

Lory R. Lybeck, OSB No. 83276
lrl@lybeckmurphy.com
Benjamin R. Justus, admitted pro hac vice
brj@lybeckmurphy.com
LYBECK MURPHY, LLP
7525 SE 24th Street, Suite 500
Mercer Island, WA 98040-2334
Telephone: 206.230.4255
Facsimile: 206.230-7791

Richard A. Adams, admitted pro hac vice
radams@pattonroberts.com
Jim C. Wyly, admitted pro hac vice
jwyly@pattonroberts.com
Leisa Beaty Pearlman, admitted pro hac vice
lpearlman@pattonroberts.com
Corey D. McGaha, admitted pro hac vice
cmcgaha@pattonroberts.com
Reid D. Miller, admitted pro have vice
rmiller@pattonroberts.com
PATTON ROBERTS, PLLC
2900 St. Michael Drive, 400 Century Plaza
Texarkana, Texas 75505
Telephone: (903) 334-7000
Facsimile: (903) 334-7007
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

TANYA ANDERSEN,

Case No. 3:07-CV-934-BR

Plaintiff,

v.

STATUS REPORT

**ATLANTIC RECORDING
CORPORATION, et al.,**

By Plaintiff Tanya Andersen

Defendants.

In anticipation of the February 9, 2009 hearing on pending discovery and privilege issues, Plaintiff Tanya Andersen submits the following status report.

I. Defendants' Continued Withholding of Written Discovery

Despite the Court's order requiring Defendants to produce certain pertinent documents and meaningfully respond to revised discovery requests, Defendants have continued their refusal to produce any documents regarding the creation, implementation, operation, or modification of the "litigation program" that is the central focus of this case. This withholding continues to hinder Plaintiff's efforts to prepare her motion for class certification and present her case for trial.

The Court's December 16, 2008 order required Defendants to produce or log various documents that have been requested by Plaintiff, including board minutes relating to Defendants' operating the litigation program as a business strategy or means to increase profit or market share, and also financial information regarding the program. Defendants were also required to certify by January 30, 2009 that a diligent search had been conducted and that all documents were either produced or listed in a privilege log. Although Defendants have located responsive board minutes, they have not provided any of the minutes, a privilege log, or a certification regarding their search. Defendants have also yet to produce additional financial information that they have located.

The Court also permitted Plaintiff to serve revised discovery requests for production of certain documents. Plaintiff served her amended requests on December 23, 2008. In response to the amended requests, Defendants made numerous objections, but provided no additional documents. During subsequent conferences among counsel, Defendants offered to provide only a "limited sampling" of documents in response to a few

of Plaintiff's amended requests. Defendants refused to produce any documents regarding the litigation program in response to the amended requests, and Defendants made clear they would not even review their own files in order to search for non-privileged documents.

II. Depositions

On January 23, 2009, Plaintiff's counsel requested in writing that Defendants' counsel provide dates for the depositions of thirteen specific current or former employees or experts of Defendants. Plaintiff also requested deposition dates for corporate designees under FRCP 30(b)(6) with knowledge of nine specifically identified subjects. Plaintiff made written request for deposition dates in early February so that they could be completed in accordance with the existing schedule for class certification.

Counsel for the RIAA provided deposition dates only in response to the FRCP 30(b)(6) topics. While counsel are currently working to schedule the depositions of the six individuals designated by Defendants, counsel for Defendants have yet to respond regarding the additional nine individuals whose depositions Plaintiff specifically requested.

Regardless, none of the depositions can be completed without the documents Defendants continue to withhold from Plaintiff (and also the contract documents subject to Defendants' assertions of privilege that are still under advisement by the court). Plaintiff must have all responsive documents in order to conduct conclusive and meaningful depositions.

Also, Defendants' counsel has advised that the first deposition offered by Defendants, that of Matthew Oppenheim, will be subject to substantial assertions of

privilege. Anticipating protracted disputes, Plaintiff seeks the Court's advance guidance as to the permissible scope of inquiry during the depositions of Mr. Oppenheim and others.

Finally, Defendants have requested the deposition of Ms. Andersen in early March. Although she was already deposed by the Record Company Defendants during the action which preceded this case, she can be available again during March once the parties confer regarding the details of her deposition.

Respectfully submitted this 6th day of February, 2009.

LYBECK MURPHY LLP

PATTON ROBERTS PLLC

By /s/ Benjamin R. Justus
Lory R. Lybeck, OSB No. 83276
Benjamin R. Justus, admitted pro hac vice
Richard A. Adams, admitted pro hac vice
Reid D. Miller, admitted pro hac vice
Corey D. McGaha, admitted pro hac vice
Leisa B. Pearlman, admitted pro hac vice
Attorneys for Plaintiff