

2. To the extent the allegations in Plaintiffs' ¶ 2 and ¶ 3 of the complaint call for legal conclusions, Defendant lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them.
3. Defendant admits that she resides in this District; Defendant denies that she committed even a single act of infringement.

Parties

4. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in ¶ 4, ¶ 5, ¶ 6, ¶ 7, ¶ 8, ¶ 9 and ¶ 10.
5. As to all remaining allegations of fact in the unnumbered ¶ 1 through 11 of the complaint not specifically admitted, Defendant denies all such allegations. As to all remaining allegations which call for a legal conclusion, Defendant lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them.

Alleged Infringement of Copyrights – Count I

6. Defendant hereby incorporates her responses stated above as if fully set forth under Count 1 of Plaintiffs' Complaint.

7. Defendant lacks sufficient knowledge or belief to admit or deny the allegations contained in ¶s 13 and 14 of Plaintiffs' Complaint and therefore denies them. Although the Plaintiffs assert they have valid Certificates of Copyright Registration, none are attached to the Complaint. To the extent the Plaintiffs allege Defendant is associated with any and all information set forth in Plaintiffs' Exhibit A, Defendant denies these allegations and demands strict proof thereof.

8. To the extent a response is necessary, Defendant is without sufficient knowledge or expertise to respond to the allegations of Plaintiffs' in ¶s 15 and 16 of Plaintiffs' Complaint and therefore denies the same and requires strict proof thereof. As to all remaining allegations in ¶s 15 and 16 of Plaintiffs' Complaint, defendant is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in ¶s 15 and 16 and therefore denies all remaining allegations contained in ¶s 15 and 16 of Plaintiffs' Complaint.

9. In response to Plaintiffs' Complaint at ¶s 17 and 18, Defendant denies she participated in any act of infringement listed in Plaintiffs' Exhibit A as summarized in a table created by Plaintiffs. To the extent the Plaintiffs allege Defendant is associated with any and all information set forth in Plaintiffs' Exhibit A, Defendant denies these allegations and demands strict proof thereof. Defendant objects to Exhibit A and the allegations set forth in ¶s 17 and 18 and requires strict proof thereof. Defendant denies the allegation that "... Defendant ... had continuously used, and continued to use, a P2P network to download and/or distribute to the public the Copyrighted Recordings." Defendant demands strict proof thereof. As to the allegations in ¶s 17 and 18 of Plaintiffs' Complaint which call for legal conclusions, Defendant lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them. As to all remaining allegations in ¶s 17 and 18 of the Plaintiffs' Complaint, Defendant denies all remaining allegations in ¶s 17 and 18 of the Plaintiffs' Complaint.

10. As to the allegations in ¶ 19 which call for legal conclusions, Defendant lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore denies them. Although the Plaintiffs assert they have placed proper copyright notices pursuant to 17 U.S.C. §401, none are attached to the Complaint. To the extent the Plaintiffs allege such statements are true, Defendant is without knowledge and therefore denies these allegations and demands strict proof thereof. As to all remaining allegations in ¶ 19 of Plaintiffs' Complaint, Defendant is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations and therefore denies all remaining allegations contained in ¶ 19 of Plaintiffs' Complaint.

11. Defendant, having denied that she performed any act of infringement, denies that she participated in any acts of willful and intentional infringement as set forth in ¶ 20 and requires strict proof thereof. As to the allegations that call for legal conclusions, Defendant lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them. As to all remaining allegations in ¶ 20 of Plaintiffs' Complaint, Defendant denies all remaining allegations in ¶ 20 of Plaintiffs' Complaint.

12. As to the allegations of ¶ 21 of Plaintiffs' Complaint which call for legal conclusions, Defendant lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them. Defendant, having denied that she participated in any acts of infringement, denies that Plaintiffs' are entitled to any damages of any kind whatsoever as alleged in Plaintiffs' Complaint at ¶ 21 and requires strict proof thereof.

a. Defendant by telephone informed Plaintiffs' agent, Jerry Smith at the telephone number (913) 234-8181 on or about November 2, 2007 that Defendant did not download any copyrighted files.

b. Defendant has never used LimeWire on the P2P network Gnutella and is without knowledge sufficient to perform the alleged acts of infringement. Defendant informed Plaintiffs' by and through their agent that any alleged downloading was not done on Defendant's Computer and was not done by Defendant. Defendant requested Plaintiffs provide detailed information to disclose what was downloaded and by whom. However, Plaintiffs' proceeded with the filing of this lawsuit against Defendant, although Plaintiffs' knew or

had reason to know that said Defendant should not be a party to any case involving copyright infringement by use of a computer and the internet.

c. Plaintiffs' filed their Complaint on March 11, 2008 and served Defendant on April 6, 2008.

d. Plaintiffs should be required to pay Defendant's attorney's fees and costs pursuant to 17 U.S.C. § 505.

13. As to the allegations in ¶ 22 that call for legal conclusions, Defendant lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them. As to all remaining allegations in ¶ 22 of Plaintiffs' Complaint, Defendant further denies that Plaintiffs are entitled to any relief stated therein.

14. As to all remaining allegations of fact in the unnumbered ¶ 12 through 22 of the complaint not specifically admitted, Defendant denies all such allegations. As to all remaining allegations which call for a legal conclusion, Defendant lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them.

Defendant denies any and all allegations contained in Plaintiffs Request for relief and specifically denies that Plaintiffs' are entitled to any relief stated therein.

AFFIRMATIVE DEFENSES

By and for her Affirmative Defenses, Defendant states:

First Affirmative Defense

1. Plaintiffs' Complaint fails to state a claim upon which relief may be granted against defendant.

Second Affirmative Defense

2. Defendant asserts the affirmative defense of failure to join an indispensable party, in that Defendant did not engage in any of the downloading and/or infringement alleged by Plaintiffs', Plaintiffs' failed to include the individual(s) who allegedly engaged in the downloading in question and who is/are indispensable parties pursuant to Rules 12(b)(7) and 19 of the Federal Rules of Civil Procedure and for such failure, Plaintiffs' Complaint should be dismissed with prejudice as to Defendant.

Third Affirmative Defense

3. Defendant further asserts the affirmative defense that the statutory damages sought by Plaintiffs are unconstitutionally excessive as applied.

4. Plaintiffs seek statutory damages of at least \$750.00 per song for the songs set forth in Exhibit A of Plaintiffs' Complaint.

5. The total cost of licensing the songs would have been 99 cents per song.

6. The total revenue to Plaintiffs' from the licensing of the songs would have been even less – approximately 70 cents per song.

7. Plaintiffs' seek statutory damages equivalent to at least 1,071 times the amount of their actual damages.

8. As courts have recognized statutory damages to be punitive in nature, On Davis v. The Gap, Inc., 246 F.3d 152, 172 (2d Cir. 2001), statutory damages must necessarily have a reasonable relationship to the Plaintiffs' alleged actual damages caused by the alleged infringement (not some ephemeral speculation on the cause of lost CD sales). See Peer Int'l Corp. v. Luna Records, Inc., 887 F.Supp 560, 568 (S.D.N.Y 1995); RSO Records, Inc., v. Peri, 596 F. Supp. 849, 826 (S.D.N.Y. 1984); Dae Han Video Production, Inc., v. Chun, 1990 U.S. Dist. LEXIS 18496, *22 (D. Va. June 18, 1990).

9. As the Supreme Court has held, due process will prohibit an award of statutory damages meeting or exceeding a proportion of ten times or more actual damages. See State Farm Mutual Automobile Insurance Co., v. Campbell, 528 U.S. 408, 123 S. Ct. 1513, 1524 (2003); see also Parker v. Time Warner Entertainment Co., 331 F.3d 13,22 (2nd Cir. 2003); In Re Napster, Inc., 2005 WL 1287611, 77 U.S.P.Q.2d 1833, 2005 Copr. L. Dec. P 29,020 (N.D. Cal. 2005). In fact, an award of statutory damages at four times actual damages “might be close to the line of constitutional impropriety.” Id.

10. Pursuant to applicable law concerning the constitutionality of statutory damages, the Plaintiffs' recovery, if any, must necessarily have a reasonable relationship to the Plaintiffs' alleged actual damages caused by the alleged infringement.

11. The ratio of Plaintiffs' recovery, if any, to its actual damages must be limited such that the ratio and the recovery comport with due process.

12. At the minimum, the Plaintiffs' recovery, if any, must not exceed nine (9) times the amount of their actual damages to so comport with due process and constitutional propriety.

13. Defendant contends that the Plaintiffs' recovery, if any, must not exceed four (4) times the amount of their actual damages to so comport with due process and constitutional propriety.

14. For these reasons, this Court must limit Plaintiffs' recovery, if any, to a ration that comports with due process and constitutional propriety.

Fourth Affirmative Defense

15. Plaintiffs' claims are barred, in whole or part, by the doctrine of laches.

Fifth Affirmative Defense

16. Upon information and belief, defendants plead affirmatively that the Plaintiffs' claims with respect to the identified sound recordings are barred by the doctrine of misuse of copyright.

Sixth Affirmative Defense

17. Plaintiffs are barred from maintaining their claims on obtaining the relief sought in the case at bar under the doctrine of estoppel

Seventh Affirmative Defense

18. Plaintiffs' claims are barred, in whole or in part by the appropriate statute of limitations.

Eighth Affirmative Defense

19. Plaintiffs, claims are barred, in whole or in part, by the doctrine of waiver.

Ninth Affirmative Defense

20. Plaintiffs failed to mitigate their damages, if any.

Tenth Affirmative Defense

21. While Defendant denies the allegations of facts and conclusions of law alleged in Plaintiffs' Complaint, Defendant asserts, in the alternative, that any downloading would have been solely been for private entertainment and not for commercial use and, accordingly, invokes the doctrine of fair use as an affirmative defense. Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984).

Eleventh Affirmative Defense

22. Defendant did not intentionally or otherwise deprive or cause Plaintiffs to be deprived of any of their rights.

Twelfth Affirmative Defense

23. Defendant specifically denies all allegations, if any, and conclusions of law, if any, to which she did not specifically reply in the Answer to Plaintiffs' Complaint.

Thirteenth Affirmative Defense

24. Plaintiffs' claims for copyright infringement were settled by Sherman Networks, creators and distributors of KaZaA software, which settlement was intended to fully compensate Plaintiffs and therefore a double recovery from defendant would be unjust enrichment.

Fourteenth Affirmative Defense

25. Defendant reserves the right to plead additional defenses (or cross-claims or counter claims) that may be identified during investigation and/or course of discovery.

WHEREFORE, Defendant prays that this Court find judgment for Defendant, deny Plaintiffs' request for injunctive relief, deny Plaintiffs' request for statutory damages, deny Plaintiffs' request for costs, deny Plaintiffs' request for attorney's fees and deny Plaintiffs' request for any relief whatsoever.

Defendant further prays that this Court hold that Defendant is the prevailing party, award her relief under Section 505 of the Copyright Act and dismiss Defendant with prejudice. 17 U.S.C. §505 (2007). Newborn v. Yahoo! Inc. and Google Inc., 391 F. Supp.2d 181 (D.D.C. 2005).

COUNTERCLAIMS

Jurisdiction And Venue

1. Defendant incorporates herein by reference, each and every allegation, answer and denial contained in each of the above paragraphs.

2. Defendant's cause of action arises under the Copyright Laws of the United States for a declaratory judgment of non-infringement pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, to the extent that an actual controversy exists between Defendant and Plaintiffs.

3. Jurisdiction in this Court is proper under 28 U.S.C. § 1338 by virtue of this action being a question of Federal Law arising under the Copyright Laws of the United States, United States Code Title 17. 17 U.S.C. § 505 (2007).

4. The Court has supplemental jurisdiction over any state law claims asserted in the counterclaims pursuant to 28 U.S.C. §1367.

5. Venue is proper in this District under 28 U.S.C. §1391(b) and (c), and 28 U.S.C. § 1400(a).

The Parties

6. Defendant Mandy Johnson is an individual with a home-based childcare business and Kansas resident.

7. On information and belief, Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the state of Delaware with its principal place of business in the State of California.

8. On information and belief, Plaintiff Warner Bros. Records, Inc. is a corporation duly organized and existing under the laws of the state of Delaware with its principal place of business in the State of California.

9. On information and belief, Plaintiff Interscope Records is a general partnership with its principal place of business in the State of California.

10. On information and belief, Plaintiff LaFace Records LLC is a limited liability company duly organized and existing under the laws of the state of Delaware with its principal place of business in the State of New York.

11. On information and belief, Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general partnership with its principal place of business in the State of New York.

12. On information and belief, Plaintiff Atlantic Recording Corporation is a corporation duly organized and existing under the laws of the state of Delaware with its principal place of business in the State of New York.

13. On information and belief, Plaintiff Elektra Entertainment Group Inc. is a corporation duly organized and existing under the laws of the state of Delaware with its principal place of business in the State of New York.

General Allegations

14. Defendant incorporates herein by this reference hereto each and every allegation contained in each of the above paragraphs.

15. Defendant Mandy Johnson (“Mandy”) is an individual who resides in Shawnee County, Kansas. Mandy is 30 years old.

16. Mandy is an account holder with Cox Communications for cable and internet services. Upon information and belief, Mandy became an account holder with Cox Communications in October 2001.

17. On information and belief, Plaintiffs’ only evidence to support their claims against Mandy is her status as an account holder of Cox Communications.

18. Plaintiffs’ alleged claims are neither well grounded in fact nor warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

19. Mandy denies that she had any knowledge of LimeWire on the P2P network Gnutella.

20. Despite being placed on notice that Mandy did not engage in any copyright infringement because she did not download any songs, the Plaintiffs filed this action against Mandy. Plaintiffs impugn Mandy's character and subject her to demands which are closely akin to extortion.

21. On information and belief, Plaintiffs' only evidence to support their claims against Mandy is their listing of recordings attached to the Complaint as an Exhibit, allegedly from a peer-to-peer file sharing program.

22. On information and belief, the listing of recordings from the peer-to-peer file sharing program was collected by MediaSentry, Inc. and appeared on their computer, not Mandy's.

23. On information and belief, Plaintiffs individually or collectively hired MediaSentry, Inc., to provide private investigative services which led to the production of evidence to be used against Mandy, including the aforementioned listing of recordings, IP addresses, and other evidence which Plaintiffs' intend to use at trial.

24. On information and belief, MediaSentry, Inc. engaged in private investigation services in the State of Kansas at the request of Plaintiffs.

25. In Kansas, an individual or agency that provides private investigator services must be licensed by the State of Kansas, pursuant to K.S.A. §75-7b01 *et seq.*

26. On information and belief, MediaSentry, Inc., is not licensed by the State of Kansas to engage in private investigation services, and therefore MediaSentry, Inc., and Plaintiffs, as facilitators and solicitors of criminal activity, are in violation of the laws of the State of Kansas and subject to criminal prosecution.

27. On information and belief, Plaintiffs, at the time they employed, contracted or otherwise engaged MediaSentry, Inc., were aware that MediaSentry, Inc. was unlicensed to conduct private investigation services in the state of Kansas specifically, and in other states as well.

28. On information and belief, Plaintiffs agreed between themselves and understood that unlicensed and unlawful investigations would take place in the State of Kansas in order to provide evidence for this lawsuit, as well as thousands of other lawsuits as part of a mass litigation campaign, a representative sampling of which is further identified below.

29. On information and belief, MediaSentry, Inc., the unlicensed private investigation company hired by Plaintiffs engaged in one or more overt acts of unlawful private investigation in the State of Kansas.

30. On information and belief, the pattern of unlawful private investigations by MediaSentry, Inc., at the behest of Plaintiffs, is representative of a pattern and practice by Plaintiffs in a series of lawsuits filed across the United States, including this one.

31. Mandy purchased high-speed internet access from Cox Communications (hereinafter referred to as “Mandy’s ISP”). Mandy’s ISP provided account holders such as Mandy with dynamic Internet Protocol (“IP”) addresses using Dynamic Host Configuration Protocol (DHCP), a technology that assigns a new IP address to each ISP user each time a user accesses the internet by the ISP’s service.

32. DHCP assignment of an IP address by Mandy’s ISP does not indicate who accessed the internet or which computer was used to obtain access. Use of malicious computer software that takes unauthorized control of an ISP user’s computer to access the internet via the subscriber’s ISP account (“bot-ware”) and other, similar unauthorized computer software (“malware”) are epidemic. Defendant has never had a Limewire account or software, never used the Gnutella network and has not engaged in any acts of infringement described in the Complaint.

33. Plaintiffs have a pattern and practice of the action complained of by Mandy in her counterclaim. See e.g., Warner Bros. Records, Inc., et al v. Sandoval, Case No. 06-cv-1105, U.S. D.C. KS. See, e.g., Warner Bros. Records, Inc., et al v. Van Mol, Case No. 06-cv-2152, U.S. D.C. KS. See, e.g., UMG Recordings, Inc. et al v. Dyer, Case No. 06-cv-1106, U.S. D.C. KS. See e.g., Sony BMG Music Entertainment et v. Burnaly, Case No. 06-cv-4043, U.S. D.C.

KS. See e.g., Warner Bros. Records, Inc., et al v. Kohake, Case No. 06-cv-4044, U.S. D.C. KS. See e.g., Capital Records, Inc. et al v. Tatro, Case No. 06-cv-1108, U.S. D.C. KS. See e.g., Arista Records, LLC et al. v. Hamilton, Case No. 06-cv-2253, U.S. D.C. KS. See e.g., Warner Bros. Records, Inc., et al v. Palmer, Case No. 06-cv-1252, U.S. D.C. KS. See e.g., Arista Records LLC et al. v. Gonzalez, Case No. 06-cv-1286, U.S. D.C. KS. See e.g. Sony BMG Music Entertainment, et al, v. Harold, Case No. 06-cv-2408, U.S. D.C. KS. See e.g., Atlantic Recording Corporation et al. v. Wiebe, Case No. 06-cv-1351, U.S. D.C. KS. See e.g., Atlantic Recording Corporation et al. v. Smith, Case No. 06-cv-4132, U.S. D.C. KS. See e.g., Interscope Records et al. v. Weldon, Case No. 06-cv-2514, U.S. D.C. KS. See e.g. Sony BMG Music Entertainment, et al, v. Miner, Case No. 08-cv-2106, U.S. D.C. KS.

34. On information and belief, the purpose of the lawsuit filed against Mandy is not to seek appropriate relief from the Courts. Rather, the lawsuit against Mandy (and those against many thousands of other individuals) is intended to spread public fear and intimidation by harassment, extortion and coercion.

COUNT 1. DECLARATORY JUDGMENT FOR NON-INFRINGEMENT

35. Mandy incorporates herein by this reference hereto each and every allegation contained in each of the above paragraphs of this answer, defenses and counter claims as if fully set forth herein.

36. Because Mandy did nothing improper regarding Plaintiffs' copyrighted materials, Mandy is entitled to a declaratory judgment of non-infringement.

37. Mandy did not commit any of the alleged acts of downloading or file-sharing.

38. The relief requested can not be obtained in this action filed by Plaintiffs against Mandy.

Mandy is entitled to a declaratory judgment of non-infringement and to such other and further relief as may be appropriate, including an injunction, costs and reasonable attorney's fees and sanctions against Plaintiffs and Plaintiffs' attorneys of record.

COUNT 2. COMPUTER FRAUD AND ABUSE 18 U.S.C. § 1030

39. Mandy incorporates herein by this reference hereto each and every allegation contained in each of the above paragraphs of this answer, defenses and counter claims as if fully set forth herein.

40. Mandy protected her computer with security methods reasonably designed to protect the contents therein.

41. As a precursor to litigation, Plaintiffs, their agents, or their representatives have accessed a computer system without authorization and obtained information from that computer system in violation of Mandy's rights.

42. In violation of 18 U.S.C. § 1030, Plaintiffs, their agents, or their representatives have intentionally accessed Mandy's protected computer using interstate commerce without authorization, and as a result of such conduct, impaired the availability and caused damage to Mandy in an amount exceeding \$5,000.00.

43. In violation of 18 U.S.C. § 1030, Plaintiffs, their agents, or their representatives have knowingly and with intent to defraud accessed a protected computer without authorization, or exceeding any authorized access, and by means of that access obtained information of value.

44. In violation of 18 U.S.C. § 1030, Plaintiffs, their agents, or their representatives have knowingly, intentionally and without authorization, caused the transmission of a program, information, code or a command, or exceeding any authorized access, and by means of that transmission cause damage in excess of \$5,000.

45. Mandy is entitled to recover damages from Plaintiffs, along with injunctive relief for such loss that cannot be remedied by an action at law, and to prevent further unauthorized access.

COUNT 3. CIVIL CONSPIRACY

46. Mandy incorporates herein by this reference hereto each and every allegation contained in each of the above paragraphs of this answer, defenses and counter claims as if fully set forth herein.

47. Plaintiffs and MediaSentry, Inc., agreed between themselves that MediaSentry, Inc. would engage in the unlicensed and unlawful acts of private investigation in the State of Kansas, and other states, in order to provide evidence for this lawsuit.

48. Plaintiffs and MediaSentry, Inc., agreed between themselves that MediaSentry, Inc. would engage in the unauthorized access to a protected computer system, in interstate commerce for the purpose of obtaining information in violation of 18 U.S.C. § 1030 and 18 U.S.C. § 2701.

49. The agreement between Plaintiffs and MediaSentry, Inc., is an agreement either to accomplish an unlawful purpose or an agreement to accomplish a lawful purpose by unlawful means, in which there was a meeting of the minds in the object or course of the action which constitutes civil conspiracy.

50. As a result of the civil conspiracy between Plaintiffs and MediaSentry, Inc., Mandy has suffered damages including emotional distress and monetary damages associated with the expense of resources and time necessary to defend this meritless lawsuit. As a result of the civil conspiracy between Plaintiffs and MediaSentry, Inc., Mandy has suffered damages including Invasion of Privacy, *supra*.

51. In violation of 18 U.S.C. § 1030 Plaintiffs have intentionally accessed a protected computer without authorization, and as a result of such conduct, caused damage to Mandy in an amount exceeding \$5,000.

52. In violation of 18 U.S.C. § 1030 Plaintiffs have knowingly and with the intent to defraud, accessed a protected computer without authorization, or exceeding any authorized access, and by means of that access furthered the intended fraud and obtained information of value.

53. Mandy seeks relief in the form of an order prohibiting Plaintiffs from employing an unlicensed private investigator for the purpose of conducting discovery in the State of Kansas, now and in the future, and the exclusion of any evidence obtained thereby in this and any other trial, and all other relief this Court may deem equitable and proper including an award of damages.

54. Mandy seeks a protective order and/or an order staying any further discovery into her private life and computer before the Court rules on the legality of these proceedings in lieu of the facts of Plaintiffs' illegal investigation which puts into question the legality of the subsequent subpoenas and litigation, including Plaintiffs' ex parte "John Doe" litigation and Plaintiffs' complaint, all of which rests upon these illegal investigations and illegal invasions of privacy.

55. Mandy seeks all relief this Court may deem equitable and proper including an award of actual and punitive damages.

COUNT 4. INVASION OF PRIVACY

56. Mandy incorporates herein by this reference hereto each and every allegation contained in each of the above paragraphs of this answer, defenses and counter claims as if fully set forth herein.

57. According to Plaintiffs' own Complaint, the Plaintiffs invaded the privacy of Mandy by accessing the private files on her computer without her knowledge or consent by employing private investigators unlicensed in the State of Kansas who concealed their identity and purpose.

58. Mandy did not give Plaintiffs' permission to access these files or her home computer.

59. Mandy did not engage in or know of any peer-to-peer activities allegedly being conducted on her computer in her home.

60. Plaintiffs' under the guise of protecting their copyrighted materials, printed off pages listing the personal and private files which they claim were located on Mandy's computer. Mandy, being a full-time stay at home day care worker for young children was presented in a false light as being a dishonest person or criminal. In addition, these listings appropriate Mandy's name. Based upon the publicly disclosed listings, Mandy is presented as a copyright thief or pirate who downloads and listens to music which may be considered highly offensive, vulgar and obscene such as 1) Akon Ft Snoop Dogg – I Wanna Fuck You; 2) Lil' Jon ft. Ashanti – I'm so horny; 3) Big Pun – Get off my dick; 4) Coolio – Gangsta's Paradise; 5) Jay Z & DMX – Money, Cash, Hoes; 6) Juelz Santana – Fuckers And Friends 7) Ice Cube feat Master P – You Know I'm a Hoe; 8) Jarule, Vita – We Murderers Baby; 9) R. Kelly – Sex Weed 10) T-Pain – I'm in Love With A Stripper; 11) Too Short – Blow Job Betty; 12) Too Short – Fuck my Car; 13) Too Short – I Need A Freak; 14) Too Short – Yo neck, yo back, my dick and my sack; 15) TQ feat Too Short – I Wanna Fuck Your Sister; among many more.

61. Plaintiffs then filed this listing as a public court document either as an Exhibit to the Complaint and/or as Exhibit 1 to their Motion to Dismiss.

62. Plaintiffs filed pages listing these personal files in an attempt to place Mandy in an unattractive light due to the nature of the allegations and the files alleged to have been on her computer.

63. Plaintiff's unlicensed investigators published the unlawfully gained, false, and morally scandalous information to Plaintiffs' representatives at Lathrop and Gage, the "Settlement Information Line," followed by further publication to Holmes, Roberts & Owens, who then published these materials in bulky unnecessary exhibits attached to public court documents.

64. By making the list of these files identified in the Exhibit attached to the Complaint and Exhibit 1 to the Motion to Dismiss Defendant's Counter Claims, Plaintiffs seek to shame Mandy into submitting to their unreasonable demands regarding their copyright claims.

65. Such actions by Plaintiffs are a blatant misuse of their right to investigate potential copyright infringement and violate Kansas law.

66. As a result of such actions, Mandy a stay at home day care worker has suffered emotional distress and monetary damages associated with having this information exposed to the public including the parents of the children who she supervises.

67. As a result of such actions, Mandy has suffered loss to her reputation, emotional distress and/or monetary damages associated with her reputation as a stay at home day care worker impugned as being a thief, a criminal, pirate and as being associated with the aforementioned music.

68. Upon information and belief, including that provided in Plaintiff's Complaint and Demand Letters, Plaintiffs, jointly and severally, with wrongful, wanton, and reckless disregard for Mandy's rights and privacy, did facilitate, solicit, and employ their agents and unlicensed private investigators to illegally conduct investigations of, trespass and illegally record portions of her computer hard drive, files and on-line communications in violations of K.S.A. 75-7b01 *et seq.*, 18 U.S.C. § 1030 and 18 U.S.C. § 2701.

69. In violation of 18 U.S.C. § 1030, Plaintiffs have intentionally accessed a protected computer without authorization, and as a result of such conduct, caused damage to each defendant in an amount exceeding \$5,000.

70. In violation of 18 U.S.C. § 1030, Plaintiffs have knowingly and with intent to defraud, accessed a protected computer without authorization, or exceeding any authorized access, and by means of that access furthered the intended fraud and obtained information of value.

71. Mandy is entitled to recover damages from Plaintiffs, along with injunctive relief for such loss that cannot be remedied by an action at law, and to prevent further unauthorized access.

COUNT 5. DECLARATORY RELIEF

72. Mandy incorporates herein by this reference hereto each and every allegation contained in each of the above paragraphs of this answer, defenses and counter claims as if fully set forth herein.

73. Before Mandy is subjected to any further harassment by Plaintiffs in the form of “fishing expeditions” into her private life by examinations of her hard drive, depositions of herself and family, and other debilitating pressures of a lawsuit, Mandy is entitled to a declaration of the rights and duties of the parties, *inter se*, in the usual form under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* declaring, *inter alia*, that:

- a. Upon information and belief, Plaintiffs’ technical method of attempting to identify alleged infringers within the State of Kansas is legally insufficient;
- b. Upon information and belief, Plaintiffs’ use of unlicensed investigators within the State of Kansas to attempt to identify infringers is illegal and, as the result of such illegality, neither Plaintiffs nor their attorneys are entitled (directly or indirectly) to rely on, make demands or seek discovery based on, or in any other way make use of work product of illegal, unlicensed investigations conducted within the State of Kansas;
- c. Upon information and belief, Plaintiffs’ use of false, *ex parte* representations of fact to Courts of Record within the United States of America to obtain Defendant’s protected confidential, and personal information in a manner prohibited by FRCP, Rule 11(b) and Federal Criminal Law;
- d. Upon information and belief, Plaintiffs’ misjoined their individual claims for infringement by false representation of co-ownership and/or control of copyrights between Plaintiffs in violation of FRCP, Rule 11(b); that no relief whatsoever can be granted to Plaintiff’s as a group because, as such, Plaintiffs are not collectively the Real Parties in Interest as to any specific claim of infringement; and that Defendant is entitled to Judgment as a matter of law against each Plaintiff to the

extent that each such Plaintiff asserts rights inconsistent with the Exhibit to Plaintiffs' Complaint;

- e. Upon information and belief, Plaintiffs failed to join all known, indispensable parties in interest who, based on Plaintiffs' own claims of infringement against Defendant, have infringement claims such that complete relief cannot be afforded unless and until all indispensable parties are joined and, on that basis, denying all relief to Plaintiffs' in this proceeding;
- f. Plaintiffs are barred from enforcing copyright claims under the doctrines of Fair Use, Waiver, and/or Laches by failure to affix identifiable copyright notices on any of the Copyrighted Recordings described in the Exhibit attached to Plaintiffs' Complaint.
- g. Plaintiffs' claim to "statutory damages" under 17 U.S.C. § 504(c) is unconstitutional.

JURY TRIAL DEMAND

74. Mandy asserts her rights under the Seventh Amendment to the U.S.

Constitution and demands, in accordance with the Federal Rules of Civil Procedure 38, a trial by jury on all issues.

WHEREFORE, Mandy respectfully requests that the Court enter judgment dismissing Plaintiffs' claims against Defendant; denying Plaintiffs' request for damages jointly and severally against Plaintiffs in an amount to be determined at trial, injunction and attorney's fees, sustaining Defendant's affirmative defenses and granting Defendant judgment on each and every count of her counterclaims, attorney's fees and costs of suit including post judgment interest on the entire judgment until paid in full, and for any other and further relief as the Court finds just and proper.

Respectfully submitted,

/Arthur K. Shaffer/
Arthur K. Shaffer, #20609
INTELLECTUAL PROPERTY CENTER, LLC
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Facsimile (816) 363-1201
Email: ashaffer@theIPCenter.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer and Counterclaims has been served upon the attorney for Plaintiffs by deposit in the United States Mail at Overland Park, Kansas, in a sealed envelope with first class postage thereon fully prepaid, this 16th day of July, 2008:

Joan K. Archer
Lathrop & Gage, LC
2345 Grand Boulevard, Suite 2800
Kansas City, MO 64108

/Arthur K. Shaffer/
Arthur K. Shaffer