agents even attempted to directly
10 contact Kylee under the guise of a need to serve subpoenas and/or deposition notices. In
11 February 2007, a paralegal from the law firm retained by the RIAA and the Record Companies
12 called Plaintiff's apartment building looking for Kylee. This attempt at direct contact was
13 completely unnecessary; the customary and professional procedure for effecting the deposition
14 of Plaintiff's child would have been to simply provide notice to Plaintiff's counsel.
15

16 8.63 In April 2007, phone calls were also made to Kylee's former elementary school
17 under false pretenses. The voice of the woman on the phone claimed to be Kylee's grandma
18 inquiring as to her attendance. Plaintiff learned of these tactics and was even more frightened
19 and distressed.
20

21 8.64 Since at least September 2006, the RIAA and the Record Companies had known
22 of a 30 year old man who had widely used the name "gotenkito" on various websites. The same
23 man had also admitted to downloading copyrighted materials on the internet. Even after
24 Plaintiff independently discovered this man and supplied his contact information to the RIAA
25 and the Record Companies, they willfully refused to investigate and pursue him in the same
26 manner as they did Plaintiff, and instead continued their vexatious sham litigation against

1 Plaintiff.

2 8.65 It was not until nearly two years after their baseless suit was recklessly filed, that
3 the RIAA lawyers initially offered to voluntarily dismiss the Record Companies' claims against
4 Plaintiff, but only if she abandoned her legal counterclaims against them. The lawyers also
5 threatened that if she did not abandon her legal rights, they would continue to persecute her and
6 her young daughter. In fact, when Ms. Andersen insisted on protecting her rights, in March
7 2007, Defendants again demanded to interrogate and confront her little girl at the offices of
8 RIAA lawyers. Despite her distress, Plaintiff refused to give in. On March 27, 2007, Judge
9 Ashmanskas intervened and entered an order protecting Kylee and Plaintiff from the aggressive
10 facial confrontation threatened by the RIAA and its agents.
11

12 8.66 In April and May 2007, a lawyer for the RIAA and the Record Companies
13 interrogated Kylee. Several other friends and relatives of Plaintiff were also interrogated.
14 Again, this was done despite the fact that computer inspection had been done, Gotenkito had
15 been identified and other exculpatory evidence established Ms. Andersen's innocence. These
16 depositions were entirely unnecessary and were intended by the RIAA and the Record
17 Companies to apply further financial pressure and psychological distress on Plaintiff in an effort
18 to cause her to abandon her counterclaims.
19

20 8.67 U.S. Judge Donald Ashmanskas concluded in his September 21, 2007 findings
21 that the Record Companies' prosecution of the litigation against Plaintiff had been objectively
22 unreasonable and improperly motivated. Specifically, the court found:
23

24
25 **[the Record Companies'] failure to contact a third party, who potentially**
26 **was the actual infringer, until April 2007, as well as their position that his**
denials were credible, while defendant's were not, are also relevant to the
third Fogerty factor—objective unreasonableness. Without applying the

1 benefit of hindsight, these facts indicate that, in significant ways, [the
2 Record Companies] did not conduct themselves in an objectively
3 reasonable manner, i.e., in a manner to be expected from a reasonable
copyright holder pursuing relief from a party it believed to be infringing.

...

4 An objectively reasonable copyright holder would seek to hold liable and
deter the person who actually violated the Copyright Act.

...

6 Whatever [the Record Companies'] reasons for the manner in which they
7 have prosecuted this case, it does not appear to be justified as a reasonable
exploration of the boundaries of copyright law.

8 In January 2008, the Senior U.S. District Judge adopted the Magistrate Judge's findings.

9 8.68 The abusive conduct of the RIAA and the Record Companies proximately
10 resulted in damages to Plaintiff and other members of the class in an amount to be specifically
11 proven at trial.

12 **FIFTH CLAIM FOR RELIEF**

13 FEDERAL RACKETEERING INFLUENCED CLAIMS AND 14 CORRUPT ORGANIZATION ACT – RACKETEERING ACTIVITY

15 18 U.S.C. § 1962(c)

All Defendants

16 8.69 Plaintiff realleges and incorporates herein by reference each of the allegations set
17 forth above. Plaintiff makes this claim against all Defendants.

18 8.70 The Racketeer Influenced and Corrupt Organization Act (RICO) prohibits
19 companies from engaging in organized racketeering or criminal activities. 18 U.S.C. § 1961, *et*
20 *seq.* RICO provides that it is unlawful for any person employed by, or associated with, any
21 enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of
22 racketeering activity or the collection of an unlawful debt. 18 U.S.C. § 1962 (c).

24 **A. Enterprise**

25 8.71 The enterprise detailed in this Fifth Claim for Relief is the same enterprise at
26 issue in Ms. Andersen's Sixth Claim for Relief, Conspiracy to Engage in Racketeering Activity.

1 To avoid redundancy and confusion, the allegation here will be incorporated by reference in the
2 Sixth Claim without specific repetition there.

3 8.72 As detailed above and herein, the RIAA, MediaSentry, the Record Companies,
4 and Settlement Support Center each worked in association with each other for the purpose of
5 creating and operating an enterprise to wage a public threat and intimidation campaign
6 targeting, in part, Plaintiff and other members of the class, in an effort to maintain control of
7 and monopolize the distribution of music recordings.
8

9 8.73 Pursuant to a secret agreement reached in or about 2002, the RIAA, its
10 controlled member companies and MediaSentry conspired to develop a massive threat and
11 sham litigation enterprise targeting private citizens across the United States. In June 2003, the
12 RIAA publicly announced that it would begin a campaign that would involve thousands of
13 threats and lawsuits against individuals.
14

15 8.74 As a part of the enterprise MediaSentry has for years conducted illegal, flawed
16 and negligent investigations of many thousands of private United States citizens. These illegal
17 investigations were and are used as the sole basis for tens of thousands of threatened and actual
18 lawsuits against individuals throughout the U.S.
19

20 8.75 Defendants have known for years that their investigation protocol is
21 fundamentally flawed and illegal. The protocol is subject to a number of known technical flaws
22 that result in misidentification of innocent individuals. However, even if these technical flaws
23 are not implicated in any individual case, the protocol generally is simply unable to identify
24 those individuals who are later subject to improper threats, coercion, and sham lawsuits in
25 federal district court. MediaSentry's investigations are also performed in violation of private
26 investigation licensing requirements applicable in Oregon and most other states, making

1 MediaSentry subject to criminal penalties.

2 8.76 In communications with Ms. Andersen and others similarly situated, the RIAA,
3 the Record Companies, and Settlement Support Center have misrepresented the true nature of
4 these illegal, flawed private investigations and the “evidence” gained therefrom in an attempt to
5 coerce undeserved payments from targeted individuals. As exemplified in the February 2, 2005
6 letter to Plaintiff, lawyers for the RIAA the Record Companies have repeatedly made false
7 representations and material omissions in asserting that its investigation had produced
8 “evidence” which personally and conclusively identified the targeted individual as the party
9 responsible for alleged infringing acts. As exemplified in the February and March 2005
10 telephone conversations between Plaintiff and Settlement Support Center, Settlement Support
11 Center has repeated the false representations and material omissions concerning the
12 investigation and the “evidence” gained, and has also admitted that Defendants intended to
13 coerce payment from Plaintiff and others similarly situated despite the admitted innocence of
14 the targeted individuals.
15

16 8.77 Defendants claim here that certain of their activities were ostensibly undertaken
17 for purposes of “litigation” against Plaintiff and others similarly situated to seek damages in a
18 court action. In reality they were conducted to promote generalized public fear and intimidation
19 in order to further the common business interests of the RIAA, the Record Companies, and
20 other RIAA member companies. Defendants have in fact actually sought a court’s
21 determination of proof and evidence of damages in only one of the tens of thousands of cases
22 filed. The investigation, the threats of litigation, and the litigation itself were all undertaken
23 without an objectively reasonable basis to support the particular claims threatened and/or
24 alleged against Plaintiff and others similarly situated. The illegal investigation, the threats of
25
26

1 litigation, and the sham litigation were all undertaken mechanically and without regard to the
2 merits of any particular case. These activities were automated and part of Defendants' broader,
3 coordinated racketeering enterprise. These "litigation" activities are a "sham" as defined by the
4 U.S. Supreme Court in California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508
5 (1972) and subsequent cases. As such, Defendants' activities are not entitled to immunity
6 under federal and state law.

8 8.78 The immediate aim of Defendants concerted acts is to threaten, intimidate and
9 coerce Plaintiff and other wrongfully targeted individuals into paying the Record Companies
10 and the RIAA thousands of dollars. The ultimate goal is to further the business interests of the
11 RIAA, the Record Companies, and other RIAA member companies by maintaining and
12 preserving as long as possible their monopolistic control over the national market for the
13 distribution of sound recordings.

15 8.79 Defendants' association constitutes an "enterprise" as defined in 18 U.S.C. §
16 1961(4).

17 8.80 While each of the Defendants participated in the common enterprise, they also
18 have an existence separate and distinct from the enterprise.

19 8.81 Defendants are each "persons" as defined in 18 U.S.C. § 1961(3).

21 **B. Predicate Acts**

22 8.82 The predicate acts detailed in this Fifth Claim for Relief are the same acts at
23 issue in Ms. Andersen's Sixth Claim for Relief, Conspiracy to Engage in Racketeering Activity.

24 To avoid redundancy and confusion, the allegations here will be incorporated by reference in
25 the Sixth Claim without specific repetition there.

26 8.83 Defendants' acts in furtherance of their racketeering enterprise include several

1 predicate acts that constitute “racketeering activity” for purposes of 18 U.S.C. § 1961(1). These
2 predicate acts, which are detailed above and herein, include mail fraud, wire fraud, violations of
3 the Hobbs Act, interstate commerce in aid of unlawful activity, and other acts involving
4 extortion that are chargeable under state law.

5 Mail Fraud

6
7 8.84 Defendants formed a common scheme and enterprise to defraud Plaintiff and the
8 other class members and directed their lawyers to send false and misleading communications
9 through the U.S. mail with the intent to defraud in violation of 18 U.S.C. § 1341. The acts of
10 mail fraud include the mailing of the false and misleading February 2, 2005 letter to Plaintiff.
11 Because of their perceived greater knowledge, her lack of technical skills and their aggressive
12 insistence, Ms. Andersen reasonably relied to her detriment on some of Defendants statements
13 that proof of copyright infringement existed.
14

15 Wire Fraud

16 8.85 Defendants formed a common scheme and enterprise to defraud Plaintiff and the
17 other class members and in furtherance of this scheme sent false and misleading
18 communications transmitted through the means of wire in violation of 18 U.S.C. § 1343. The
19 acts of wire fraud include the February and March 2005 telephone conversations between
20 Plaintiff and individuals employed by Settlement Support Center. Because of their perceived
21 greater knowledge, her lack of technical skills and their aggressive insistence, Ms. Andersen
22 reasonably relied to her detriment on some of Defendants’ statements that proof of copyright
23 infringement existed.
24

25 Hobbs Act

26 8.86 Through the above-detailed enterprise, Defendants conspired to and/or attempted

1 to coerce and threaten Plaintiff and the other class members into paying the Defendant Record
2 Companies thousands of dollars in violation of the Hobbs Act, 18 U.S.C. § 1951, *et seq.*
3 Defendants' conduct in violation of the Hobbs Act includes the plan of extortion evidenced in
4 the mailing of the threatening, false and misleading February 2, 2005 letter by lawyers for the
5 RIAA and the Record Companies; the various February and March 2005 phone conversations
6 in which representatives of Settlement Support Center made false and misleading
7 representations and threats; the June 24, 2005 filing of the baseless sham lawsuit; and various
8 threats made by lawyers for the RIAA and the Record Companies during the pendency of the
9 litigation against Ms. Andersen. Each of these acts were committed to intimidate Plaintiff and
10 extort from her payment of thousands of dollars through wrongful use of threatened and actual
11 fear.
12
13

14 Interstate Commerce for Unlawful Activity (18 U.S.C. § 1952)

15 8.87 As detailed above and herein, Defendants engaged in and/or conspired to engage
16 in interstate and/or foreign travel and utilize interstate mails in order to conduct illegal and
17 flawed private investigations promote, manage, establish, and/or carry on their unlawful
18 activities, including extortion, mail fraud, wire fraud and coercion.
19

20 8.88 Defendants frequently engaged in interstate commerce to facilitate and promote,
21 manage, establish and carry on the unlawful criminal investigation of Ms. Andersen and other
22 class members in violation of ORS 703.405 and 163.275 and similar laws of other states, and/or
23 to facilitate the fraudulent schemes discussed above.

24 8.89 Defendants' knowing, willful, and intentional acts violated 18 U.S.C. § 1952.

25 Oregon Predicate Act-Coercion

26 8.90 Through the above-detailed enterprise, Defendants conspired to and/or attempted

1 to improperly coerce Plaintiff and the other class members into paying the RIAA and the
2 Record Companies. This conduct constitutes a violation of Oregon's coercion statute, ORS
3 163.275, and is punishable by up to five years' imprisonment. Defendants' conduct in violation
4 of the coercion statute includes the mailing of the threatening, false and misleading February 2,
5 2005 letter by lawyers for the RIAA and the Record Companies; the various February and
6 March 2005 phone conversations in which representatives of Settlement Support Center made
7 false and misleading representations and threats; the June 24, 2005 filing of the baseless sham
8 lawsuit; and various threats made by lawyers for the RIAA and the Record Companies during
9 the pendency of the litigation against Ms. Andersen. Each of these acts were committed in an
10 attempt to intimidate Plaintiff into paying of several thousand dollars and/or abandoning her
11 counterclaims. In each instance, Defendants' representatives directly or impliedly threatened
12 that if Plaintiff did not pay the RIAA or the Record Companies and/or abandon her
13 counterclaims, Defendants or their agents would provide false information with respect to legal
14 claims against Plaintiff and her potential defenses thereto, or would engage in other criminal
15 conduct.
16
17

18 **C. Pattern of Related Racketeering Acts**

19 8.91 The pattern of related racketeering acts detailed in this Fifth Claim for Relief is
20 the same pattern at issue in Ms. Andersen's Sixth Claim for Relief, Conspiracy to Engage in
21 Racketeering Activity. To avoid redundancy and confusion, the allegations here will be
22 incorporated by reference in the Sixth Claim without specific repetition.
23

24 8.92 Defendants' acts formed a pattern of racketeering as defined in 18 U.S.C. §
25 1961(5). Defendants have committed at least two acts of racketeering. These acts represent a
26 common course of conduct used by Defendants to target thousands of citizens throughout the

1 United States. These activities shared the common objectives of seeking payment of thousands
2 of dollars from each person targeted, regardless of their innocence, in order to preserve and
3 maintain a monopolistic music distribution scheme. These acts had the same or similar
4 purposes, results, participants, victims and methods of commission.

5
6 8.93 As an example of Defendants' pattern of activity, in September 2004, lawyers
7 for the RIAA sent to Debbie Foster of Oklahoma a letter asserting that they had "evidence" of
8 copyright infringement, threatening litigation, and demanding that Ms. Foster contact their
9 agents. As in the letter sent to Plaintiff, the letter to Ms. Foster contained various
10 misrepresentations and material omissions concerning MediaSentry's investigation and the
11 "evidence" gained from it. Ms. Foster contacted the RIAA's agents, who demanded several
12 thousand dollars in payment. Although she repeatedly asserted her own innocence, when Ms.
13 Foster refused to make an undeserved payment to the RIAA, several RIAA member companies
14 sued her, causing her to incur significant costs as a result. Ms. Foster ultimately prevailed in
15 that lawsuit, which a district court later found objectively baseless.

16
17 8.94 As further evidence of Defendants' pattern of activity, in September 2004,
18 several RIAA member companies filed suit against James Nelson of Michigan. When Mr.
19 Nelson's counsel called a lawyer for the RIAA and presented evidence that Mr. Nelson did not
20 engage in any of the alleged infringing acts, the RIAA's lawyer insisted that Mr. Nelson's lack
21 of involvement was irrelevant and threatened that the companies would pursue the suit against
22 him for hundreds of thousands of dollars whether or not he had ever engaged in the alleged file-
23 sharing.

24
25 8.95 Defendants and their agents stood to financially benefit from these deceptive and
26 unlawful acts. Proceeds from these activities are used to fund the operation of Defendants'

1 continued public threat campaigns against the other members of the class.

2 **D. Economic Injury and Effect on Interstate Commerce**

3 8.96 The economic injury detailed in this Fifth Claim for Relief is the same injury at
4 issue in Ms. Andersen's Sixth Claim for Relief, Conspiracy to Engage in Racketeering Activity.
5 To avoid redundancy and confusion, the allegations here will be incorporated by reference in
6 the Sixth Claim without specific repetition.
7

8 8.97 Defendants' enterprise engages in interstate commerce, and Defendants'
9 activities affect interstate commerce. As a result of Defendants' racketeering activities, Ms.
10 Andersen was unable to return to work and derive income. As a result, she was unable to
11 engage in desired interstate commercial activity that she otherwise would have. Further, she
12 engaged in interstate commerce and spent substantial time and resources investigating the
13 integrity of her computer, investigating Defendants' claims, and participating in the sham
14 litigation against her. Thousands of others similarly situated were prevented from engaging in
15 desired commercial activities and were compelled to engage in undesired commercial activities,
16 and also spent additional funds in interstate commerce on legal fees and settlement proceeds in
17 defending and resolving sham litigation.
18

19 8.98 Defendants' racketeering activities have directly and proximately resulted in
20 damages to Plaintiff and other members of the class in an amount to be specifically proven at
21 trial.
22

23 **SIXTH CLAIM FOR RELIEF**

24 **FEDERAL RACKETEERING INFLUENCED CLAIMS AND CORRUPT ORGANIZATION
25 ACT - CONSPIRACY TO ENGAGE IN RACKETEERING ACTIVITY**

26 18 U.S.C. § 1962(d)

All Defendants

8.99 Plaintiff realleges and incorporates herein by reference each of the allegations set

1 forth above. Plaintiff makes this claim against all Defendants.

2 8.100 The Racketeer Influenced and Corrupt Organization Act (RICO) prohibits
3 companies from conspiring to engage in organized racketeering or criminal activities. RICO
4 provides that it is unlawful for any person employed by, or associated with, any enterprise to
5 merely conspire to violate 18 U.S.C. § 1962 (c). 18 U.S.C. § 1962(d).

6
7 **A. Enterprise**

8 8.101 The enterprise which Defendants conspired to engage in is set forth in detail at
9 Paragraphs 8.71 to 8.81 above. To avoid redundancy and confusion, these claims are
10 incorporated but not specifically restated here.

11 **B. Predicate Acts**

12 8.102 The predicate acts which Defendants conspired to engage in are set forth in
13 detail at Paragraphs 8.82 to 8.90 above. To avoid redundancy and confusion, these claims are
14 incorporated but not specifically restated here.

15
16 **C. Pattern of Related Racketeering Acts**

17 8.103 The pattern of related racketeering acts which Defendants conspired to engage in
18 is set forth in detail at Paragraphs 8.91 to 8.95 above. To avoid redundancy and confusion,
19 these claims are incorporated but not specifically restated here.

20
21 **D. Economic Injury and Effect on Interstate Commerce**

22 8.104 The economic injury which Defendants' conspiracy caused in is set forth in
23 detail at Paragraphs 8.96 to 8.98 above. To avoid redundancy and confusion, these claims are
24 incorporated but not specifically restated here.

25 8.105 Defendants' conspiracy to engage in racketeering activities has directly and
26 proximately resulted in damages to Plaintiff and other members of the class in an amount to be

1 specifically proven at trial.

2 **SEVENTH CLAIM FOR RELIEF**
3 OREGON RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT -
4 RACKETEERING ACTIVITY
5 ORS 166.720(3)
6 *All Defendants*

7 8.106 Plaintiff realleges and incorporates herein by reference each of the allegations set
8 forth above. Plaintiff makes this claim against all Defendants.

9 8.107 The Oregon Racketeer Influenced and Corrupt Organizations Act (ORICO),
10 ORS 166.715 *et seq.*, prohibits companies from engaging in organized racketeering or criminal
11 activities. ORICO provides that it is unlawful for any person employed by, or associated with,
12 any enterprise to conduct or participate, directly or indirectly, in such enterprise through a
13 pattern of racketeering activity or the collection of an unlawful debt. ORS 166.720(3).

14 **A. Enterprise**

15 8.108 The enterprise detailed in this Seventh Claim for Relief is the same enterprise at
16 issue in Ms. Andersen's Eighth Claim for Relief, Conspiracy to Engage in Oregon Racketeering
17 Activity. To avoid redundancy and confusion, the allegations here will be incorporated by
18 reference in the Eighth Claim without specific repetition

19 8.109 As detailed above and herein, the RIAA, MediaSentry, the Record Companies,
20 and Settlement Support Center each worked in association with each other for the purpose of
21 creating and operating an enterprise to wage a public threat and intimidation campaign
22 targeting, in part, Plaintiff and other members of the class, in an effort to maintain control of
23 and monopolize the distribution of music recordings.

24 8.110 Pursuant to a secret agreement reached in or about 2002, the RIAA, its
25 controlled member companies and MediaSentry conspired to develop a massive threat and
26

1 sham litigation enterprise targeting private citizens across the United States. In June 2003, the
2 RIAA publicly announced that it would begin a campaign that would involve thousands of
3 threats and lawsuits against individuals.

4 8.111 As a part of the enterprise MediaSentry has for years conducted illegal, flawed
5 and negligent investigations of many thousands of private United States citizens. These illegal
6 investigations were and are used as the sole basis for tens of thousands of threatened and actual
7 lawsuits against individuals throughout the country.

8 8.112 Defendants have known for years that their investigation protocol is
9 fundamentally flawed and illegal. The protocol is subject to several known technical flaws that
10 can result in misidentification. However, even if these technical flaws are not implicated in any
11 individual case, the protocol simply cannot identify those individuals who are later subject to
12 improper threats, coercion, and personal suit in federal district court. MediaSentry's
13 investigations are also performed in violation of private investigation licensing requirements
14 applicable in Oregon and most other states; they are thus illegal.

15 8.113 In various communications with Ms. Andersen and others similarly situated, the
16 RIAA, the Record Companies, and Settlement Support Center have misrepresented the true
17 nature of these illegal, flawed private investigations and the "evidence" gained therefrom in an
18 attempt to coerce undeserved payments from targeted individuals. As exemplified in the
19 February 2, 2005 letter to Plaintiff, lawyers for the RIAA the Record Companies have
20 repeatedly made false representations and material omissions in asserting that its investigation
21 had produced "evidence" which personally and conclusively identified the targeted individual
22 as the party responsible for alleged infringing acts. As exemplified in the February and March
23 2005 telephone conversations between Plaintiff and Settlement Support Center, Settlement
24
25
26

1 Support Center has repeated the false representations and material omissions concerning the
2 investigation and the “evidence” gained from it, and has also admitted that Defendants intended
3 to coerce payment from Plaintiff and others similarly situated despite the admitted innocence of
4 the targeted individuals.

5
6 8.114 Although certain of Defendants’ activities were ostensibly undertaken for
7 purposes of particular litigation against Plaintiff and others similarly situated, in reality they
8 were conducted to promote generalized public fear and intimidation in order to further the
9 common business interests of the RIAA and the Record Companies. The investigation, the
10 threats of litigation, and the litigation itself were all undertaken without an objectively
11 reasonable basis to support the particular claims threatened and/or alleged against Plaintiff and
12 others similarly situated. The investigation, the threats of litigation, and the litigation in
13 Plaintiff’s case, and in the cases of similarly situated class members, were all undertaken
14 without regard to the merits of each particular case. These activities were instead performed in
15 a generic manner as part of Defendants’ broader, coordinated racketeering enterprise. These
16 activities are a “sham” as defined by the U.S. Supreme Court in California Motor Transport Co.
17 v. Trucking Unlimited, 404 U.S. 508 (1972) and subsequent cases. As such, Defendants’
18 activities are not entitled to immunity under federal and state law.
19
20

21 8.115 The immediate aim of each of these activities was to intimidate and coerce
22 Plaintiff and other wrongfully targeted individuals into paying the Record Companies and the
23 RIAA several thousand dollars. The ultimate goal was to further the business interests of the
24 RIAA, the Record Companies, and other RIAA-member companies by maintaining and
25 preserving as long as possible their monopolistic control over the national market for the
26 distribution of sound recordings.

1
2 8.116 Defendants’ association constitutes an “enterprise” as defined in ORS
3 166.715(2).

4 8.117 While each of the Defendants participated in the enterprise, they also have an
5 existence separate and distinct from the enterprise.
6

7 8.118 Defendants are each “persons” as defined in ORS 166.715(5).

8 **B. Predicate Acts**

9 8.119 The predicate acts detailed in this Seventh Claim for Relief are the same acts at
10 issue in Ms. Andersen’s Eighth Claim for Relief, Conspiracy to Engage in Oregon Racketeering
11 Activity. To avoid redundancy and confusion, the allegations here will be incorporated by
12 reference in the Eighth Claim without specific repetition.
13

14 8.120 Defendants’ acts in furtherance of their racketeering enterprise include several
15 predicate acts that constitute “racketeering activity” for purposes of ORS 166.715(6). These
16 predicate acts, which are detailed above and herein, include mail fraud, wire fraud, violations of
17 the Hobbs Act, interstate commerce in aid of unlawful activity and violations of the coercion
18 statute.
19

20 **Mail Fraud**

21 8.121 Defendants formed a scheme to defraud Plaintiff and the other class members
22 and directed their lawyers to send false and misleading communications through the U.S. mail
23 with the intent to defraud in violation of 18 U.S.C. § 1341. The acts of mail fraud include the
24 mailing of the false and misleading February 2, 2005 letter to Plaintiff. Because of their
25 perceived greater knowledge, her lack of technical skills and their aggressive insistence, Ms.
26 Andersen reasonably relied to her detriment on some of Defendants statements that proof of

1 copyright infringement existed.

2 Wire Fraud

3 8.122 Defendants formed a scheme to defraud Plaintiff and the other class members
4 and in furtherance of this scheme sent false and misleading communications transmitted
5 through the means of wire in violation of 18 U.S.C. § 1343. The acts of wire fraud include the
6 February and March 2005 telephone conversations between Plaintiff and Settlement Support
7 Center. Because of their perceived greater knowledge, her lack of technical skills and their
8 aggressive insistence, Ms. Andersen reasonably relied to her detriment on some of Defendants
9 statements that proof of copyright infringement existed.
10

11 Hobbs Act

12 8.123 Through the above-detailed enterprise, Defendants conspired to and/or attempted
13 to coerce and threaten Plaintiff and the other class members into paying the Defendant Record
14 Companies thousands of dollars in violation of the Hobbs Act, 18 U.S.C. § 1951, *et seq.*
15 Defendants' conduct in violation of the Hobbs Act includes the mailing of the threatening, false
16 and misleading February 2, 2005 letter by lawyers for the RIAA and the Record Companies; the
17 various February and March 2005 phone conversations in which representatives of Settlement
18 Support Center made false and misleading representations and threats; the June 24, 2005 filing
19 of the baseless sham lawsuit, and various threats made by lawyers for the RIAA and the Record
20 Companies during the pendency of the sham litigation against Plaintiff. Each of these acts was
21 committed in an attempt to intimidate Plaintiff into paying of several thousand dollars through
22 wrongful use of threatened and actual fear.
23
24

25 Interstate Commerce to Promote Unlawful Activity (18 U.S.C. § 1952)

26 8.124 As detailed above and herein, Defendants engaged in and/or conspired to engage

1 in interstate commerce and utilize interstate mails in order to promote, manage, establish,
2 and/or carry on their unlawful investigative activities in violation of ORS 703.405 and 163.275
3 and similar laws of other states, and/or to facilitate their fraudulent schemes.

4 8.125 Defendants frequently engaged in interstate and/or foreign travel to effectuate
5 and/or facilitate the unlawful fraudulent schemes discussed above.

7 8.126 Defendants' knowing, willful, and intentional acts violated 18 U.S.C. § 1952.

8 Oregon Coercion

9 8.127 Through the above-detailed enterprise, Defendants conspired to and/or attempted
10 to improperly coerce Plaintiff and the other class members into paying the RIAA and the
11 Record Companies and/or to abandon their legal rights. This conduct constitutes a violation of
12 Oregon's coercion statute, ORS 163.275, which is specified as racketeering activity in ORS
13 166.725(6)(a)(I). Defendants' conduct in violation of the coercion statute includes the mailing
14 of the threatening, false and misleading February 2, 2005 letter by lawyers for the RIAA and the
15 Record Companies; the various February and March 2005 phone conversations in which
16 representatives of Settlement Support Center made false and misleading representations and
17 threats; the June 24, 2005 filing of the baseless sham lawsuit; and various threats made by
18 lawyers for the RIAA and the Record Companies during the pendency of the sham litigation
19 against Plaintiff. Each of these acts was committed in an attempt to intimidate Plaintiff into
20 paying several thousand dollars and/or abandoning her counterclaims. In each instance,
21 Defendants' representatives directly or impliedly threatened that if Plaintiff did not pay the
22 RIAA or the Record Companies and/or abandon her counterclaims, Defendants or their agents
23 would provide false information with respect to legal claims against Plaintiff and her potential
24 defenses thereto, or would engage in other criminal conduct.
25
26

1
2 **C. Pattern of Related Racketeering Acts**

3 8.128 The pattern of related racketeering acts detailed in this Seventh Claim for Relief
4 is the same pattern at issue in Ms. Andersen’s Eighth Claim for Relief, Conspiracy to Engage in
5 Oregon Racketeering Activity. To avoid redundancy and confusion, the allegations here will be
6 incorporated by reference in the Eighth Claim without specific repetition.
7

8 8.129 Defendants’ acts formed a pattern of racketeering as defined in ORS 166.715(4).
9 Defendants have committed at least two acts of racketeering. These acts represent a common
10 course of conduct used by Defendants to target thousands of citizens throughout the United
11 States. These activities shared the common objectives of seeking payment of thousands of
12 dollars from each person targeted, regardless of their innocence, in order to preserve and
13 maintain a monopolistic music distribution scheme. These acts had the same or similar
14 purposes, results, participants, victims and methods of commission.
15

16 8.130 As an example of Defendants’ pattern of activity, in September 2004, lawyers
17 for the RIAA sent to Debbie Foster of Oklahoma a letter asserting that they had “evidence” of
18 copyright infringement, threatening litigation, and demanding that Ms. Foster contact their
19 agents. As in the letter sent to Ms. Andersen, the letter to Ms. Foster contained various
20 misrepresentations and material omissions concerning MediaSentry’s investigation and the
21 “evidence” gained from it. Ms. Foster contacted the RIAA’s agents, who demanded several
22 thousand dollars in payment. Although she repeatedly asserted her own innocence, when Ms.
23 Foster refused to make an undeserved payment to the RIAA, several RIAA member companies
24 sued her, causing her to incur significant costs as a result. Ms. Foster ultimately prevailed in
25 that lawsuit, which a district court later found objectively baseless.
26

1
2 8.131 As further evidence of this pattern of activity, in September 2004, several RIAA
3 member companies filed suit against James Nelson of Michigan. When Mr. Nelson's counsel
4 called a lawyer for the RIAA and presented evidence that Mr. Nelson did not engage in any of
5 the alleged downloading activities, the RIAA's lawyer insisted that Mr. Nelson's lack of
6 involvement was irrelevant and threatened that the companies would sue him for hundreds of
7 thousands of dollars whether or not he had ever engaged in the alleged file sharing.
8

9 8.132 Defendants and their agents stood to financially benefit from these deceptive and
10 unlawful acts. Proceeds from these activities are used to fund the operation of Defendants'
11 continued public threat campaigns against the other members of the class.
12

13 **D. Economic Injury**

14 8.133 The economic injury detailed in this Seventh Claim for Relief is the same injury
15 at issue in Ms. Andersen's Eighth Claim for Relief, Conspiracy to Engage in Oregon
16 Racketeering Activity. To avoid redundancy and confusion, the allegations here will be
17 incorporated by reference in the Eighth Claim without specific repetition.
18

19 8.134 As a result of Defendants' racketeering activities, Plaintiff was unable to return
20 to work and derive income. Further, she spent additional time and resources as a result of
21 investigating the integrity of her computer, investigating Defendants' claims, and participating
22 in the sham litigation against her. Thousands of others similarly situated were prevented from
23 engaging in desired commercial activities and were compelled to engage in undesired
24 commercial activities, and also spent additional funds on legal fees and settlement proceeds in
25 defending and resolving sham litigation.
26

8.135 Defendants' racketeering activities have directly and proximately resulted in

1 damages to Plaintiff and members of the class in an amount to be specifically proven at trial.

2 **EIGHTH CLAIM FOR RELIEF**

3 OREGON RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT -
4 CONSPIRACY TO ENGAGE IN RACKETEERING ACTIVITY

5 ORS 166.720(4)

6 *All Defendants*

7 8.136 Plaintiff realleges and incorporates herein by reference each of the allegations set
8 forth above. Plaintiff makes this claim against all Defendants.

9 8.137 The Oregon Racketeer Influenced and Corrupt Organizations Act (ORICO),
10 ORS 166.715 *et seq.*, prohibits companies from conspiring to engage in organized racketeering
11 or criminal activities. ORICO provides that it is unlawful for any person employed by, or
12 associated with, any enterprise to merely conspire to violate ORS 166.720(3). ORS 166.720(4).

13 **A. Enterprise**

14 8.138 The enterprise which Defendants conspired to engage in is set forth in detail at
15 Paragraphs 8.108 to 8.118 above. To avoid redundancy and confusion, these claims are
16 incorporated but not specifically restated here.

17 **B. Predicate Acts**

18 8.139 The predicate acts which Defendants conspired to engage in are set forth in
19 detail at Paragraphs 8.119 to 8.127 above. To avoid redundancy and confusion, these claims
20 are incorporated but not specifically restated here.

21 **C. Pattern of Related Racketeering Acts**

22 8.140 The pattern of related racketeering acts which defendants conspired to engage in
23 is set forth in detail at Paragraphs 8.128 to 8.132 above. To avoid redundancy and confusion,
24 these claims are incorporated but not specifically restated here.

25 **D. Economic Injury**

1 employed had resulted in multiple mistaken identifications in the past.

2 8.145 On June 24, 2005, lawyers representing the RIAA and the Record Companies
3 knowingly and intentionally made the materially false representation that they had actual
4 evidence that Plaintiff had infringed the copyrights for thousands of song titles listed in “screen
5 shots” included in the defendant Record Companies’ publicly filed complaint. The RIAA and
6 the Record Companies used this list of titles as a means to embarrass, coerce, and threaten
7 Plaintiff with the prospect of being sued for over one million dollars. The RIAA and the
8 Record Companies knew this representation was false, and knowingly and intentionally
9 withheld the material fact that they did not know who engaged in any infringing activities, and
10 they did not know whether any of the thousands of file names listed in the screen shots
11 contained any copyrighted sound recordings whatsoever. The reason the RIAA and the Record
12 Companies omitted this information was to intimidate Plaintiff into paying the Record
13 Companies thousands of dollars. The RIAA and the Record Companies intended that Plaintiff
14 rely and act upon their false representations
15

17 8.146 The RIAA and the Record Companies failed to disclose to Plaintiff the fact that
18 she had been misidentified, and withheld from her the true nature of the “evidence” against her.
19 Plaintiff had no access to the information that the RIAA and the Record Companies falsely
20 claimed to have received from MediaSentry. She had no way of knowing that the RIAA and
21 the Record Companies were withholding and omitting material information from her.
22

23 Reasonable Reliance

24 8.147 Plaintiff never believed that she had personally engaged in copyright
25 infringement. Plaintiff did not possess the sophisticated knowledge of computer technology
26 and copyright law that the RIAA and the Record Companies did, and she justifiably relied on

1 their false statements. Based on the huge economic disparity and the aggressive threats and
2 misrepresentations made to her, and given Defendants' adamant and intimidating insistence,
3 Plaintiff reasonably did fear and believe that somehow some evidence did exist on her
4 computer that supported the false accusations of copyright infringement made against her. In
5 reasonable reliance on the materially false statements of the RIAA and the Record Companies,
6 Plaintiff was compelled to invest substantial resources into investigating the integrity of her
7 computer and investigating the claims of infringement at the request of the RIAA and the
8 Record Companies. Plaintiff spent additional time and money locating and consulting attorneys
9 regarding these false claims.
10

11 Damages

12 8.148 The RIAA and the Record Companies' false threats that they possessed
13 damaging evidence that would be used in a lawsuit that would ruin Plaintiff financially caused
14 her severe distress. As a direct result of the fraudulent statements of the RIAA and the Record
15 Companies, Plaintiff (and others similarly situated) suffered direct and consequential harm and
16 damages in an amount to be proven at trial.
17

18 **B. Settlement Support Center**

19 Intentionally False Representations

20 8.149 In several telephone conversations with Plaintiff occurring in February and
21 March 2005, Settlement Support Center representatives made the false representation that the
22 RIAA and the Record Companies already possessed damaging, particularized evidence that
23 would be used successfully in a lawsuit for massive damages that would ruin her financially.
24 Settlement Support Center made the false representation that unless Plaintiff immediately paid
25 \$4,000-5,000, defendants would prevail in a lawsuit based upon this same asserted evidence.
26

1 Settlement Support Center also made the false representation that Ms. Andersen had been
2 “viewed” engaging in infringing acts.

3 8.150 Settlement Support Center knew that these representations were false. In fact, in
4 a later conversation in February or March 2005, an employee of Settlement Support Center
5 actually admitted to Plaintiff that he believed that she had not infringed any copyrights. He
6 explained, however, that the RIAA, the Record Companies and Settlement Support Center
7 would not quit their attempts to coerce payment from her because to do so would encourage
8 other people to defend themselves. He stated that Plaintiff could pay thousands of dollars to
9 defend herself against a federal lawsuit or take the less expensive option of “settling”.
10

11 8.151 Settlement Support Center also knew that these statements were false because it
12 knew that the investigation protocol employed could not identify any individual who had
13 committed any of the alleged acts of infringement; it knew that that there was no evidence that
14 the files allegedly detected were actual copies of sound recordings for which the Record
15 Companies allegedly had copyrights; and it knew that that the investigation protocol had
16 resulted in multiple mistaken identifications in the past.
17

18 8.152 Settlement Support Center knowingly and intentionally withheld the material
19 fact that it did not know who engaged in any infringing activities, and it did not know whether
20 any of the thousands of file names listed in the screen shots contained any copyrighted sound
21 recordings whatsoever. The reason Settlement Support Center omitted this information was to
22 intimidate Plaintiff into paying the Record Companies thousands of dollars. Settlement
23 Support Center intended that Plaintiff rely and act upon its false representations
24

25 8.153 Settlement Support Center failed to disclose to Plaintiff the material fact that she
26 had been misidentified, and withheld from her the true nature of the “evidence” against her.

1 Plaintiff had no access to the information that Settlement Support Center had. She had no way
2 of knowing that Settlement Support Center was withholding and omitting material information
3 from her.

4 Reasonable Reliance

5 8.154 Plaintiff never believed that she had engaged in copyright infringement. Based
6 on the huge economic disparity and the aggressive threats and misrepresentations made to her,
7 Plaintiff did fear that somehow some evidence did exist on her computer that supported the
8 false accusations made against her. As it was proven, no such evidence ever existed. However,
9 in reasonable reliance on the materially false statements of Settlement Support Center, Plaintiff
10 invested substantial resources into investigating the integrity of her computer and investigating
11 the claims of infringement at the request of Settlement Support Center. Plaintiff spent
12 additional time and money locating and consulting attorneys regarding these false claims.
13 Settlement Support Center's false threat that Defendants possessed damaging evidence that
14 would be used in a lawsuit that would ruin Plaintiff financially caused her severe distress.
15 Plaintiff did not possess the sophisticated knowledge of debt collection and lawsuit resolution
16 that Settlement Support Center did, and she justifiably relied on its false statements.
17
18

19 Damages

20 8.155 As a direct result of Settlement Support Center's fraudulent statements, Plaintiff
21 and others similarly situated suffered direct and consequential harm and damages in an amount
22 to be proven at trial.
23

24 **TENTH CLAIM FOR RELIEF**
25 OREGON UNLAWFUL TRADE PRACTICES ACT
26 *ORS 646.605, et seq.*
Defendants RIAA, Record Companies, and Settlement Support Center

1
2 8.156 Plaintiff realleges and incorporates herein by reference each of the allegations set
3 forth above. Plaintiff makes this claim against the RIAA, the Record Companies, and
4 Settlement Support Center, with allegations specific to each Defendant set forth below.

5 8.157 Oregon’s Unlawful Trade Practices Act prohibits those in trade or commerce
6 from engaging in unfair or deceptive practices in the course of business with consumers. ORS
7 646.608(u). Parties harmed by violation of ORS 646.608 are entitled bring a civil action to
8 recover damages suffered as a result. ORS 646.638. Most states have similar statutes protecting
9 their citizens from fraudulent and deceptive business practices harmful to their citizens.
10

11 **A. RIAA and Record Companies**

12 8.158 On February 2, 2005, lawyers representing the RIAA and the Record Companies
13 sent a letter demanding that Plaintiff contact Settlement Support Center. In an attempt to
14 threaten, intimidate and coerce Plaintiff into paying thousands of dollars, the letter made the
15 materially false statement that “[t]he evidence necessary for the record companies to prevail in
16 this action has already been secured.” The RIAA and the Record Companies knew that this
17 statement was false and/or acted with reckless disregard of its falsity because they knew that
18 their investigation could not identify any individual who had committed any of the alleged acts
19 of infringement; they knew that that there was no evidence that the files allegedly detected were
20 actual copies of sound recordings for which they allegedly had copyrights; and they knew that
21 that the investigation protocol they employed had resulted in multiple mistaken identifications
22 in the past.
23
24

25 8.159 On June 24, 2005, lawyers representing the RIAA and the Record Companies
26 knowingly and intentionally made the materially false representation that they had actual

1 evidence that Plaintiff had infringed the copyrights for thousands of song titles listed in “screen
2 shots” included in the defendant Record Companies’ publicly filed complaint. From June 24,
3 2005 to the present, in various published litigation documents, the Record Companies and the
4 RIAA have continuously and publicly asserted that the contents of their original accusations
5 were accurate and true. The RIAA and the Record Companies used this list of titles as a means
6 to embarrass, coerce, and threaten Plaintiff with the prospect of being sued for over one million
7 dollars. The RIAA and the Record Companies knew that this statement was false and/or acted
8 with reckless disregard of its falsity, and they knowingly and intentionally withheld the material
9 fact that they did not know who engaged in any infringing activities, and they did not know
10 whether any of the thousands of file names listed in the screen shots contained any copyrighted
11 sound recordings whatsoever. The reason the RIAA and the Record Companies omitted this
12 information was to intimidate Plaintiff into paying the Record Companies thousands of dollars.
13
14 The RIAA and the Record Companies intended that Plaintiff rely and act upon their false
15 representations.
16

17 8.160 The RIAA and the Record Companies failed to disclose to Ms. Andersen the fact
18 that she had been misidentified, and withheld from her the true nature of the “evidence” against
19 her. Ms. Andersen had no access to the information that the RIAA and the Record Companies
20 falsely claimed to have received from MediaSentry. Plaintiff had no way of knowing that the
21 RIAA and the Record Companies were withholding and omitting material information from
22 her.
23

24 8.161 Plaintiff, like other class members, knew she was innocent of the copyright
25 infringement claims. Because of their aggressive claims, superior technological knowledge and
26 economic domination, Ms. Andersen reasonably relied upon their representations that some

1 data supporting their claims may have somehow been added to her computer. In reliance on the
2 materially false statements of the RIAA and the Record Companies, Plaintiff invested
3 substantial resources into investigating the integrity of her computer and investigating the
4 claims of infringement at the request of the RIAA and the Record Companies. Plaintiff also
5 spent additional time and money locating and consulting attorneys regarding the false claims.
6 Their false threat that they possessed damaging, particularized evidence that would be used in a
7 lawsuit that would ruin her financially caused her great distress. The conduct of the RIAA and
8 the Record Companies caused her medical condition to worsen, requiring that she return to her
9 doctor and caused her to be unable to return to work. Plaintiff did not possess the sophisticated
10 knowledge of copyright law and computer technology that the RIAA and the Record
11 Companies did, and she justifiably relied on their false statements, suffering ascertainable
12 losses as a result.
13
14

15 8.162 Prior to being targeted in Defendants' abusive campaign, Plaintiff had an
16 ongoing consumer relationship with the RIAA and its member companies. For years, she had
17 purchased music from RIAA member companies' mail order CD clubs.

18 8.163 As a direct result of the materially false statements of the RIAA and the Record
19 Companies, Plaintiff suffered direct and consequential harm and damages in an amount to be
20 proven at trial. Other class members relied on the false representations and paid Defendants'
21 extortive demands.
22

23 **B. Settlement Support Center**

24 8.164 In several telephone conversations with Plaintiff occurring in February and
25 March 2005, Settlement Support Center representatives made the false representation that the
26 RIAA and the Record Companies already possessed damaging, particularized evidence that

1 would be used successfully in a lawsuit for massive damages that would ruin her financially.
2 Settlement Support Center made the false representation that unless Plaintiff immediately paid
3 \$4,000-5,000, Defendants would prevail in a lawsuit based upon this same asserted evidence.
4 Settlement Support Center also made the false statement that Plaintiff had been “viewed”
5 engaging in infringing acts.
6

7 8.165 Settlement Support Center knew that these representations were false and/or
8 acted with reckless disregard of their falsity. In fact, in a later conversation in February or
9 March 2005, an employee of Settlement Support Center actually admitted to Plaintiff that he
10 believed that she had not infringed any copyrights. He explained, however, that the RIAA, the
11 Record Companies and Settlement Support Center would not quit their attempts to coerce
12 payment from her because to do so would encourage other people to defend themselves. He
13 stated that Plaintiff could pay thousands of dollars to defend herself against a federal lawsuit or
14 take the less expensive option of “settling”.
15

16 8.166 Settlement Support Center also knew that these statements were false and/or
17 acted with reckless disregard of their falsity because it knew that the investigation protocol
18 employed could not identify any individual who had committed any of the alleged acts of
19 infringement; it knew that that there was no evidence that the files allegedly detected were
20 actual copies of sound recordings for which they allegedly had copyrights; and it knew that that
21 the investigation protocol had resulted in multiple mistaken identifications in the past.
22

23 8.167 In its conversations with Plaintiff, Settlement Support Center knowingly and
24 intentionally withheld the material fact that it did not know who engaged in any infringing
25 activities, and it did not know whether any of the thousands of file names listed in the screen
26 shots contained any copyrighted sound recordings whatsoever. The reason Settlement Support

1 Center omitted this information was to intimidate Plaintiff into paying the Record Companies
2 thousands of dollars. Settlement Support Center intended that Plaintiff rely and act upon its
3 false representations

4 8.168 Settlement Support Center failed to disclose to Plaintiff the material fact that she
5 had been misidentified, and withheld from her the true nature of the “evidence” against her.
6 Plaintiff had no access to the information that Settlement Support Center had. She had no way
7 of knowing that Settlement Support Center was withholding and omitting material information
8 from her.
9

10 8.169 In reasonable reliance on the materially false statements of Settlement Support
11 Center, Plaintiff invested substantial resources into investigating the integrity of her computer
12 and investigating the claims of infringement at the request of Settlement Support Center.
13 Plaintiff spent additional time and money locating and consulting attorneys about these false
14 claims. Settlement Support Center’s false threat that Defendants possessed damaging evidence
15 that would be used in a lawsuit that would ruin her financially caused her severe distress.
16 Settlement Support Center’s conduct caused her medical condition to worsen, requiring that she
17 return to her doctor and caused her to be unable to return to work. Plaintiff did not possess the
18 sophisticated knowledge of debt collection and lawsuit resolution that Settlement Support
19 Center did, and she justifiably relied on its false statements, suffering ascertainable losses as a
20 result. Other class members were additionally harmed because they paid Defendants’ extortive
21 demands.
22

23 8.170 As a direct result of Settlement Support Center’s materially false statements and
24 omissions, Plaintiff and others similarly situated suffered direct and consequential harm and
25 damages in an amount to be proven at trial.
26

1
2 **ELEVENTH CLAIM FOR RELIEF**

3 **INJUNCTIVE RELIEF**

4 *All Defendants*

5 8.171 In view of the unlawful and harmful conduct above, Plaintiff requests that this
6 court enter injunctive relief necessary to prevent the Defendants from continuing to engage in
7 criminal investigation of private American citizens.

8 8.172 Plaintiff requests that this court enter an order as soon as practicable declaring
9 that the Defendants' conduct in the course of their private investigations as detailed above is
10 unlawful.

11 8.173 Plaintiff requests that this court enter an order as soon as practicable also
12 declaring that the fruits of the illegal investigations not be further used to conduct the ongoing
13 enterprise of sham litigation against private American citizen.
14

15 **IX. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff Tanya Anderson, individually and on behalf of others similarly
17 situated, prays for:

- 18 a. All direct and consequential damages necessary to compensate Plaintiff and the
19 other members of the class;
20
21 b. Declaratory and injunctive relief;
22
23 c. Statutory treble and punitive damages awardable under RICO, 18 U.S.C. § 1961, *et*
24 *seq.*, analogous provisions of ORICO, the Oregon Unlawful Trade Practices Act,
25 and applicable common law;
26
d. Attorneys' fees and costs awardable;
e. For post-judgment interest on the entire judgment until paid in full;

1 f. For such other and further relief as the Court may deem just and equitable.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff requests a trial by jury.

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

5 Lybeck Murphy, LLP

6
7 By: /s/ Lory R. Lybeck
8 Lory R. Lybeck (OSB #83276)
9 Attorneys for plaintiff

1
2
3 **IN THE UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF OREGON**

5 I hereby certify that on the 17th day of April, 2008, I electronically filed the foregoing Third
6 Amended Complaint with the Clerk of the Court using the CM/ECF system, which will send
7 notification of such filing to the following:

8 Kenneth R. Davis, II
9 davisk@lanepowell.com
10 William T. Patton
11 pattonw@lanepowell.com
12 Lane Powell PC
13 601 SW Second Avenue, Suite 2100
14 Portland, OR 97204
15 503-778-2100/phone
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26 Denver, CO 80203
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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.

By: s/ Lory R. Lybeck
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