

## Factual Allegations Related to Raleigh

44. On or about January 21, 2004, Atlantic, BMG, Virgin, Capitol, and UMG filed a lawsuit styled *Warner Brothers Records, Inc., et al., v. Does 1-43*, No. 1:04cv0476(JES) (“Does 1-43 Action”) in the United States District Court for the Southern District of New York.

45. On or about February 2, 2004, Counterclaim Defendants and RIAA served a subpoena in the Does 1-43 Action on Mediacom, a third party ISP. In response to the subpoena, Mediacom provided Counterclaim Defendants and RIAA with the name of its customer, Jenny Kopp (“Kopp”).

46. Counterclaim Defendants and RIAA mailed a letter to Kopp dated March 17, 2004 telling Kopp she had been sued by a number of record companies for copyright infringement but not yet named as a defendant. A copy of that letter is attached as Exhibit 3. Counterclaim Defendants and RIAA also told Kopp in the letter that “[y]ou are being sued because we have obtained evidence that you have made copyrighted sound recordings owned by the record company plaintiffs available for mass distribution over a peer-to-peer network. . . . Pursuant to a Court Order issued by the judge in that case, your Internet Service Provider (“ISP”) provided use with your identifying information, including your name and address. By law, we may use that information to identify you by name in a lawsuit and serve you with a copy of the new complaint. We are writing in advance of serving a new complaint to give you the opportunity to resolve these claims. . . . The Copyright Act imposes a range of statutory damages for copyright infringement. The minimum damages under the law

is \$750 for *each* copyrighted recording that has been infringed (“shared”). . . . If you choose not to resolve this matter now, then we will name you as a defendant and serve you with a copy of the complaint.” (emphasis in original). Counterclaim Defendants and RIAA made these statements to Kopp to instill fear of economic loss and harm and extort monies from her although these Counterclaim Defendants and RIAA had no legal entitlement to the monies. This threat of economic loss and harm was not justified because Counterclaim Defendants and RIAA had no evidence that Kopp violated the Copyright Act.

47. After receiving the letter from Counterclaim Defendants and RIAA, Kopp hired counsel and provided Counterclaim Defendants and RIAA with a sworn affidavit denying any of Counterclaim Defendants’ claims. A copy of Kopp’s affidavit is attached as Exhibit 4.

48. After receiving Kopp’s affidavit, Counterclaim Defendants and RIAA sent Raleigh a letter by mail dated June 16, 2004 telling Raleigh that she had been implicated in a lawsuit for copyright infringement. A copy of that letter is attached as Exhibit 5. Counterclaim Defendants and RIAA state in this letter that “[y]ou are implicated because we have obtained evidence that you likely made copyrighted sound recordings owned by the record company plaintiffs available for mass distribution over a peer—to-peer network.” Counterclaim Defendants and RIAA also state “Ms. Kopp contends that you, not she, are the individual in the household using the peer—to-peer network.” That statement is also false. Counterclaim Defendants and RIAA’s letter continues: “We may now use the information provided by Ms. Kopp to identify you by

name in a lawsuit and serve you with a copy of the new complaint. We are writing in advance of serving a new complaint, in the event that you have an interest in resolving these claims. . . . The Copyright Act imposes a range of statutory damages for copyright infringement. The minimum damages under the law is \$750 for *each* copyrighted recording that has been infringed (“shared”). . . . If you choose not to resolve this matter now, then we can name you as a defendant and serve you with a copy of the complaint.” (emphasis in original). The above-statements were made to Raleigh by Counterclaim Defendants and RIAA to instill fear of economic loss and harm to extort monies from her.

49. After receiving the letter dated June 16, 2006 from Counterclaim Defendants and RIAA, Raleigh engaged counsel to represent her.

50. In a letter sent by mail and dated September 18, 2006, Counterclaim Defendants and RIAA told Raleigh through her counsel that Kopp had identified Raleigh “as the actual infringer in a signed declaration in regards to the above-referenced [Does 1–43 Action].” This statement was false and was designed to instill the fear of litigation and economic loss and harm in Raleigh.

51. Raleigh, through her counsel, telephoned the Settlement Information Line established by Counterclaim Defendants and RIAA as part of their scheme, and a representative and agent of Counterclaim Defendants and RIAA demanded \$6,000 from Raleigh to settle.

52. On or about November 18, 2006, without any evidence identifying Raleigh as a person who shared, downloaded or copied infringing files, Counterclaim

Defendants and RIAA filed the instant lawsuit against Raleigh alleging copyright infringement. Attached to the complaint was a “Notice to Defendant” from Defendants. A copy of the Notice is attached as Exhibit 6.

53. The Notice from Counterclaim Defendants and RIAA attached to the complaint states, in part, “[W]e have obtained evidence that you have copied, distributed, and made available for mass distribution copyrighted sound recordings owned by the record company plaintiffs over a peer—to-peer network.” The statement is false and extortive and designed to intimidate and instill the fear of litigation and economic loss and harm in Raleigh. The Notice further states, “The record company plaintiffs are prepared to prosecute this lawsuit fully to see that their rights and interests are protected. However, as discussed below, they are willing to consider settling the case promptly.” The Notice continues, “You violated the record company plaintiffs’ copyrights and are liable for damages as a result.” That statement too is false and constitutes an attempt by Counterclaim Defendants and RIAA to extort money from Raleigh by intimidating and by instilling a fear of economic loss and harm. The Notice also states, “The Copyright Act imposes a range of damages for copyright infringement. The damages range is \$750 to \$30,000 for *each* copyrighted work infringed[] . . . . If you would like to discuss settlement, the record companies request, with our consent, that you contact their representatives by phone at (913) 234-8181, by facsimile at (913) 234-8182, or by e-mail at info@SettlementInformationLine.com. If you are under 18, your attorney (or your parent or other guardian) must be present during any discussions.” (emphasis in original). The above-statements were

made to Raleigh by Counterclaim Defendants and RIAA to instill fear of economic loss and harm and extort monies from her.

54. On or about December 3, 2004, Raleigh provided Counterclaim Defendants and RIAA with an affidavit disavowing any involvement or knowledge of illegally downloading, uploading, filesharing or in any other way illegally using copyrighted music for any purpose whatsoever. A copy of Raleigh's Affidavit is attached as Exhibit 7. Despite Raleigh's affidavit, Counterclaim Defendants and RIAA have demanded and continue to demand a cash payment from her and further that she voluntarily enter into a permanent injunction to settle this matter.

55. On or about August 6, 2007, Counterclaim Defendants and RIAA telephoned Raleigh's counsel, demanded a \$5,000 payoff and that Raleigh enter into a permanent injunction to settle this matter, and threatened to take lengthy and expensive depositions of some 120 students in Raleigh's sorority house that she identified as sorority sisters in her affidavit if Raleigh refused to settle. These statements by Counterclaim Defendants and RIAA directed to Raleigh were made to instill fear of economic loss and harm and extort monies from her. This threat of economic loss and harm was not justified because Counterclaim Defendants and RIAA had no evidence that it was Raleigh who violated the Copyright Act or that they were entitled to any payment from her.

56. The nature of Counterclaim Defendants and RIAA's scheme made it reasonably foreseeable that the mail and wires would be used in furtherance thereof. The letters Counterclaim Defendants and RIAA mailed to Raleigh and her counsel, as

well as the telephone call placed by Counterclaim Defendants and RIAA' agents, were made as part of their scheme to extort and defraud Raleigh.

57. Counterclaim Defendants and RIAA made representations of fact in the letters to Raleigh and her counsel, that were false and which Counterclaim Defendants and RIAA knew were false. These facts were material to Raleigh's decision to hire and retain counsel. Each Counterclaim Defendant each intended that Raleigh rely and act on such statements. Raleigh did not know the statements were false and justifiably relied on them to her detriment and as a direct result of such reliance suffered injury to her property.

58. Counterclaim Defendants and RIAA's statements communicated by telephone to Raleigh through counsel were made in furtherance of Counterclaim Defendants and RIAA's scheme to defraud and extort money from her.

59. As part of their scheme, Counterclaim Defendants and RIAA engaged in mail fraud in violation of 18 U.S.C. § 1341 and wire fraud in violation of 18 U.S.C. § 1343 and in attempted extortion in violation the Hobbs Act, 18 U.S.C. § 1951.

60. Counterclaim Defendants and RIAA's acts of mail and wire fraud and attempted extortion, together with their conspiracy to commit acts of mail and wire fraud and attempted extortion, are sufficient to serve under 18 U.S.C. § 1961(1) as predicate acts for a RICO claim.

61. The predicate acts of Counterclaim Defendants and RIAA have the same or similar purposes, results, victims, and methods of commission and are therefore related. These predicate acts also consist of a series of related acts extending over a

substantial period of time and are therefore continuous.

62. The enterprise and conduct of Counterclaim Defendants and RIAA alleged herein affect interstate commerce because Counterclaim Defendants and RIAA are located in several states and the enterprise engages in and pursues activities affecting commerce between the states.

### **Class Action Allegations**

63. Raleigh, the named counterclaim plaintiff, brings this action on behalf of herself and, pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure, on behalf of all similarly situated persons.

64. Counterclaim Defendants and RIAA's ongoing schemes, as detailed herein, violate RICO. Each defendant, together in an enterprise with the other Counterclaim Defendants and RIAA, has falsely accused individuals of downloading copyrighted sound recordings owned by the Counterclaim Defendants and RIAA and making them available for distribution or mass distribution over a P2P network in an attempt to extort settlement payments.

65. Raleigh proposes to represent a Plaintiffs' Class consisting of all persons residing in the United States who were falsely accused by Counterclaim Defendants and RIAA of downloading copyrighted sound recordings owned by the Counterclaim Defendants and making them available for distribution or mass distribution over a P2P network and who incurred costs and damages including legal fees in defense of such false claims.

66. On information and belief, the Plaintiffs' Class consists of many

thousands of individuals, and the members of the Plaintiffs' Class are so numerous that it is impractical to bring all of them before the Court in this action. Moreover, the amount of damages suffered by each member of the proposed Plaintiffs' Class is so small that an action for recovery by each individual Class member is economically unfeasible.

67. Raleigh is similarly situated to the members of the Plaintiffs' Class and will fairly insure adequate representation of all of the proposed Plaintiffs' Class members.

68. There are common questions of law and fact applicable to the claims asserted on behalf of the Plaintiffs' Class. Those questions include the following:

- a. Whether Counterclaim Defendants had any evidence that the proposed Plaintiffs' Class members downloaded copyrighted sound recordings owned by the Counterclaim Defendants and made them available for distribution or mass distribution over a P2P network;
- b. Whether Counterclaim Defendants had any evidence that the proposed Plaintiffs' Class members violated Counterclaim Defendants' copyrights;
- c. Whether the proposed Plaintiffs' Class members incurred costs and damages including legal fees in defense of Counterclaim Defendants' false claims;
- d. Whether Counterclaim Defendants attempted to extort cash settlements from the proposed Plaintiffs' Class members falsely accused of violating Counterclaim Defendants' copyrights;
- e. Whether Counterclaim Defendants engaged and/or conspired to engage in conduct of an enterprise through a pattern of racketeering activity; and
- f. Whether Counterclaim Defendants violated and/or conspired to violate RICO by attempting to extort cash settlements and engaging in racketeering activity.

g. Whether Counterclaim Defendants defrauded and/or conspired to defraud the proposed Plaintiffs' Class members.

69. Proposed lead counsel for the proposed Plaintiffs' Class, Green Jacobson & Butsch P.C., is experienced and knowledgeable concerning this type of litigation, and will fairly and adequately represent the interests of the proposed Plaintiffs' Class.

70. The questions of law and fact common to the members of the proposed Plaintiffs' Class predominate over any questions of fact affecting any individual member of the proposed Plaintiffs' Class, and a class action is superior to other available methods for the fair and efficient resolution of this controversy. No unusual difficulties are anticipated in the management of this case as a class action.

71. This action is maintainable as a plaintiffs' class action pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure.

**Count I**  
**(Racketeering-RICO § 1962(d))**

72. Raleigh adopts and realleges each preceding allegation as if more fully stated herein.

73. Counterclaim Defendants and RIAA agreed to and conducted and participated in the conduct of the enterprise's affairs through a pattern of racketeering activity and for the unlawful purpose of intentionally defrauding and attempting to extort Raleigh and the other members of the proposed Plaintiffs' Class.

74. Pursuant to and in furtherance of their fraudulent and extortionate scheme, Counterclaim Defendants and RIAA committed multiple related and continuous acts of racketeering.

75. The acts set forth above constitute a pattern of racketeering activity pursuant to 18 U.S.C. § 1961(5).

76. Counterclaim Defendants and RIAA have directly and indirectly conducted and participated in the conduct of the enterprise's affairs through the pattern of racketeering and activity described above in violation of 18 U.S.C. § 1962(c).

77. As direct and proximate result of Counterclaim Defendants and RIAA's racketeering activities and violations of 18 U.S.C. § 1962(c), Raleigh and each member of the proposed Plaintiffs' Class have been injured in their property in that they incurred costs and damages including legal fees.

WHEREFORE, counterclaim plaintiff Jenna Raleigh, on behalf of herself, and on behalf of each member of the proposed Plaintiffs' Class, prays that this Court grant the following relief:

- a. An order certifying this action as a plaintiffs' class action, and appointing Raleigh, individually and collectively, as the representative of the Plaintiffs' Class;
- b. An order appointing Green Jacobson & Butsch, P.C. as counsel and lead counsel for the Plaintiffs' Class;
- c. Judgment in favor of Raleigh and the members of the Plaintiffs' Class and against Counterclaim Defendants, jointly and severally, for actual and treble damages;
- d. An injunction prohibiting Counterclaim Defendants from continuing to engage in the racketeering activities in which they are engaged as alleged herein.
- e. A finding that Raleigh and the members of the Plaintiffs' Class are the prevailing parties under 18 U.S.C. 1964(c) and awarding Raleigh and members of the

Plaintiffs' Class their attorney's fees;

f. Judgment awarding class counsel reasonable attorneys' fees and all expenses of this action to be paid by the Counterclaim Defendants, jointly and severally, and requiring the Counterclaim Defendants to pay the costs and expenses of class notice and claims administration; and

g. Award Raleigh and other members of the Plaintiffs' Class prejudgment interest, post-judgment interest, costs, and any further and additional relief to which they may be entitled.

**Count II**  
**(Conspiracy--RICO § 1962(d))**

78. Raleigh adopts and realleges each preceding allegation as if more fully stated herein.

79. As alleged in Count I, Counterclaim Defendants and RIAA agreed and conspired to violate 18 U.S.C. § 1962(a) by defrauding and attempting extort Raleigh and the other members of the proposed Plaintiffs' Class.

80. Counterclaim Defendants and RIAA have intentionally combined, conspired and agreed to conduct and participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity. Counterclaim Defendants and RIAA knew their predicate acts were part of a pattern of racketeering activity and agreed to the commission of those acts to further the schemes described above. Such conduct constitutes a conspiracy to violate 18 U.S.C. § 1962(c) in violation of 18 U.S.C. § 1962(d).

81. As direct and proximate result of Counterclaim Defendants and RIAA's

conspiracy, the overt acts taken in furtherance of that conspiracy, and violations of 18 U.S.C. § 1962(d), Raleigh and other members of the proposed Plaintiffs' Class have been injured in their property in that they incurred costs and damages including legal fees.

WHEREFORE, counterclaim plaintiff Jenna Raleigh, on behalf of herself, and on behalf of each member of the proposed Plaintiffs' Class, prays that this Court grant the following relief:

- a. An order certifying this action as a plaintiffs' class action, and appointing Raleigh, individually and collectively, as the representative of the Plaintiffs' Class;
- b. An order appointing Green Jacobson & Butsch, P.C. as counsel and lead counsel for the Plaintiffs' Class;
- c. Judgment in favor of Raleigh and the members of the Plaintiffs' Class and against Counterclaim Defendants, jointly and severally, for actual and treble damages;
- d. An injunction prohibiting Counterclaim Defendants from continuing to engage and conspiring to engage in the racketeering activities in which they are engaged as alleged herein.
- e. A finding that Raleigh and the members of the Plaintiffs' Class are the prevailing parties under 18 U.S.C. 1964(c) and awarding Raleigh and members of the Plaintiffs' Class their attorney's fees;
- f. Judgment awarding class counsel reasonable attorneys' fees and all expenses of this action to be paid by the Counterclaim Defendants, jointly and severally, and requiring the Counterclaim Defendants to pay the costs and expenses

of class notice and claims administration; and

g. Award Raleigh and other members of the Plaintiffs' Class prejudgment interest, post-judgment interest, costs, and any further and additional relief to which they may be entitled.

**Count III  
(Fraudulent Misrepresentation)**

82. Raleigh adopts and realleges each preceding allegation as if more fully stated herein.

83. Counterclaim Defendants intentionally and knowingly made false representations and omissions of material facts to Raleigh and the other members of the proposed Plaintiffs' Class, and intended that Raleigh and the other members of the proposed Plaintiffs' Class act on the such false representations and omissions of material facts.

84. Raleigh and the other members of the proposed Plaintiffs' Class, without knowledge of the material omissions or the falsity of the representations, justifiably relied on Counterclaim Defendants' false representations and omissions of material facts.

85. As a direct and proximate result of such representations and omissions, Raleigh and the other members of the proposed Plaintiffs' Class suffered damages and incurred costs including legal fees.

86. Defendants acted with malice and with evil motive and reckless indifference to Plaintiffs' right to full disclosure and the truth.

87. Counterclaim Defendants' willful and conscious disregard of Raleigh and

the other members of the proposed Plaintiffs' Class's rights justifies an award of punitive damages.

WHEREFORE, counterclaim plaintiff Jenna Raleigh, on behalf of herself, and on behalf of each member of the proposed Plaintiffs' Class, prays that this Court grant the following relief:

- a. An order certifying this action as a plaintiffs' class action, and appointing Raleigh, individually and collectively, as the representative of the Plaintiffs' Class;
- b. An order appointing Green Jacobson & Butsch, P.C. as counsel and lead counsel for the Plaintiffs' Class;
- c. Judgment in favor of Raleigh and the members of the Plaintiffs' Class and against Counterclaim Defendants, jointly and severally, for actual and punitive damages;
- d. An injunction prohibiting Counterclaim Defendants from continuing to make fraudulent misrepresentations as alleged herein.
- e. Judgment awarding class counsel reasonable attorneys' fees and all expenses of this action to be paid by the Counterclaim Defendants, jointly and severally, and requiring the Counterclaim Defendants to pay the costs and expenses of class notice and claims administration; and
- f. Award Raleigh and other members of the Plaintiffs' Class prejudgment interest, post-judgment interest, costs, and any further and additional relief to which they may be entitled.

**Count IV**  
**(Prima Facie Tort)**

88. Raleigh adopts and realleges each preceding allegation as if more fully stated herein.

89. Counterclaim Defendants intentionally communicated with Raleigh and the other members of the proposed Plaintiffs' Class through the mails and wires.

90. Counterclaim Defendants intended to cause injury to Raleigh and the other members of the proposed Plaintiffs' Class by such communications.

91. As a direct and proximate of Counterclaim Defendants' communications, Raleigh and the other members of the proposed Plaintiffs' Class suffered damages and incurred costs including legal fees.

92. Counterclaim Defendants lacked justification, or alternatively, had only a patently insufficient justification, for communicating with Raleigh and the other members of the proposed Plaintiffs' Class through the mails and wires and falsely accusing them of violating Counterclaim Defendants' copyrights.

93. Counterclaim Defendants acted with malice in that, relying on inadequate and non-existent evidence, they purposed and continued to attempt to extort cash payments from Raleigh and other members of the Plaintiffs' Class for acts they never committed.

94. Counterclaim Defendants' willful and conscious disregard of Raleigh and the other members of the proposed Plaintiffs' Class's rights justifies an award of punitive damages.

WHEREFORE, counterclaim plaintiff Jenna Raleigh, on behalf of herself, and

on behalf of each member of the proposed Plaintiffs' Class, prays that this Court grant the following relief:

a. An order certifying this action as a plaintiffs' class action, and appointing Raleigh, individually and collectively, as the representative of the Plaintiffs' Class;

b. An order appointing Green Jacobson & Butsch, P.C. as counsel and lead counsel for the Plaintiffs' Class;

c. Judgment in favor of Raleigh and the members of the Plaintiffs' Class and against Counterclaim Defendants, jointly and severally, for actual and punitive damages;

d. Judgment awarding class counsel reasonable attorneys' fees and all expenses of this action to be paid by the Counterclaim Defendants, jointly and severally, and requiring the Counterclaim Defendants to pay the costs and expenses of class notice and claims administration;

e. Award Raleigh and other members of the Plaintiffs' Class prejudgment interest, post-judgment interest, costs, and any further and additional relief to which they may be entitled.

**Count V  
(Conspiracy)**

95. Raleigh adopts and realleges each preceding allegation as if more fully stated herein.

96. Counterclaim Defendants conspired and agreed to commit the unlawful acts of fraudulent misrepresentation and omission of material facts.

97. Counterclaim Defendants committed these unlawful acts pursuant to

their conspiracy to attempt to extort cash settlements from Raleigh and the other members of the proposed Plaintiffs' Class.

98. Counterclaim Defendants conspired and agreed to use the mails and wires to communicate with Raleigh and the other members of the Plaintiffs' Class with the intent to cause injury to them by such communications.

99. Counterclaim Defendants communicated with Raleigh and the other members of the Plaintiffs' Class pursuant to their conspiracy to attempt to extort cash settlements from Raleigh and the other members of the proposed Plaintiffs' Class.

100. As a direct result of Counterclaim Defendants' conduct, Raleigh and the other members of the proposed Plaintiffs' Class suffered damages and incurred costs including legal fees.

101. Counterclaim Defendants acted with evil motive and reckless indifference to Raleigh and the other members of the proposed Plaintiffs' Class's rights.

102. Counterclaim Defendants' willful and conscious disregard of Raleigh and the other members of the proposed Plaintiffs' Class's rights justifies an award of punitive damages.

WHEREFORE, counterclaim plaintiff Jenna Raleigh, on behalf of herself, and on behalf of each member of the proposed Plaintiffs' Class, prays that this Court grant the following relief:

- a. An order certifying this action as a plaintiffs' class action, and appointing Raleigh, individually and collectively, as the representative of the Plaintiffs' Class;
- b. An order appointing Green Jacobson & Butsch, P.C. as counsel and lead

counsel for the Plaintiffs' Class;

c. Judgment in favor of Raleigh and the members of the Plaintiffs' Class and against Counterclaim Defendants, jointly and severally, for actual and punitive damages;

d. Judgment awarding class counsel reasonable attorneys' fees and all expenses of this action to be paid by the Counterclaim Defendants, jointly and severally, and requiring the Counterclaim Defendants to pay the costs and expenses of class notice and claims administration; and

e. Award Raleigh and other members of the Plaintiffs' Class prejudgment interest, post-judgment interest, costs, and any further and additional relief to which they may be entitled.

Defendant/Counterclaim Plaintiff demands a trial by jury.

Respectfully submitted,  
GREEN JACOBSON, & BUTSCH, P.C.

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CERTIFICATE OF SERVICE

I certify that on September 5, 2007, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system, upon the following named counsel of record: William H. Joyce and Steven M. Wald.

I certify that on September 5, 2007, copies of the foregoing were mailed to each of the following named non-participants in Electronic Case Filing: None.

/s/ Jonathan F. Andres