

1 **Lory R. Lybeck**
Lybeck Murphy, LLP
2 7525 SE 24th Street, Ste. 500
Mercer Island, WA 98040-2334
3 206-230-4255 /phone
206-230-7791 /fax
4 Lybeck – lrl@lybeckmurphy.com
Lybeck – OSB #83276
5 Attorney for defendant

6
7
8 UNITED STATES DISTRICT COURT
9 DISTRICT OF OREGON AT PORTLAND

10 TANYA ANDERSEN)

11 Plaintiff)

12 v.)

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

21 Defendants.

No.

COMPLAINT

**DEMAND
FOR JURY TRIAL**

RELATED CASE NOTICE

22
23 **I. RELATED ACTION**

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

25 **1. Identity of Related Case**

26 1.1 Pursuant to Local Rule 42.2 this action is related to Atlantic Recording Corp., et

1 al v. Andersen, No. CV 05-933 AS (D. Or) pending before the Honorable Donald C.
2 Ashmanskas in the United States District Court, District of Oregon.

3 **2. Nature of Related Case**

4 1.2 On August 26, 2005, while Tanya Andersen and her 8 year-old daughter were
5 sitting down to dinner, a legal process server knocked on her door. When she answered the
6 door, she was served with a lawsuit filed by RIAA-controlled music distribution companies in a
7 federal court. Ms. Andersen was shocked, afraid, and very distressed. The lawsuit falsely
8 claimed that she owed hundreds of thousands of dollars to these companies as penalties for
9 copyright infringement. Ms. Andersen knew that she was completely innocent of the charges
10 against her. She answered the false claims and asserted counterclaims seeking damages.
11 During discovery, Ms. Andersen learned that the lawsuit filed against her was based solely
12 upon an illegal, flawed and negligent investigation. Almost two years later, on the eve of
13 summary judgment, the lawsuit was dismissed with prejudice. Ms. Andersen's counterclaims
14 continue in that case. Those counterclaims are restated here as direct claims. New claims are
15 also set forth here against the former plaintiffs in that action and against new additional parties.
16
17
18

19 **3. LR 42.4 Notice/Consolidation**

20 21 1.3 It is anticipated that on Ms. Andersen's motion her counterclaims in Atlantic
22 Recording Corp. v. Andersen and these new claims will be joined in a single action either by
23 voluntary dismissal or consolidation of the related action with this case.

24 **II. NATURE OF THE CASE**

25 2.1 Tanya Andersen pursues this action to recover compensation for the significant
26 damages these defendants directly caused her. She also seeks punitive damages, statutory

1 penalties, litigation fees and expenses, and declaratory relief.

2 **III. PARTIES**

3 **A. Tanya Andersen**

4 3.1 Plaintiff Tanya Andersen is the single mother of a 10 year-old girl, Kylee. She
5 and Kylee reside in Beaverton, Oregon.

6 **B. Defendants**

7 3.2 **Defendant Record Companies.** Defendants Atlantic Recording Corporation, a
8 Delaware corporation; Priority Records, LLC, a California limited liability company; Capitol
9 Records, Inc., a Delaware corporation; UMG Recordings, Inc., a Delaware corporation; and
10 BMG Music, a New York general partnership (hereinafter collectively “defendant Record
11 Companies”) are companies in the business of manufacturing and distributing recorded music.
12 Each of these companies is also a member of the Recording Industry Association of America.
13 The defendant Record Companies filed an action against Ms. Andersen, Atlantic Recording
14 Corp., et al v. Andersen, No. CV 05-933 AS (D. Or.), which remains pending in this court.
15

16 3.3 **Defendant RIAA.** The true nature of Defendant Recording Industry
17 Association of America (hereinafter “RIAA”) RIAA’s corporate form is unknown. Its
18 headquarters are located in Washington D.C. It holds itself out as a trade group that directs and
19 controls its members companies, in the filing of thousands of lawsuits against individuals in
20 federal courts across the country. These RIAA controlled member companies are subsidiaries
21 of 4 major companies that monopolize and control the sale of over 90% of all the music that is
22 commercially distributed in the United States. For several years the RIAA has engaged in a
23 coordinated enterprise to pursue a scheme of threatening and intimidating litigation in an
24 attempt to maintain its music distribution monopoly.
25
26

1 **V. FACTUAL BACKGROUND**

2 **A. The National Threat and Litigation Enterprise**

3 5.1 Defendant RIAA is composed of 4 major multinational member companies and
4 each of which has many subsidiary member companies. The RIAA publicly claims to have a
5 virtual monopoly and to control 90% of the sound recordings sold in the United States.
6

7 5.2 Defendant MediaSentry is in the business of conducting personally invasive
8 private investigations of private citizens in many states in the U.S., for the RIAA and its
9 controlled member companies. MediaSentry advertises that its services include “investigation”
10 and “litigation support”.

11 5.3 Pursuant to a secret agreement, the RIAA, its controlled member companies and
12 MediaSentry conspired to develop a massive threat and litigation enterprise targeting private
13 citizens across the United States. The RIAA and its controlled member companies have for
14 years aggressively acted to prevent disclosure of the secret agreement. Recently it has been
15 discovered that as a part of this secret enterprise MediaSentry has for years conducted illegal,
16 flawed and negligent investigations of many thousands of private United States citizens. These
17 illegal investigations are then used as the sole basis for pursuit of tens of thousands of lawsuits
18 throughout the U.S.
19

20 5.4 During the investigation, MediaSentry, without authorization and under the false
21 pretext of being a peer user, claims to employ secret methods to enter individual computers to
22 surreptitiously and illegally gather information on private citizens. At best, MediaSentry only
23 identifies an internet protocol (IP) address and which it then sells to the RIAA. The RIAA and
24 its controlled member companies then use this illegally obtained information in its public threat
25 and litigation enterprise.
26

1 5.5 MediaSentry and the RIAA know that their investigations are illegal, flawed and
2 cannot identify specific individuals that are subsequently threatened and/or sued. In a March
3 2004 sworn deposition MediaSentry's then president admitted to various serious flaws in the
4 investigative scheme which all defendants know result in misidentification of individuals.
5 Despite this knowledge, defendants have falsely represented to tens of thousands of people that
6 they have been definitively and personally identified as a copyright infringer.
7

8 5.6 MediaSentry's then president also admitted that MediaSentry actually cannot
9 determine whether listed files are copyrighted recordings, bogus or inoperative files, or decoys
10 from lists of file names collected on "screen shots".

11 5.7 The flaws in MediaSentry's investigations have been well known to defendants
12 for years. In Brein et al v. UPC Nederland B.V. et al., No. 194741/KGZA-05-462/BL/EV at
13 4.30-31 (2005), a Dutch court ruled that that MediaSentry's investigation protocol was
14 insufficient to state a claim for copyright infringement because it was unable to identify an
15 actual individual allegedly engaged in copyright infringement.
16

17 5.8 In BMG Canada, Inc. v. John Doe, 2005 FCA 193, (2005), the Canadian Federal
18 Court ruled that the investigation protocol used by MediaSentry is so deficient that the
19 "evidence" gathered fails to establish even a prima facie case of infringement.
20

21 5.9 RIAA-controlled member companies have filed and dismissed meritless cases
22 across the country after being forced to admit that they had sued the wrong people. See, e.g.,
23 Atlantic v. Zuleta, Case No. 06-CV-1221 (N.D. Ga.); BMG Music v. Thao, Case No. 07-CV-
24 143 (E.D. Wis.); Capitol Records, Inc., et al v. Foster, Case No. Civ. 04-1569-W (W.D. Okla.);
25 Interscope Records v. Leadbetter, Case No. C05-1149-RSL-MJP (W.D. Wash.); Priority
26 Records, LLC v. Chan, Case No. 04-CV-73645-DT (E.D. Mich.); Virgin Records America, Inc.

1 v. Marson, Case No. 05-CV-03201 RGK (C.D. Cal.).

2 5.10 The illegality of the private investigations is also known to defendants. Most
3 states require licensing or registration of private investigators. In Oregon, unlicensed
4 investigators are subject to civil and criminal penalties. These licensing laws are well known to
5 reputable investigators. On information and belief, MediaSentry and its investigators are not
6 and have not been licensed to conduct private investigations of private citizens in Oregon or
7 any other state. Their investigations are illegal.

9 5.11 For years, the RIAA and its member companies have been using flawed and
10 illegal private investigation information as part of their coordinated scheme and common
11 enterprise to threaten, intimidate and coerce payment from private citizens across the United
12 States. As such they have clogged and abused the federal courts for many years.

14 5.12 To conduct this enterprise, the RIAA causes its controlled member companies to
15 file information farming suits against anonymous "John Doe" parties to obtain private
16 information about certain IP addresses from internet service providers (ISPs). Since only John
17 Doe defendants are "named", the targeted individuals are often deprived of due process and
18 receive little or no information about the RIAA's conspiracy to harvest personal information
19 about them.

21 5.13 After an individual's personal information is harvested, the anonymous "John
22 Doe" suits are invariably dismissed; often before the individuals who have been secretly sued
23 have any meaningful opportunity to appear or to otherwise protect their privacy.

24 5.14 When the anonymous suits are filed, defendants know that the subpoenaed
25 private information is often flawed and mistaken and will be later misused. Some ISPs
26 receiving subpoenas have informed their customers of this potential for errors. After learning

1 that these ISPs were disclosing flaws in its investigations, the RIAA demanded that the ISPs
2 stop giving advice to their own customers and that ISPs direct all customers to contact only the
3 RIAA.

4 5.15 After the RIAA has the ISP customers' private information, it directs its lawyers
5 to send threatening and misleading letters containing false allegations and material omissions to
6 individuals whose names and addresses were disclosed.

7 5.16 These letters are intended to intimidate, confuse, and mislead by claiming that
8 the recipient has "already been sued". At the same time the letters state that the recipients
9 "have not yet been named as a defendant", in a lawsuit.

10 5.17 These letters also falsely allege that "[t]he evidence necessary for the record
11 companies to prevail in this action [against an individual] has already been secured."

12 5.18 These letters typically demand that the recipient contact the RIAA's unnamed
13 "representatives" and threaten that if the recipient does not make contact within 10 days of the
14 letter, a federal lawsuit will be filed against them personally.

15 5.19 The short 10 day time period is intended to deny the recipient any meaningful
16 opportunity to investigate the false assertions contained in the letter.

17 5.20 These letters never advise the recipient that he or she was the subject of an
18 illegal private investigation. Further, these letters never disclose the known possibility of error
19 or mistaken identity. The letters also never disclose that the investigations provide no proof
20 that a specific individual engaged in the alleged copyright infringement. Instead, these letters
21 falsely claim that the RIAA has actual proof necessary to prevail on direct copyright
22 infringement claims against the recipient.

23 5.21 These letters instruct the recipients to contact defendants' agent, Settlement
24
25
26

1 Support Center. The nature of the Settlement Support Center's association with the RIAA and
2 other defendants in their common enterprise is never specifically disclosed.

3 5.22 Settlement Support Center was formed by the RIAA and its controlled member
4 companies for the purpose of coercing payments from individuals identified by MediaSentry's
5 illegal, flawed and negligent private investigations. Settlement Support Center's role in the
6 defendants' common enterprise is to engage in debt collection activities across the country.
7 Settlement Support Center employs personnel specially trained to project an authoritative and
8 intimidating presence in communications with targeted individuals.
9

10 5.23 In their communications, Settlement Support Center representatives do not
11 disclose the fact of the illegal investigation or acknowledge the possibility of mistaken identity
12 due to the known flaws inherent in MediaSentry's private investigation protocol. Moreover,
13 they do not disclose that no proof actually exists of infringement by a specific individual.
14

15 5.24 Defendants are aware that Settlement Support Center does not disclose the
16 illegal private investigation, the possibility of misidentification or the inability of the
17 investigation to identify specific individuals.

18 5.25 Each defendant acted in concert with the others in a joint enterprise to retain
19 monopolistic control over U.S. and worldwide distribution of music recordings. This
20 monopoly harms the artists (including songwriters and musicians), the music-consuming
21 public, and wrongfully sued individuals like Tanya Andersen. Defendants' illegal enterprise
22 also clogs and abuses this nation's federal court system.
23

24 **B. The Campaign Against Tanya Andersen**

25 5.26 Tanya Andersen initially received a letter from the Los Angeles, California law
26 firm Mitchell Silverberg & Knupp, LLP on behalf of certain undisclosed "record companies".

1 The letter falsely claimed that Ms. Andersen had illegally downloaded music, infringed
2 undisclosed copyrights and that “[t]he evidence necessary for the record companies to prevail in
3 this action has already been secured.”

4 5.27 After receiving this letter, Ms. Andersen immediately contacted defendants and
5 their agent, Settlement Support Center. She explained that their claims were in error and that
6 she had never downloaded or shared music or used any file-sharing program. She told them
7 that she did not even know how to use such a program. According to the defendants’ scheme,
8 Settlement Support Center repeated defendants’ joint threat that unless she immediately paid
9 Settlement Support Center \$4,000-5,000 defendants would ruin her financially. Defendants
10 then knew or should have known that Ms. Andersen was innocent.

11 5.28 An employee of Settlement Support Center actually admitted to Ms. Andersen
12 that he believed that she had not infringed any copyrights. He explained, however, that
13 defendants would not quit their attempts to force payment from her because to do so would
14 encourage other people to defend themselves. He stated that Ms. Andersen could pay
15 thousands of dollars to defend herself against a federal lawsuit or take the less expensive option
16 of “settling” with defendants.

17 5.29 Ms. Andersen wrote to Settlement Support Center again explaining her
18 innocence. She even invited an inspection of her computer to prove that the claims made
19 against her were false or in error.

20 5.30 Instead of inspecting her computer, the RAA and its controlled member
21 companies filed suit against Ms. Andersen on June 24, 2005.

22 5.31 The defendant Record Companies later claimed that MediaSentry had caught her
23 sharing files online at 4:20 A.M. PST, on May 20, 2004, and identified her as
24
25
26

1 "gotenkito@kazaa."

2 5.32 Ms. Andersen explained that she did not know "gotenkito" nor anyone else who
3 used that name. Ms. Andersen also explained that she was not awake at 4:20 AM on May 20,
4 2004. She again explained that her computer was never used to share files online.

5 5.33 Defendants knew that Ms. Andersen was not engaged in copyright infringement.
6
7 In fact, a simple 2-minute search for "gotenkito" on the Google search engine confirms that a
8 young man in Everett, Washington had been using the internet name gotenkito. This man's
9 MySpace webpage, "Chad's Wacky Life Stories", describes his interest in computers, music
10 and even admits downloading copyrighted materials.

11 5.34 In an attempt to end defendants' persecution of her, Ms. Andersen provided
12 gotenkito's name, location, and phone number to the defendant Record Companies. Along with
13 everything else she had done, she hoped this would result in their admitting that she had been
14 misidentified and falsely accused and that the claims against her would be dismissed.

15 5.35 Instead of dismissing their false claims, the defendant Record Companies
16 persisted in their malicious prosecution of her they publicly libeled her with demeaning and
17 repulsive accusations. They repeatedly and publicly claimed that Ms. Andersen stole and
18 possessed songs with titles such as "shake that ass bitch", "dope nose", "die motherfucker die",
19 "bullet in the head", "fuck y'all hoes", "nigger fucker", and "i stab people".
20
21

22 5.36 Ms. Andersen remains understandably offended and outraged by defendants
23 conduct. She was the mother of a then 7 year-old girl. She has no interest in the violent,
24 profane, misogynistic, and racist music that the RIAA and its controlled member companies
25 monopolize. Defendants knew that Ms. Andersen listens to only country music and soft rock.
26 For years she had avidly purchased music from RIAA member companies' mail order CD

1 clubs.

2 5.37 Defendants were also aware that their false, slanderous claims and the federal
3 lawsuit were significantly damaging to Ms. Andersen. In May 2004, for health reasons Ms.
4 Andersen had been forced to leave her position as a case manager at the Department of Justice
5 at the time she was targeted by defendants, she was surviving on disability benefits for painful
6 physical illness, emotional and psychological problems.
7

8 5.38 Before the lawsuit, she had hoped to return to work, but her psychological and
9 physical symptoms seriously worsened due to defendants' malicious and outrageous conduct.
10 Rather than completing a return to work program she had to seek additional medical and
11 psychiatric care.
12

13 5.39 Still defendants refused to undertake a reasonable investigation into the
14 propriety of their claims against Ms. Andersen. They repeatedly refused to even inspect her
15 computer hard drive. After a court order required it and the inspection was finally done, the
16 RIAA's own expert determined that Ms. Andersen's computer had not been used to infringe
17 copyrights. No files or remnants of any files allegedly containing copies of the defendant
18 Record Companies' copyrighted recordings were ever found on her computer.
19

20 5.40 Even then and despite their own experts' determination and all the other proof of
21 her innocence, the RIAA and its member controlled companies refused Ms. Andersen's pleas
22 that the litigation and persecution of her stop.

23 5.41 Rather than ending their abuse of her, RIAA-controlled lawyers renewed their
24 threats: They would not dismiss their false claims unless Ms. Andersen paid them some
25 undisclosed amount of money. They wanted it to appear publicly that they had prevailed.
26

5.42 When Ms. Andersen declined to pay them, defendants stepped up their

1 intimidation. They demanded the deposition of Ms. Andersen's 10 year-old daughter Kylee.
2 Ms. Andersen remained outraged. The RIAA and its agents knew that Ms. Andersen was very
3 concerned about her daughter and the threat of taking her deposition was causing Ms. Andersen
4 a great deal of distress.

5
6 5.43 Knowing of her distress, the RIAA and its agents even attempted to directly
7 contact Kylee. They called Ms. Andersen's apartment building looking for Kylee. Phone calls
8 were also made to her former elementary school under false pretenses. The voice of the woman
9 on the phone claimed to be Kylee's grandma inquiring as to her attendance. Ms. Andersen
10 learned of these tactics and was even more frightened and distressed.

11 5.44 Later, and not until nearly two years after their reckless suit was filed, RIAA
12 lawyers offered to voluntarily dismiss the claims against Ms. Andersen, but only if she
13 abandoned her legal counterclaims against them. They also emphasized that if she did not
14 abandon her legal rights, they would continue to persecute her and her young daughter, and
15 again demanded to interrogate and confront her little girl at the offices of RIAA lawyers.
16 Despite her distress, Ms. Andersen failed to give in. The court even was compelled to enter an
17 order protecting Kylee and Ms. Andersen from the aggressive confrontation threatened by the
18 RIAA and its agents.

19
20 5.45 Ms. Andersen was ultimately able to file a motion for summary judgment. This
21 motion required the defendant Record Companies to submit proof of their claims. The
22 defendants delayed the time to submit proof they knew never existed. They made one more
23 demand that Ms. Andersen dismiss her counterclaims. When she again refused, the Record
24 Companies' had no option and were forced to finally dismiss their case with prejudice on June
25
26 1, 2007.

1 **VI. CLAIMS FOR RELIEF**

2 **Count 1: Negligence**

3 6.1 Plaintiff realleges and incorporates herein by reference each of the allegations set
4 forth above.

5 6.2 The RIAA publicly claims to have special expertise in conducting investigations,
6 influencing politicians, and suing thousands of private citizens. In fact, the RIAA's president,
7 Cary Sherman, is a 1971 graduate of Harvard Law School. He was senior partner in one of this
8 country's best known law firms. The RIAA publicly proclaims that he is "one of the top
9 copyright attorneys in the country." The RIAA knows what is legal and what is malicious.

10 6.3 With its legal expertise, the RIAA has a heightened duty to act reasonably,
11 responsibly, and legally to avoid foreseeable harm to others.

12 6.4 Despite its specialized knowledge, the RIAA acted negligently when it retained
13 MediaSentry to conduct private investigation of Tanya Andersen's and other private citizens'
14 personal information when it knew or should have known that MediaSentry was not licensed to
15 conduct private investigations.

16 6.5 Despite its specialized knowledge, the RIAA acted negligently when it conspired
17 and coordinated with MediaSentry to devise a scheme to conduct private investigations of Ms.
18 Andersen and other private citizens that it knew or should have known was flawed in that it was
19 prone to erroneously identify innocent private citizens.

20 6.6 Despite its specialized knowledge, the RIAA acted negligently when it conspired
21 and coordinated with MediaSentry to devise a scheme to conduct private investigations of Ms.
22 Andersen and other private citizens that it knew or should have known were flawed in that they
23 could not identify the individuals who actually engaged in copyright infringement.
24
25
26

1 could not identify the individuals who actually engaged in copyright infringement.

2 6.7 Despite its specialized knowledge, the RIAA acted negligently when it
3 continued to use the illegal and flawed investigations in its enterprise of threat and litigation
4 even after repeated reports of its illegality and flaws arose in its member companies' cases
5 across the country.
6

7 6.8 Defendant MediaSentry held itself out as an expert in conducting secret internet-
8 based private investigations of private citizens' personal information. MediaSentry acted
9 negligently when it failed to comply with private investigation licensing laws in Oregon and
10 many other states.

11 6.9 MediaSentry acted negligently when it designed a private investigation scheme
12 that it knew or should have known was flawed and illegal.
13

14 6.10 MediaSentry acted negligently when it conspired and coordinated with the RIAA
15 to operate an illegal and flawed private investigation scheme in Oregon and many other states
16 across the country.

17 6.11 The defendant Record Companies acted negligently when they relied on
18 information collected and provided by defendants RIAA and MediaSentry to file and pursue
19 lawsuits against Ms. Andersen and other private citizens in Oregon and across the country.
20

21 6.13 Defendant Settlement Support Center negligently relied upon the MediaSentry
22 private investigation in its coercive communications to Ms. Andersen demanding payment,
23 when it knew or should have known that this investigation was illegal and flawed.

24 6.14. Communications from the RIAA, the defendant Record Companies, and
25 Settlement Support Center negligently failed to disclose to Ms. Andersen the illegality of the
26 investigation, the possibility of misidentification, and the true nature of "evidence" against her

1 which had “already been secured”.

2 6.15 Defendants negligently failed to properly investigate the true identity of
3 “gotenkito”, both before first demanding payment from Ms. Andersen, and after information
4 suggesting his true identity was supplied to defendants by her.

5 6.16 Defendants’ negligent conduct described above proximately caused direct and
6 consequential monetary, physical, and psychological harms to Ms. Andersen in an amount to be
7 proven at trial.

8
9 **Count 2: Fraud and Negligent Misrepresentation**

10 7.1 This claim was previously asserted as Count 5 of Ms. Andersen’s counterclaims
11 in Atlantic Recording Corp., et al v. Andersen.

12 7.2 Plaintiff realleges and incorporates herein by reference each of the allegations set
13 forth above.

14 7.3 Defendants knowingly made materially false representations and omissions of
15 material facts to Ms. Andersen in an attempt to extort money from her.

16 7.4 On February 2, 2005, defendants’ lawyers wrote a letter demanding that Ms.
17 Andersen contact Settlement Support Center. In an attempt to threaten, intimidate and scare
18 Ms. Andersen into paying thousands of dollars, the letter made the affirmative false statement
19 that “[t]he evidence necessary for the record companies to prevail in this action has already
20 been secured.” Defendants knew that this statement was false because they knew that their
21 investigation could not identify who had committed any of the alleged acts of infringement;
22 they knew that that there was no evidence that the files allegedly detected were actual copies of
23 sound recordings for which they had copyrights; and knew that that the investigation protocol
24 they employed had led to multiple mistaken identifications in the past.
25
26

1 7.5 Between February and March 2005, defendant Settlement Support Center falsely
2 claimed that defendants had proof that Ms. Andersen’s IP address had been “viewed”
3 downloading and distributing over 1,000 audio files for which it sought to collect hundreds of
4 thousands of dollars. This statement was materially false. Ms. Andersen never downloaded or
5 distributed any audio files nor did the record companies or any of their agents ever observe any
6 such activity associated with her personal home computer. Defendants were at all relevant
7 times aware that no evidence existed supporting their claims.

9 7.6 Defendants’ representatives knowingly and intentionally misrepresented that
10 defendants had actual evidence that Ms. Andersen had infringed the thousands of song titles
11 listed in the defendant Record Companies’ complaint. Defendants used this list of titles as a
12 means to coerce and threaten Ms. Andersen with the prospect of being sued for hundreds of
13 thousands of dollars. Defendants knowingly and intentionally withheld the material fact that
14 they did not know who engaged in any infringing activities, and they did not know whether any
15 of the thousands of file names contained any copyrighted sound recordings whatsoever. The
16 reason defendants omitted this information was to intimidate Ms. Andersen into paying the
17 defendant Record Companies thousands of dollars.

19 7.7 Defendants failed to disclose to Ms. Andersen the fact that she had been
20 misidentified, and withheld from her the true nature of the “evidence” against her. Ms.
21 Andersen had no access to the information that the defendants falsely claimed to have received
22 from MediaSentry. Ms. Andersen had no way of knowing that defendants were withholding
23 and omitting information from her, on which they intended she rely.

25 7.8 Defendants had a duty to conduct a reasonable investigation into the information
26 that it was representing as true. Defendants breached that duty.

1 7.9 As a direct result of defendants' materially false representations and omissions
2 of material facts, Ms. Andersen invested substantial resources into investigating the integrity of
3 her computer and investigating the claims of infringement at the request of defendants.
4 Defendants' conduct caused her medical condition to flare up and worsen, requiring that she
5 return to her doctor and caused her to be unable to return to work. Defendants' conduct
6 resulted in direct and consequential harm to Ms. Andersen and damages in an amount to be
7 proven at trial.
8

9
10 **Count 3: Oregon Racketeer Influenced and Corrupt Organization Act**

11 8.1 This claim was previously asserted as Count 8 of Ms. Andersen's counterclaims
12 in Atlantic Recording Corp., et al v. Andersen.

13
14 8.2 Plaintiff realleges and incorporates herein by reference each of the allegations set
15 forth above.

16 8.3 The Oregon Racketeer Influenced and Corrupt Organization Act (ORICO)
17 prohibits companies from engaging in organized racketeering or criminal activities. ORS
18 166.715, *et seq.* ORICO provides that it is unlawful for any person employed by, or associated
19 with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a
20 pattern of racketeering activity or the collection of an unlawful debt. ORS 166.720(3).
21

22 8.4 Defendants each worked in association with each other for the purpose of
23 creating and operating an enterprise to wage a public relations and public threat and
24 intimidation campaign targeting, in part, innocent people in an attempt to maintain their
25 monopoly over the distribution of recorded music.
26

 8.5 Defendants' association constitutes an "enterprise" as defined in ORICO.

1 8.6 Defendants common and conspiratorial conduct is set forth in detail in
2 paragraphs 5.1 to 5.43 above. Defendants conducted illegal and flawed investigations which
3 were designed to be, and actually were, used in a campaign of threat and extortion waged
4 against Tanya Andersen and thousands of others.

5 8.7 Defendants directed their lawyers and Settlement Support Center to transmit to
6 Ms. Andersen false and misleading communications through the U.S. mail and otherwise, and
7 to coerce and threaten Ms. Andersen into paying the defendant Record Companies thousands of
8 dollars, which acts are in violation of ORS 163.275, ORS 166.720(3), 18 U.S.C. § 1951, and 18
9 U.S.C. § 1341.

10 8.8 While each of the defendants participate in the enterprise, they also have an
11 existence separate and distinct from the enterprise.

12 8.9 Defendants' acts formed a pattern of racketeering by committing at least two
13 acts of racketeering. These acts represent a common course of conduct used by defendants to
14 target thousands of citizens throughout the United States. These activities shared the common
15 objectives of seeking payment of thousands of dollars from each person targeted, regardless of
16 their innocence, in order to maintain monopolistic control over the market for music
17 distribution. These acts had the same or similar purposes, results, participants, victims and
18 methods of commission. The predicate acts of racketeering include, but are not limited to:
19 attempted violations of Oregon's coercion statute, ORS 163.275; attempts to obtain execution
20 of documents by deception, ORS 165.102; attempted theft by deception, ORS 164.085; mail
21 fraud, 18 U.S.C. 1341; attempts to obtain property with consent induced by wrongful fear and
22 intimidation in violation of the Hobbs Act, 18 U.S.C. § 1951, *et seq.*; extortion; and furtherance
23 of a plan to commit coercion in violation of ORICO 166.720(3).

1 8.10 These unlawful activities were not isolated. The RIAA and its member
2 companies have repeated this coercive conduct with many other victims throughout the United
3 States. Settlement Support Center has reportedly engaged in the same pattern of threatening
4 and coercive conduct. In 2004, the RIAA targeted another innocent person in this scheme.
5 When presented with evidence that the individual did not engage in any of the downloading
6 activities, RIAA members insisted that her lack of involvement was irrelevant and reportedly
7 threatened that they would sue her for hundreds of thousands of dollars whether or not she had
8 ever engaged in the alleged file sharing: “It didn’t matter. Someone is responsible and someone
9 is going to have to pay.” Motown Records, et al. v. Nelson, No. 04-73646 (E.D. MI).

11 8.11 Defendants and their agents stood to financially benefit from these deceptive and
12 unlawful acts. Proceeds from these activities are used to fund the operation of defendants’
13 continued public threat campaigns.

15 8.12 Defendants’ racketeering conduct directly and proximately resulted in harm to
16 Ms. Andersen and damage to her health and property in an amount to be specifically proven at
17 trial.

18 **Count 4: Federal Racketeer Influenced and Corrupt Organization Act**

19 9.1 Plaintiff realleges and incorporates herein by reference each of the allegations set
20 forth above.

22 9.2 The Racketeer Influenced and Corrupt Organization Act (RICO) prohibits
23 companies from engaging in organized racketeering or criminal activities. 18 U.S.C. § 1961, *et*
24 *seq.* RICO provides that it is unlawful for any person employed by, or associated with, any
25 enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of
26 racketeering activity or the collection of an unlawful debt. 18 U.S.C. § 1962 (c).

1 9.3 Defendants each worked in association with each other for the purpose of
2 creating and operating an enterprise to wage a public relations and public threat and
3 intimidation campaign targeting, in part, innocent people in an attempt to maintain control of
4 and monopolize the distribution of music recordings.

5 9.4 Defendants' association constitutes an "enterprise" as defined in 18 U.S.C. §
6 1961(4).

7 9.5 Defendants common and conspiratorial conduct is set forth in detail in
8 paragraphs 5.1 to 5.45 above. Defendants conducted illegal and flawed investigations which
9 were designed to be and actually were used in a campaign of threat and extortion waged against
10 Tanya Andersen and thousands of others.

11 9.6 Defendants formed a scheme to defraud Ms. Andersen and directed their lawyers
12 to send false and misleading communications through the U.S. mail with the intent to defraud
13 her in violation of 18 U.S.C. § 1341.

14 9.7 Defendants attempted to coerce and threaten Ms. Andersen into paying the
15 defendant Record Companies thousands of dollars in violation of the Hobbs Act, 18 U.S.C. §
16 1951, *et seq.*

17 9.8 While each of the defendants participate in the enterprise, they also have an
18 existence separate and distinct from the enterprise.

19 9.9 Defendants are each "persons" as defined in 18 U.S.C. § 1961(3).

20 9.10 Defendants' acts formed a pattern of racketeering as defined in 18 U.S.C. §
21 1961(5). Defendants have committed at least two acts of racketeering. These acts represent a
22 common course of conduct used by plaintiffs to target thousands of citizens throughout the
23 United States. These activities shared the common objectives of seeking payment of thousands
24 of dollars.
25 of dollars.
26 of dollars.

1 of dollars from each person targeted, regardless of their innocence in order to protect a
2 monopolistic music distribution scheme. These acts had the same or similar purposes, results,
3 participants, victims and methods of commission. The predicate acts of racketeering include,
4 but are not limited to: mail fraud, 18 U.S.C. § 1341; attempts to obtain property with consent
5 induced by wrongful fear and intimidation in violation of the Hobbs Act, 18 U.S.C. § 1951, *et*
6 *seq.*; extortion; and conspiracy to violate 18 U.S.C. § 1962(c) in violation of 18 U.S.C. §
7 1962(d).

9 9.11 These unlawful activities were not isolated. The RIAA and its member
10 companies have repeated this coercive conduct with many other victims throughout the United
11 States. Settlement Support Center has reportedly engaged in the same pattern of threatening
12 and coercive conduct. In 2004, the RIAA targeted another innocent person in this scheme.
13 When presented with evidence that the individual did not engage in any of the downloading
14 activities, RIAA members insisted that her lack of involvement was irrelevant and reportedly
15 threatened that they would sue her for hundreds of thousands of dollars whether or not she had
16 ever engaged in the alleged file sharing: “It didn’t matter. Someone is responsible and someone
17 is going to have to pay.” Motown Records, et al. v. Nelson, No. 04-73646 (E.D. MI).

19 9.12 Defendants and their agents stood to financially benefit from these deceptive and
20 unlawful acts. Proceeds from these activities are used to fund the operation of defendants’
21 continued public threat campaigns.

23 9.13 Defendants’ enterprise engages in interstate commerce, and defendants’
24 activities affect interstate commerce.

25 9.14 Defendants’ racketeering conduct directly and proximately resulted in damages,
26 including harm to Ms. Andersen’s health and property in an amount to be specifically proven at

1 trial.

2 **Count 5: Abuse of Legal Process**

3 10.1 This claim was previously asserted as Count 4 of Ms. Andersen's counterclaims
4 in Atlantic Recording Corp., et al v. Andersen.

5
6 10.2 Plaintiff realleges and incorporates herein by reference each of the allegations set
7 forth above.

8 10.3 Despite knowing that Ms. Andersen was never observed downloading any
9 music, defendants used the threat of expensive and intrusive litigation as a tool to coerce Ms.
10 Andersen to pay many thousands of dollars for an obligation she did not owe. Defendants
11 pursued their collection activities and this lawsuit for the primary purpose of threatening Ms.
12 Andersen (and many others) as part of its public relations campaign targeting electronic file
13 sharing.
14

15 10.4 Defendants have falsely and publicly represented and asserted to this court that
16 information obtained in this invasive and secret manner existed and proved Ms. Andersen's
17 alleged downloaded and distributed copyrighted audio recordings. Ms. Andersen never
18 downloaded music but has been subjected to public derision and embarrassment.

19 10.5 Defendants' conduct resulted in damages and harm to Ms. Andersen and her
20 property in an amount to be specifically proven at trial.
21

22 **Count 6: Malicious Prosecution**

23 11.1 Plaintiff realleges and incorporates herein by reference each the allegations set
24 forth above.

25 11.2 Despite knowing that their faulty and illegal investigation protocol did not give
26 rise to probable cause for commencing and then continuing civil litigation against Ms.

1 Andersen, RIAA and the defendant Record Companies relied upon the same illegal and flawed
2 investigation as the sole asserted basis for their false claims.

3 11.3 Prior to commencing their abusive litigation against Ms. Andersen, defendants
4 were aware that Ms. Andersen's psychological condition was deteriorating and worsening as a
5 result of the threats of imminent litigation.
6

7 11.4 Despite her repeated requests, defendants refused to inspect Ms. Andersen's
8 computer prior to commencing litigation, and refused to adequately investigate the identity of
9 gotenkito both before the litigation commenced and during the years they abusively continued
10 it.

11 11.5 After becoming aware that Ms. Andersen was acutely sensitive to the prospect of
12 her daughter's persecution, defendants' agents contacted Ms. Andersen's apartment building
13 looking for Kylee. Disturbing calls to Kylee's former grade school were made under false
14 pretenses inquiring as to her attendance. Ms. Andersen learned of these tactics and was
15 frightened and distressed.
16

17 11.6 Defendants' lawyers threatened persecution of Kylee in an effort to force Ms.
18 Andersen to abandon her counterclaims against the defendant Record Companies. Their
19 demand for face-to-face confrontation with Ms. Andersen's then 10 year-old child in a
20 deposition at the offices of RIAA lawyers were also intended to coerce and threaten her.
21

22 11.7 The defendant Record Companies abusively filed and continued this baseless
23 litigation against Ms. Andersen for nearly two years, ignoring her many pleas that the litigation
24 cease. Defendants were at all times aware of the total lack of probable cause for commencing
25 and maintaining it, and the serious harm it caused to Ms. Andersen.
26

11.8 The litigation terminated in Ms. Andersen's favor upon the unconditional

1 dismissal with prejudice of the claims against her on June 1, 2007.

2 11.9 The above course of conduct was malicious, and was intended to serve the
3 primary purpose of intimidating, coercing, and threatening Ms. Andersen and others.

4 11.10 Defendants' conduct described above proximately caused direct and
5 consequential monetary, physical, and psychological harms to Ms. Andersen and damages in an
6 amount to be proven at trial.
7

8 **Count 7: Outrage and Intentional Infliction of Emotional Distress**

9 12.1 This claim was previously asserted as Count 6 of Ms. Andersen's counterclaims
10 in Atlantic Recording Corp., et al v. Andersen.

11 12.2 Ms. Andersen realleges and incorporates herein by reference each of the
12 allegations set forth above.

13 12.3 Defendants' outrageous conduct, including threats, intimidation, and coercion,
14 was intended to and actually caused Ms. Andersen extreme emotional distress.

15 12.4 Defendants' conduct was without any reasonable basis and reckless in that they
16 did not investigate the defendant Record Companies' claims before initiating the action against
17 Ms. Andersen and in continuing to pursue the action when they knew that no facts or evidence
18 existed to support the claims.
19

20 12.5 Despite having never observed any downloading or distribution associated with
21 Ms. Andersen's personal home computer; despite refusing Ms. Andersen's offer to allow an
22 inspection of her own computer; and, after confirming that she did not download music,
23 defendants wrongfully continued their improper efforts to coerce payment from her.
24

25 12.6 Defendants pursued debt collection activities for the inappropriate purpose of
26 illegally threatening Ms. Andersen and many thousands of others. This tortious abuse was

1 motivated by and is a central part of a public relations campaign targeting electronic file-
2 sharing.

3 12.7 An employee of Settlement Support Center admitted to Ms. Andersen that he
4 believed that she had not downloaded any music. He stated that Settlement Support Center and
5 the defendant Record Companies would not quit the debt collection activity against her because
6 to do so would encourage other people to defend themselves against claims made by the RIAA
7 and its members.
8

9 12.8 Defendants were aware of Ms. Andersen's disabilities and her serious health
10 issues. Settlement Support Center knew that its conduct would cause extreme distress in Ms.
11 Andersen. As a result of defendants' conduct, Ms. Andersen suffered severe physical and
12 emotional distress and health problems.
13

14 12.9 Defendants' conduct resulted in damages, including harm to Ms. Andersen's
15 health and property in an amount to be specifically proven at trial.
16

17 **Count 8: Computer Fraud and Abuse Act**

18 13.1 This claim was previously asserted as Count 2 of Ms. Andersen's counterclaims
19 in Atlantic Recording Corp., et al v. Andersen.
20

21 13.2 Plaintiff realleges and incorporates herein by reference each of the allegations set
22 forth above.

23 13.3 Under the provisions of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030,
24 *et seq.* ("CFAA"), it is illegal to invade another person's private computer to spy, steal or
25 remove private information, damage property, or cause other harm and losses. The CFAA
26 prohibits a person from accessing a computer without authorization to "obtain information from

1 any protected computer if the conduct involved an interstate or foreign communication.” 18
2 U.S.C. § 1030(a)(2)(C). The CFAA further prohibits a person from breaking into a computer
3 without permission and creates a cause of action where the unauthorized access results in
4 damage, loss, or personal injury. 18 U.S.C. § 1030(a)(5)(B)(iii).

5
6 13.4 Ms. Andersen regularly used her personal computer to communicate with friends
7 and family across the country and for interstate e-commerce. Ms. Andersen had password
8 protection and security in place to protect her computer and personal files from access by
9 others. Ms. Andersen has never engaged in file sharing activities, did not make any portion of
10 her computer available to the public, and did not authorize defendants to invade her computer
11 or steal information.

12
13 13.5 Ms. Andersen’s computer is her personal and private property. Defendant
14 MediaSentry claims to have bypassed Ms. Andersen’s computer security systems and to have
15 invaded her personal computer to secretly spy on and steal or remove private information. If
16 this occurred as claimed, MediaSentry did not have her permission to inspect, copy, or remove
17 her private computer files. If this occurred, MediaSentry gained access secretly and illegally.

18
19 13.6 Even assuming that defendants could have had implied consent to view certain
20 files allegedly appearing on Ms. Andersen’s computer, by using pretext, acting deceptively and
21 masquerading as a peer user, using false pretenses, and employing sophisticated data collection
22 technology, defendants’ acts vitiated whatever implied consent they might have had.

23
24 13.7 If defendants’ investigative claims are to be believed, they willfully used Ms.
25 Andersen’s computer without authorization to appropriate Andersen’s personal property for
26 their own purposes.

13.8 Defendants’ claimed conduct resulted in damages and harm to Ms. Andersen’s

1 health and property. As a direct result of defendants' purported interference with the integrity
2 and capacity of her personal computer, Ms. Andersen invested substantial resources into
3 investigating the integrity of her computer, and she was chilled against the lawful use of her
4 computer. Defendants' conduct caused her medical condition to worsen and flare up, requiring
5 that she return to her doctor, and caused her to be unable to return to work. Defendants'
6 conduct resulted in direct and consequential damages, loss, and harm to Ms. Andersen's person
7 and property in an amount far in excess of \$5,000 (the minimum damages required to be proved
8 under the CFAA).
9

10 **Count 9: Trespass to Chattels**

11 14.1 This claim was previously asserted as Count 1 of Ms. Andersen's counterclaims
12 in Atlantic Recording Corp., et al v. Andersen, denominated as electronic trespass.
13

14 14.2 Ms. Andersen's computer, its capacity and its integrity are her personal property.
15 Ms. Andersen had password protection and security in place to protect her computer and
16 personal files from access by others. Ms. Andersen has never engaged in file sharing activities,
17 did not make any portion of her computer available to the public, and did not expressly or
18 impliedly authorize defendants or any of their agents to enter her computer or steal information
19 therefrom.
20

21 14.3 RIAA and the defendant Record Companies employed MediaSentry as their
22 agent and claimed that it invaded Ms. Andersen's personal computer and secretly spied on and
23 stole information or removed files from it. If defendants' investigative claims are to be
24 believed, they willfully misused Ms. Andersen's computer without authorization to appropriate
25 Andersen's personal property for their own purposes. Defendants' claimed unauthorized
26 invasion and use of Ms. Andersen's computer would constitute an interference and/or

1 intermeddling with the capacity and integrity of her personal property. MediaSentry did not
2 have Ms. Andersen's permission to inspect, copy, or remove private computer files. If
3 MediaSentry accessed her private computer as claimed, it did so illegally and secretly

4 14.4 Even assuming that defendants could have had implied consent to view files
5 appearing on Ms. Andersen's computer, defendants use of false pretext, deception and their
6 claimed masquerading as a peer user vitiated whatever implied consent they might have had
7

8 14.5 Defendants used the private information (including an alleged internet protocol
9 address) that they claimed to have stolen from Ms. Andersen's computer in their attempt to
10 threaten and coerce her into paying thousands of dollars.

11 14.6 Defendants' claims and conduct resulted in damages and harm to Ms.
12 Andersen's health and property. As a direct result of plaintiffs' claimed interference with the
13 integrity and capacity of her personal computer, Ms. Andersen invested substantial resources
14 into investigating the integrity of her computer. Defendants' conduct caused Ms. Andersen's
15 existing health problems to worsen and flare up, requiring that she return to her doctor.
16 Because of their conduct she was unable to return to work. Defendants' conduct resulted in
17 direct and consequential damages, loss, and harm to Ms. Andersen in an amount to be proven at
18 trial.
19
20

21 **Count 10: Invasion of Privacy**

22 15.1 This claim was previously asserted as Count 3 of Ms. Andersen's counterclaims
23 in Atlantic Recording Corp., et al v. Andersen.

24 15.2 Plaintiff realleges and incorporates herein by reference each of the allegations set
25 forth above.

26 15.3 According to defendants, MediaSentry invaded Ms. Andersen's personal

1 computer. If these claims are to be believed, MediaSentry did not have permission to inspect
2 Ms. Andersen's private computer files and it gained access only by illegal acts of subterfuge,
3 intruding into Ms. Andersen's private affairs.

4 15.3 Ms. Andersen's computer, its capacity, integrity, and the information contained
5 in it are her personal, private property. Ms. Andersen has never engaged in file sharing
6 activities, did not make any portion of her computer available to the public, and did not
7 authorize defendants or any of their agents to invade her computer or steal information.
8 MediaSentry did not have her permission to inspect, copy, or remove her private computer files.
9

10 15.4 Even assuming that defendants could have had implied consent to view certain
11 files allegedly appearing on Ms. Andersen's computer, by using pretext, acting deceptively and
12 masquerading as a peer user, using false pretenses, and employing sophisticated data collection
13 technology, defendants' acts vitiated whatever implied consent they might have had.
14

15 15.5 Defendants have falsely represented that information obtained in this invasive
16 and secret manner is proof of Ms. Andersen's alleged downloading. Ms. Andersen never
17 downloaded music but has been subjected to public derision and embarrassment associated with
18 defendants' claims and public relations campaign.
19

20 15.6 Defendants have used this improperly obtained information to make reckless,
21 shameful and slanderous public accusations about Ms. Andersen. Defendant RIAA has made
22 further widely publicized statements portraying those it accuses of infringement as "pirates"
23 and "thieves". These statements, innuendo and subsequent republications thereof place Ms.
24 Andersen in a false light.

25 15.7 Defendants' conduct described above proximately caused direct and
26 consequential monetary, physical, and psychological harms to Ms. Andersen in an amount to be

1 proven at trial.

2 **Count 11: Libel and Slander**

3 16.1 Defendants acted in concert to publicly state and represent that Ms. Andersen
4 stole and collected racist, misogynist and violent music. She was publicly called a thief and a
5 liar by defendants and their agents. The repulsive song titles were published repeatedly.
6

7 16.2 Defendants' conduct described above proximately caused direct and
8 consequential monetary, physical, and psychological harms to Ms. Andersen and damages in an
9 amount to be proven at trial

10 **Count 12: Deceptive Business Practices**

11 17.1 This claim was previously asserted as Count 7 of Ms. Andersen's counterclaims
12 in Atlantic Recording Corp., et al v. Andersen.

13 17.2 Plaintiff realleges and incorporates herein by reference each of the allegations set
14 forth above.
15

16 17.3 Oregon's Unlawful Trade Practices Act prohibits those in trade or commerce
17 from engaging in unfair or deceptive practices in the course of business with consumers. ORS
18 646.605 et seq.

19 17.4 Settlement Support Center, acting on behalf of the RIAA and the defendant
20 Record Companies, made false and deceptive statements to Ms. Andersen in an attempt to
21 mislead, threaten, and coerce her into paying thousands of dollars.
22

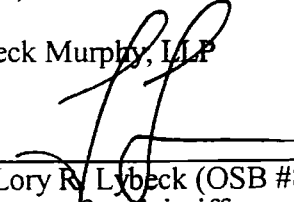
23 17.5 Settlement Support Center, acting on behalf of the RIAA, the defendant Record
24 Companies, and other RIAA members, has made similar false and deceptive statements to
25 many other residents of Oregon and other states across the country. The public interest has
26 been and continues to be directly impacted by defendants' deceptive practices.

DEMAND FOR JURY TRIAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Plaintiffs request a trial by jury.

Respectfully submitted this 21st day of June, 2007.

Lybeck Murphy, LLP
By: 
Lory R. Lybeck (OSB #83276)
Attorneys for plaintiff