

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ATLANTIC RECORDING ) JURY TRIAL DEMANDED  
CORPORATION, *et al.*, )  
)  
Plaintiffs/Counterclaim )  
Defendants, )  
)  
vs. ) Cause No. 4:06CV01708 CEJ  
)  
JENNA RALEIGH, individually and on )  
behalf of all others similarly situated, )  
)  
Defendant/Counterclaim )  
Plaintiffs. )

**AMENDED COUNTERCLAIM  
FOR INDIVIDUAL AND CLASS ACTION RELIEF**

Counterclaim Plaintiff Jenna Raleigh (“Raleigh”), on her own behalf and on behalf of all others similarly situated, and for her amended counterclaim against Atlantic Recording Corporation, BMG Music, Virgin Records America, Inc., Capitol Records, Inc., Sony BMG Music Entertainment, and UMG Recordings, Inc., (collectively “Counterclaim Defendants”) states<sup>1</sup>:

**The Parties**

1. Raleigh is a citizen of the State of Missouri residing in St. Louis County.
2. Upon information and belief, Atlantic Recording Corporation (“Atlantic”) is a Delaware corporation with its principal place of business in the State of New York.
3. Upon information and belief, BMG Music (“BMG”) is a New York general

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<sup>1</sup> Raleigh’s claims in Counts I through V were previously dismissed by the Court’s Order entered August 18, 2008 and are re-alleged herein to preserve such claims for appeal.

partnership with its principal place of business in the State of New York.

4. Upon information and belief, Virgin Records America, Inc., (“Virgin”), is a California corporation with its principal place of business in the State of New York.

5. Upon information and belief, Capitol Records, Inc., (“Capitol”) is a Delaware corporation with its principal place of business in the State of New York.

6. Upon information and belief, Sony BMG Music Entertainment (“Sony BMG”) is a Delaware general partnership with its principal place of business in the State of New York.

7. Upon information and belief, UMG Recordings, Inc., (“UMG”) is a Delaware corporation with its principal place of business in the State of California.

### **Jurisdiction and Venue**

8. This counterclaim arises under the Racketeer Influenced and Corrupt Organization Act (“RICO”), 18 U.S.C. § 1961, *et seq.*, for attempted extortion and mail and wire fraud pursuant to 18 U.S.C. § 1962, the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and under Missouri common law doctrines.

9. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 which grants district courts jurisdiction over claims arising under the laws of the United States, and 28 U.S.C. § 1367(a) which grants this Court pendant jurisdiction over claims involving issues of state law arising out of a common nucleus of operative facts.

10. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) and § 1965, as a substantial portion of the events giving rise to these claims occurred in this District and Counterclaim Defendants have committed and/or conspired to commit acts

of racketeering and fraud within the State of Missouri.

### **Factual Allegations Common to the Class**

11. In or around 2003, Counterclaim Defendants and non-party Recording Industry Association of America, Inc., (“RIAA”) began a nationwide scheme to defraud and extort money from thousands of innocent people by unjustly accusing them of copyright infringement. This scheme to defraud and extort money is carried out through an organized effort and pattern of (1) using the mails to send threatening and intimidating letters designed to instill fear of litigation and economic loss and harm, and (2) using the mails to send letters containing false and misleading information; and (3) using the telephones to make settlement demands and, through a “Settlement Information Line,” to arrange settlements and collect monies from innocent individuals; and (4) filing and dismissing frivolous lawsuits instituted solely to obtain *ex parte* discovery and intended to circumvent the requirements of federal copyright law.

12. Counterclaim Defendants through various concerted efforts and cartels, control or attempt to control the channels of creation, distribution, and sale of musical works throughout the United States and the world. They are not artists, songwriters, or musicians. They did not write or record the songs.

13. Counterclaim Defendants and RIAA have collaborated and engaged in a scheme to defraud Raleigh and other individuals by falsely accusing them without a reasonable basis that they violated the Copyright Act and by making false statements in an effort to extort a cash settlement from her and other members of the proposed

Plaintiffs' Class.

14. Counterclaim Defendants and RIAA combined, conspired and entered into an agreement and formed an association for the purpose of attempting to extort monies from Raleigh and other innocent victims in the Class. Their agreement and scheme involved the use of misrepresentations, threats, fear of economic loss, and lawsuits in order to obtain these cash settlements. Counterclaim Defendants and RIAA used these tactics to compel Raleigh and other innocent victims to pay them monies, although these Counterclaim Defendants and RIAA had no legal entitlement to the monies.

15. In June, 2003, RIAA on behalf of Counterclaim Defendants announced plans to gather evidence and prepare numerous lawsuits against individual computer users who they speculated were illegally offering to "share" substantial amounts of copyrighted music over peer-to-peer ("P2P") computer networks. The data collected, they contended, would be used "as the basis for filing what could ultimately be thousands of lawsuits charging individual peer-to-peer music distributors with copyright infringement." *Recording Industry To Begin Collecting Evidence And Preparing Lawsuits Against File [sic]*, Jun. 25, 2003, [http://www.riaa.com/newsitem.php?news\\_year\\_filter=2003&resultpage=7&Id=2B9DA905-4A0D-8439-7EE1-EC9953A22DB9](http://www.riaa.com/newsitem.php?news_year_filter=2003&resultpage=7&Id=2B9DA905-4A0D-8439-7EE1-EC9953A22DB9).

16. As part of this scheme, Counterclaim Defendants and RIAA attempted to identify alleged infringers by searching P2P networks and using Internet Protocol ("IP") to identify the Internet Service Provider ("ISP") issuing the IP address on a particular computer. They also searched P2P networks to find users with files available

for copying on the hard drives of the computer connected to the networks.

17. For a number of years, a group of large, multinational, multi-billion dollar record companies, including these Counterclaim Defendants, have been abusing the federal court judicial system for the purpose of waging a public relations and public threat campaign targeting digital file sharing activities. As part of this campaign, these record companies hired private investigators to invade private computers and private computer networks to obtain information – in the form of Internet Protocol (“IP”) addresses – allowing them to identify the computers and computer networks that they invaded. These investigators perform these investigations in Missouri and other states. Using information obtained from this illegal invasion, the record companies file so-called “John Doe” lawsuits - reportedly against more than 13,500 anonymous “John Does.” The “John Doe” lawsuits are filed for the sole purpose of activating the discovery powers of the court system - notably, the subpoena power – to obtain records from Internet service providers, to connect the IP addresses the names of individual account holders allegedly using those IP addresses at the time of the invasion. However, service providers have no way of knowing the identities of the person or persons who may be using the computer or computer network at the time the records companies invade it. In fact, there is not even any way to verify that the unlicensed investigators secretly snooping for IP addresses have obtained the correct ones.

18. The P2P networks are public and the information on them is available to anyone. RIAA, on behalf of itself and its members, claims that “[b]ecause all this information is publicly available to anyone on the network, it’s relatively easy to look

for and find users who are offering to ‘share’ copyrighted music files.” *Frequently Asked Questions about File Sharing Litigation*, Sep. 8, 2003, [http://www.riaa.com/newsitem.php?news\\_year\\_filter=2003&resultpage=6&id=6822F971-3C75-1823-E095-5FE523CE62FC](http://www.riaa.com/newsitem.php?news_year_filter=2003&resultpage=6&id=6822F971-3C75-1823-E095-5FE523CE62FC). This statement is misleading because finding users on P2P networks is not tantamount to identifying the real-world individuals who allegedly are downloading and offering to share copyrighted music files.

19. Although Counterclaim Defendants and RIAA sign into file sharing networks hoping to identify users who are sharing particular songs, the real-world names of P2P network users are difficult to identify. Each user has a “screen name” that represents his or her presence on the network. This screen name is usually an anonymous nickname, e.g. “musiclover3” or a modified version of another person’s name, e.g., “JenaRal”. Also, on many systems, multiple users can have the same screen name, further clouding the association of a screen name with a given individual. A search of P2P networks, by itself, is insufficient to tie a virtual-world user to the specific real-world person who is actually downloading, copying or sharing the allegedly infringed material.

20. As part of their scheme, Counterclaim Defendants and RIAA also attempted to identify alleged infringers through the IP address. Using an IP address assigned to a computer logged into the P2P network, Counterclaim Defendants and RIAA subpoena records of the ISP to get the identity of the ISP customer associated with the IP address at a particular point in time.

21. Using an IP address to get the name of an ISP customer does not

necessarily mean Counterclaim Defendants and RIAA have identified an infringer. Although an IP address can act as an identifier, much like a street address or telephone number, IP addresses are often dynamic (as opposed to static), meaning that every time a particular computer signs onto the Internet, it receives a different IP address from the ISP than the previous time. Additionally, ISPs often share IP addresses back and forth between separate access points to maximize their availability at any given time.

22. An IP address is not always limited to a single computer or a single user. A group of computers can share the same IP address through Network Address Translation (“NAT”), much like in a sorority house, where multiple students share a single telephone number. Knowing only the IP address does not uniquely identify the computer using the IP address at the time, or the particular individual was using any computer on the network. Many homes, businesses, and universities allow multiple people to use multiple computers throughout the day or night sharing a common public IP address. Many people do not even log in under a separate username and password.

23. Having IP addresses and the names of ISP customers does not necessarily provide Counterclaim Defendants and RIAA with the identity of the person who downloaded, copied or shared the allegedly infringed material.

24. Counterclaim Defendants and RIAA have acknowledged the limitations of using IP addresses and names from an ISP to identify actual infringers. RIAA conceded in a press release that after reviewing the user name and IP address gathered by the software, “we can then decide whether it justifies serving the ISP with

a subpoena requesting the name and address of the individual *whose account was being used* to distribute copyrighted music.” *Frequently Asked Questions about File Sharing Litigation*, Sep. 8, 2003, [http://www.riaa.com/newsitem.php?news\\_year\\_filter=2003&resultpage=6&id=6822F971-3C75-1823-E095-5FE523CE62FC](http://www.riaa.com/newsitem.php?news_year_filter=2003&resultpage=6&id=6822F971-3C75-1823-E095-5FE523CE62FC) (emphasis added).

25. RIAA claims that “Under the Digital Millennium Copyright Act, ISPs are required to provide copyright holders with such information [i.e., the name and address of the individual whose account was being used] when there is a good-faith reason to believe their copyrights are being infringed.” *Frequently Asked Questions about File Sharing Litigation*, Sep. 8, 2003, [http://www.riaa.com/newsitem.php?news\\_year\\_filter=2003&resultpage=6&id=6822F971-3C75-1823-E095-5FE523CE62FC](http://www.riaa.com/newsitem.php?news_year_filter=2003&resultpage=6&id=6822F971-3C75-1823-E095-5FE523CE62FC).

26. The Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 512, provides that a copyright owner or a person authorized to act on the owner’s behalf may, without filing suit, request the clerk of any United States district court to issue a subpoena to an ISP for identification of an alleged infringer. 17 U.S.C. § 512(h). The request is made by filing with the clerk a copy of a notification described in subsection 17 U.S.C. § 512(c)(3)(A), a proposed subpoena, and a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title. 17 U.S.C. § 512(h). The above-referenced notification must include “a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its



agent, or the law.” 17 U.S.C. § 512(c)(3)(A)(v).

27. After harvesting the names of account holders through these subpoenas, the record companies often dismiss the John Doe suits. The record companies then provide the personal information to their agent, the “Settlement Support Center,” which engages in deceptive and illegal practices aimed at extorting money from people allegedly identified from the secret lawsuits. Most of the people subjected to these secret suits do not even know that they have been sued until a demand for payment is made by lawyers for the record companies or by the Settlement Support Center operatives.

28. Counterclaim Defendants have filed hundreds of lawsuits in federal court against multiple, unidentified “Does” to engage in *ex parte* discovery and, upon information and belief, to avoid filing the “good faith” notification required under the DMCA, thereby flagrantly and illegally circumventing the discovery procedures imposed by Congress.

29. In September 2003, Counterclaim Defendants and other members of RIAA filed copyright infringement claims against 261 individual file sharers in what they described as “the first wave of what could ultimately be thousands of civil lawsuits against major offenders who have been illegally distributing substantial amounts (averaging more than 1,000 copyrighted music files each) of copyrighted music on peer-to-peer networks.” *Recording Industry Begins Suing P2P File Sharers Who Illegally Offer Copyrighted Music Online*, Sep. 8, 2003, [http://www.riaa.com/newsitem.php?news\\_year\\_filter=200&resultpage=6&id=85183](http://www.riaa.com/newsitem.php?news_year_filter=200&resultpage=6&id=85183)

A9C-28F4-19CE-BDE6-F48E206CE8A1.

30. By July 2006, RIAA members, including Counterclaim Defendants, had filed more than 20,000 lawsuits against individuals for allegedly sharing music through file sharing networks. That figure continues to grow. In July 2007, RIAA announced on behalf of the major record companies that it was sending “a new wave of 408 pre-litigation settlement letters” to 23 universities nationwide. *23 New Schools to Receive Latest Round of RIAA Pre-Lawsuit Letters*, Jul. 18, 2007, [http://www.riaa.com/newsitem.php?news\\_year\\_filter=2007&resultpage=&id=780E8751-0E03-4258-D651-F991B66E1708](http://www.riaa.com/newsitem.php?news_year_filter=2007&resultpage=&id=780E8751-0E03-4258-D651-F991B66E1708).

31. Using questionable methods and relying on inadequate and non-existent evidence, Counterclaim Defendants and RIAA have intentionally cast an over-broad net of litigation that ensnares the innocent as well as the guilty. RIAA, through its Vice President Amy Weiss and on behalf of the Counterclaim Defendants, openly acknowledged, for example, that this litigation approach is akin to drift net fishing by stating, “[w]hen you go fishing with a net, you sometimes are going to catch a few dolphin.” Dennis Roddy, *The Song Remains the Same*, Pittsburgh Post-Gazette, Sept. 14, 2003, <http://www.post-gazette.com/columnists /20030914edroddy 0914p1.asp>.

32. As part of this extortive scheme, Counterclaim Defendants and RIAA carefully choose a settlement amount that is substantially smaller than the legal fees required even for innocent defendants to fight the accusations. The settlement demand is usually between \$2,000 and \$6,000. With full knowledge that their lawsuits are baseless, Counterclaim Defendants and RIAA have even begun offering discounts as

part of their scheme. Beginning in 2007, Counterclaim Defendants and RIAA expanded their outrageous scheme by preparing and arranging to have letters sent to ISP customers (on the ISP's letterhead) giving the customer so-called "early notification" of an opportunity to settle any claims with the Counterclaim Defendants and other members of RIAA at a reduced rate, i.e, discounts of \$1,000 or more, before suit is filed against them.

33. The Settlement Support Center is a company organized for the sole purpose of contacting prospective defendants and demanding that they pay thousands of dollars each to avoid the prospect of a federal lawsuit against them. This demand takes no account of the merits of any prospective claim against the putative defendant, but instead relies upon the inherent inequality in resources and litigation power between Plaintiffs and their individual victims.

34. Counterclaim Defendants and RIAA each are members of the enterprise and each participated and conducted the affairs of the enterprise through their agents.

35. The enterprise consists of Counterclaim Defendants and RIAA who have each joined together for the common and shared purpose of engaging in and conspiring to engage in schemes of racketeering by using the wires and mails and threats of economic loss and harm to extort and defraud Raleigh and other victims by preying on their fears and accusing them, without any proof, of violating the Copyright Act and demanding outrageous amounts of money to settle their baseless claims.

36. RIAA is the trade group that represents the United States recording industry and its members consist of record companies including the Counterclaim

Defendants. Through its directors and officers, RIAA seeks to support and promote the business of its members. Upon information and belief, Counterclaim Defendants and RIAA have retained national coordinating counsel in the prosecution of many frivolous copyright infringement claims on their behalf.

37. The organizational pattern provided by RIAA and system of authority and coordination supplied by Counterclaim Defendants' national coordinating counsel in pursuing this scheme to extort and defraud provides a mechanism for directing Counterclaim Defendants and RIAA's affairs and racketeering on a continuing, rather than an ad hoc, basis.

38. The enterprise consisting of Counterclaim Defendants and RIAA would exist if the group was not engaged in racketeering and schemes to extort and defraud. RIAA works to protect the intellectual property rights of its members, including Counterclaim Defendants. The RIAA and its members regularly hire legal counsel to assist them in protecting those rights. The enterprise therefore has an ascertainable structure separate from the pattern of racketeering.

39. As part of this shocking scheme to extort and defraud, Counterclaim Defendants and RIAA have filed hundreds of phony lawsuits and made a similar number of settlement demands against innocent people to intimidate, defraud, and extort and have thus engaged in a pattern of racketeering activity. These lawsuits and settlement demands typically contained false and misleading statements which were known to be false and misleading when made.

40. On or about February 17, 2004, for example, Atlantic, Capitol, BMG,

Virgin and UMG filed a lawsuit styled *Motown Record Co., L.P., et al., v. Does 1–252*, Case No. 1:04cv0439(WBH), in United States District Court for the Northern District of Georgia against 252 unnamed defendants based solely on IP addresses. Following expedited discovery in *Does 1–252*, Debbie Foster (“Foster”) of Norman, Oklahoma received a letter by mail dated September 2, 2004 from Counterclaim Defendants and RIAA telling Foster 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 1.

41. Counterclaim Defendants and RIAA stated in this letter to Foster: “You 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 Foster to instill fear of economic loss and harm and

extort monies from her and to which Atlantic, Capitol, BMG, Virgin, Sony or UMG had no legal entitlement. This threat of economic loss and harm was not justified because Counterclaim Defendants and RIAA had no evidence that Foster violated the Copyright Act and they were not entitled to such monies.

42. Foster later retained an attorney and, upon information and belief, did so because she reasonably believed Atlantic, Capitol, BMG, Virgin and UMG had the power to inflict economic loss and harm and would exploit that power to her detriment.

43. On or about February 28, 2006, Atlantic, Capitol, BMG, Virgin and UMG filed a lawsuit styled *London–Sire Records, Inc., et al., v. Does 1–26*, Case No. 1:06cv0455(TWT), in the United States District Court for the Northern District of Georgia against 26 unnamed defendants based solely on IP addresses. Following expedited discovery in *Does 1–26*, Tallie Stubbs (“Stubbs”) of Oklahoma City, Oklahoma received a letter by mail dated June 21, 2006 from Counterclaim Defendants and RIAA telling Stubbs 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 2.

44. Counterclaim Defendants and RIAA stated in this letter to Stubbs: “You 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 Stubbs to instill fear of economic loss and harm and extort monies from her although Atlantic, Capitol, BMG, Virgin and UMG had no legal entitlement to the monies. This threat of economic loss and harm was not warranted because Counterclaim Defendants and RIAA had no evidence that Stubbs violated the Copyright Act or that they were entitled to such monies.

45. Stubbs retained an attorney and, upon information and belief, did so because she reasonably believed Atlantic, Capitol, BMG, Virgin and UMG had the power and ability to inflict economic loss and harm and would exploit the power to her detriment.

46. As part of this campaign of extortion, Counterclaim Defendants enhance the intimidation factor by actually filing suit in a number of instances with no prior warning. These suits are designed to attract media attention, and often do, as stories emerge of Counterclaim Defendants’ suits against the elderly, disabled, technologically clueless, and other vulnerable victims. Many of these victims have no idea how to operate a computer, let alone how to install and use peer-to-peer networking software

to exchange music they would not likely be listening to anyway. But actual innocence is rarely a consideration to Counterclaim Defendants.

47. The enterprise and conduct of Counterclaim Defendants and RIAA vis-a-vis Foster and Stubbs affected interstate commerce because Counterclaim Defendants and RIAA were located in several states and the enterprise engaged in and pursued activities affecting commerce between the states.

48. Counterclaim Defendants' litigation campaign, and its preceding extortionate demands and illegal investigations, are part of a concerted pattern of sham litigation. Counterclaim Defendants' true purpose is not to obtain the relief claimed in its sham litigation, but to intimidate, harass, and oppress Raleigh and other users of computer networks.

49. Upon information and belief, Counterclaim Defendants have filed suit against more than thirty thousand individuals alleging virtually identical claims. Upon information and belief, Counterclaim Defendants have never once proceeded to trial in any contested case raising these allegations except one, *Capitol Records v. Thomas*, No. 06-1497 (D. Minn.), in which the court by order entered September 24, 2008, vacated a defendants' verdict and granted plaintiff's motion for new trial.

50. Counterclaim Defendants and RIAA attempted to extort monies from Foster and Stubbs in violation the Hobbs Act, 18 U.S.C. § 1951 and such conduct is sufficient under 18 U.S.C. § 1961(1) to serve as predicate acts for a RICO claim.

#### **Factual Allegations Related to Raleigh**

51. 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.

52. 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”).

53. 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.

54. 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.

55. 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.

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

57. 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.

63. 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's agents, were made as part of their scheme to extort and defraud Raleigh.

64. 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.

65. 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.

66. 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.

67. 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.

68. 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.

69. 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.

70. Counterclaim Defendants have not observed any specific instance of Raleigh illegally downloading any sound recording.

71. Counterclaim Defendants have not observed any specific instance of Raleigh illegally uploading any sound recording.

72. Counterclaim Defendants have not observed any specific instance of Raleigh illegally disseminating any sound recording to anyone not authorized to receive it.

73. Raleigh did not authorize any person to obtain information from her computer via the "online media distribution system" alleged by Counterclaim Defendants.

74. Raleigh did not configure any computer to "share" files.

75. Neither Counterclaim Defendants nor their agents contacted Raleigh to obtain her permission to obtain information from her computer.

76. Neither Counterclaim Defendants nor their agents contacted any person with authority to grant permission for Counterclaim Defendants to obtain information from the computer identified in Counterclaim Defendants' Complaint, for the purpose of obtaining that permission.

### **Class Action Allegations**

77. 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.

78. 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.

79. Upon information and belief, Counterclaim Defendants have not observed any specific instance of a member of the proposed Plaintiffs' Class illegally downloading any sound recording.

80. Upon information and belief, Counterclaim Defendants have not observed any specific instance of any member of proposed Plaintiffs' Class illegally uploading any sound recording.

81. Upon information and belief, Counterclaim Defendants have not observed any specific instance of any member of the proposed Plaintiffs' Class illegally disseminating any sound recording to anyone not authorized to receive it.

82. Upon information and belief, Counterclaim Defendants did not have authority from any member of the proposed Plaintiffs' Class to obtain information from his or her computer via the "online media distribution system" alleged by Counterclaim Defendants.

83. Upon information and belief, neither Counterclaim Defendants nor their



agents contacted any member of the proposed Plaintiffs' Class to obtain his or her permission to obtain information from his or her computer.

84. Upon information and belief, neither Counterclaim Defendants nor their agents contacted any person with authority to grant permission for Counterclaim Defendants to obtain information from the computer of any member of the proposed Plaintiffs' Class for the purpose of obtaining that permission.

85. Raleigh proposes to represent a Plaintiffs' Class consisting of all persons residing in the United States who:

- a. 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; and/or
- b. whose computers used in interstate commerce and/or communication were accessed by Counterclaim Defendants without permission or authority through conduct involving interstate communication and from which information was obtained in violation of such person's rights within two years prior to the date of the filing of this amended counterclaim.

86. On information and belief, the Plaintiffs' Class consists of many thousands of individuals, and the members of the proposed 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.

87. 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.

88. 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;
- 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;
- h. Whether Counterclaim Defendants as in investigative precursor to their sham litigation accessed the proposed Plaintiffs' Class members without authorization and obtained information in violation of his or her rights;
- i. Whether Counterclaim Defendants as in investigative precursor to their sham litigation improperly accessed a protected computer in violation of 18 U.S.C. § 1030, *et seq.*, and violated the rights of the proposed Plaintiffs' Class members;

- j. Whether Counterclaim Defendants' collusive conduct, including the sham litigation alleged herein, is an attempt by Counterclaim Defendants to secure for themselves rights beyond those granted to them in copyright law and constitute a misuse of copyright.
- k. Whether, for each Counterclaim Defendant, that Counterclaim Defendant acted with the malice necessary for the imposition of punitive damages;

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

90. 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.

91. 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(c))**

92. Raleigh adopts and realleges each preceding allegations as if more fully stated herein.

93. 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.

94. Pursuant to and in furtherance of their fraudulent and extortionate

scheme, Counterclaim Defendants and RIAA committed multiple related and continuous acts of racketeering.

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

96. 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).

97. 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 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))**

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

99. 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.

100. 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).

101. 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 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)**

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

103. 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.

104. 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.

105. 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.

106. Defendants acted with malice and with evil motive and reckless

indifference to Plaintiffs' right to full disclosure and the truth.

107. 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 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)**

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

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

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

111. 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.

112. 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.

113. 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.

114. 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 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)**

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

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

117. 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.

118. 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.

119. 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.

120. 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.

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

122. 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 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.

**Count VI  
(Trespass to Chattels)**

123. Raleigh adopts and realleges the allegation in Paragraphs 1 through 91 as if more fully stated herein.

124. As an investigative precursor to their sham litigation, Counterclaim Defendants have accessed the computer system of Raleigh and the members of the proposed Plaintiffs' Class without authorization and obtained information from that computer system in violation of their rights.

125. Counterclaim Defendants intentionally and without authorization intruded into the computer of Raleigh and the members of the proposed Plaintiffs' Class to obtain information.

126. Counterclaim Defendants' unlawful intrusion deprived Raleigh and the members of the proposed Plaintiffs' Class of the use and possession of their computers.

127. Counterclaim Defendants proximately caused injury as a result.

128. Raleigh and the members of the proposed Plaintiffs' Class are entitled to recover those damages from Counterclaim Defendants.

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

130. 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 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.

**Count VII**  
**(Computer Fraud and Abuse Act – 18 U.S.C. § 1030)**

131. Raleigh adopts and realleges the allegation in Paragraphs 1 through 91 and 123 through 130 as if more fully stated herein.

132. As an investigative precursor to their sham litigation, Counterclaim Plaintiffs through conduct involving interstate communication intentionally accessed computers and computer systems of Raleigh and the members of the proposed Plaintiffs' Class without authorization and obtained information from those computer and computer systems in violation of the rights of Raleigh and members of the proposed Plaintiffs' Class.

133. The computers and computer systems of Raleigh and the members of the proposed Plaintiffs' Class were used in interstate commerce and/or communication.

134. Counterclaim Defendants's conduct referenced above, all done in violation of 18 U.S.C. § 1030, resulted in impairment to the integrity and/or availability of data, a program, a system or information on the computers of Raleigh and the members of the proposed Plaintiffs' Class and caused Raleigh and eac member of the proposed Plaintiff Class to sustain damage and costs in an amount exceeding \$5,000 in the course of a year.

135. Raleigh and the members of the proposed Plaintiffs' Class are entitled to recover costs and damages from Counterclaim Defendants, along with injunctive relief for such loss that cannot be remedied by an action at law, and to prevent further unauthorized access.

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

137. 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 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.

**Count VIII**  
**(Conspiracy as to Counts VI and VII)**

138. Raleigh adopts and realleges the allegation in Paragraphs 1 through 91 and 123 through 137 as if more fully stated herein.

139. Counterclaim Defendants conspired and agreed to commit the unlawful acts alleged in Counts VI and VII above.

140. Counterclaim Defendants committed these unlawful acts as an investigative precursor to their sham litigation.

141. Counterclaim Defendants conspired and agreed to access the computer system of Raleigh and the members of the proposed Plaintiffs' Class without authorization and obtain information from that computer system in violation of their rights.

142. 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.

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

144. 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 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 Jenna Raleigh demands a trial by jury.

Respectfully submitted,

GREEN JACOBSON P.C.

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**CERTIFICATE OF SERVICE**

I certify that on November 17, 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: John D. Ryan, Esq.

I certify that on November 17, 2007, copies of the foregoing were mailed to each of the following named non-participants in Electronic Case Filing: None.

/s/ Jonathan F. Andres