

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
Civil Action No. 5:08-CV-00131-D

SONY BMG MUSIC	)	
ENTERTAINMENT, Inc., UMG	)	
RECORDINGS Inc., ELECTRA	)	
ENTERTAINMENT GROUP, Inc.,	)	
BMG MUSIC, and MOTOWN	)	
RECORD COMPANY, L.P.,	)	
	)	
Plaintiffs/Counterclaim	)	
Defendants,	)	
	)	
vs.	)	<u>FIRST AMENDED ANSWER, DEFENSES,</u>
	)	<u>COUNTERCLAIM, AND</u>
SHAHANDA MOELLE MOURSY,	)	<u>THIRD PARTY COMPLAINT</u>
	)	
Defendant/ Counterclaim	)	
Plaintiff/Third-party Plaintiff,	)	
	)	
vs.	)	
	)	
RIAA, and SAFENET, Inc. f/k/a	)	
MEDIAENTRY, Inc., a Delaware	)	
corporation,	)	
,	)	
	)	
Third-party Defendants.	)	

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DEFENDANT, Shahanda Noelle Moursy, answering the Complaint of the Plaintiffs,  
avers:

1. Paragraph 1 of the First Amended Complaint (“Complaint”) states a conclusion of law which the responding Defendant believes requires no answer; to the extent a response is required, Defendant denies the allegations in Paragraph 1 of the Complaint.

2. Paragraph 2 of the Complaint states a conclusion of law which the responding Defendant believes requires no answer; to the extent a response is required, Defendant denies the allegations in Paragraph 2 of the Complaint. Moreover, this Defendant denies that any acts of infringement occurred.

3. Defendant admits that she resides within the judicial district. Defendant denies that any acts of infringement occurred. Except as herein admitted, Paragraph 3 of the Complaint states a conclusion of law which the responding Defendant believes requires no answer; to the extent a response is required, Defendant denies the remaining allegations in Paragraph 3 of the Complaint.

4. Defendant lacks information sufficient to admit or deny the allegations in Paragraph 4 of the Complaint and therefore denies same.

5. Defendant lacks information sufficient to admit or deny the allegations in Paragraph 5 of the Complaint and therefore denies same.

6. Defendant lacks information sufficient to admit or deny the allegations in Paragraph 6 of the Complaint and therefore denies same.

7. Defendant lacks information sufficient to admit or deny the allegations in Paragraph 7 of the Complaint and therefore denies same.

8. Defendant lacks information sufficient to admit or deny the allegations in Paragraph 8 of the Complaint and therefore denies same.

9. Defendant admits that she resides within this judicial district. Except as herein admitted, the allegations of Paragraph 9 of the Complaint are denied.

10. Defendant reasserts and realleges the responses in Paragraph 1 through 9 above.

11. Defendant admits that a document purporting to be a copy of Certificate of Copyright Registration is attached to the Complaint as Exhibit A. Defendant lacks information sufficient to admit or deny the remaining allegations in Paragraph 11 of the Complaint and therefore denies same.

12. Paragraph 12 of the Complaint states a conclusion of law which the responding Defendant believes requires no answer; to the extent a response is required, Defendant denies the allegations in Paragraph 12 of the Complaint.

13. Defendant lacks information sufficient to admit or deny the allegations in Paragraph 13 of the Complaint and therefore denies same.

14. Defendant lacks information sufficient to admit or deny the allegations in Paragraph 14 of the Complaint and therefore denies same.

15. Defendant denies the allegations contained in Paragraph 15 of the Complaint.

16. Defendant denies the allegations contained in Paragraph 16 of the Complaint.

17. Defendant lacks information sufficient to admit or deny the allegations in Paragraph 17 of the Complaint concerning whether or not Plaintiffs placed any such notices, and therefore denies the allegations of Paragraph 17 of the Complaint.

18. Defendant denies the allegations contained in Paragraph 18 of the Complaint.

19. Defendant denies the allegations contained in Paragraph 19 of the Complaint.

20. Defendant denies the allegations contained in Paragraph 20 of the Complaint.

As to the WHEREFORE portion of the Complaint, the Defendant prays the Plaintiffs have and recover nothing.

## AFFIRMATIVE DEFENSES

1. Plaintiffs' claims are barred by the doctrine of fair use.
2. Plaintiffs' claims are barred by license.
3. Plaintiffs' claims are barred by 17 U.S.C. § 512.
4. Plaintiffs' claims are barred by 17 U.S.C. § 1008.
5. Plaintiffs' claims are barred by the doctrine of unclean hands.
6. Plaintiffs' claims are barred by the doctrine of laches.
7. Plaintiffs' claims are barred by the doctrine of waiver.
8. Plaintiffs' claims are barred by the applicable statute of limitations.
9. Plaintiffs' claims are barred by accord and satisfaction.
10. Plaintiffs failed to mitigate their damages, if any.
11. Plaintiffs' claims are barred because any act giving rise to liability was committed by third parties beyond Defendant's control, including the "online media distribution system" referred to in the Complaint.
12. Plaintiffs' claims are barred because they have failed to join indispensable parties, namely, the "online media distribution system" referred to in the Complaint.
13. Plaintiffs' claims are barred by settlement, and/or accord and satisfaction because Plaintiffs have already entered into a multi-million dollar settlement with the makers of the "online media distribution system" referred to in the Complaint, which settlement fully compensated them for any damages caused by use of the "online media distribution system."
14. Plaintiffs' claim for injunctive relief is barred because Plaintiffs have an adequate remedy at law.

15. Plaintiffs' claims are barred by federal and state law prohibiting unfair and deceptive trade practices.

16. Defendant is entitled to an offset for damages caused by Plaintiffs' criminal activity.

17. Plaintiffs' claim for attorney's fees is barred because it is not authorized by any statute or contract.

18. Defendant is entitled to attorneys' fees and costs pursuant to 17 U.S.C. § 505.

19. The "Digital Theft Deterrence ... Act of 1999" is unconstitutional because it is essentially a criminal statute, punitively deterrent in its every substantive aspect, from which it follows that: a defendant prosecuted pursuant to this act is entitled to the process protections of the criminal law, including the rules and constitutional law of criminal procedure and the right to trial by jury empowered to act by general verdict; Congress has exceeded its power by placing the executive function of prosecuting an essentially criminal statute in private hands; and, Congress has violated constitutional separation of powers by requiring the judicial branch to try cases pursuant to their essentially criminal mandate by inappropriate civil process.

20. The statutory damages Plaintiffs seek are unconstitutional because they violate Defendant's right to Due Process granted under the Fifth Amendment of the United States Constitution. Plaintiffs seek statutory damages which, at a minimum, are \$750 per song. The total cost of licensing the songs would have been approximately \$0.99 per song and the total revenue to Plaintiffs from the songs, upon information and belief, would have been approximately \$0.77 per song. Plaintiffs seek statutory damages that are, at a minimum, more than nine hundred and seventy four (974) times the amount of their actual damages. Because the

statutory damages have no reasonable relationship to the actual damages, the statutory damages sought are punitive in nature and unconstitutional. Accordingly, in keeping with the principle that a statute must be construed where possible in a manner that is consistent with its constitutionality, Plaintiffs' Complaint, which alleges no specific acts but alleges only generally Defendant's use of an "online media distribution system" to infringe Plaintiffs' copyrights, should be construed so as to allege that defendants' use of an "online media distribution system" -- i.e. her joining and participating in an online system -- to infringe Plaintiffs' copyrights, constitutes a single infringement, and that statutory damages not exceeding a total of \$750 may be awarded.

21. The Complaint makes no mention of any enumerated acts of infringement, but instead seeks recovery for a series of acts, to wit the operation of an "online media distribution system" to infringe plaintiffs' copyrights. Accordingly, to the extent Plaintiffs seek statutory damages or costs for sound recording copyrights registered with the U.S. Copyright Office subsequent to the date on which Defendant first began using an online system, their claims are barred by 17 U.S.C. § 412.

22. Moursy reserves the right to plead additional affirmative defenses that may be identified during investigation or discovery.

WHEREFORE, Defendant Shahanda Noelle Moursy, having fully answered the Complaint, prays this Court enter judgment in her favor and against Plaintiffs, find that Defendant is the prevailing party, and award Defendant costs, including attorney's fees, pursuant to the federal Copyright Act, 17 U.S.C. § 505, as well as Rule 41 (a)(2) of the Federal Rules of Civil Procedure, and grant her such further relief as may be proper.

## AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT

Counterclaim and Third-party Plaintiff Shahanda Moursy (“Moursey”), for her Counterclaim and Third-party Complaint against Sony BMG Entertainment, Inc., UMG Recordings Inc., Electra Entertainment Group, Inc., BMG Music, Motown Record Company, L.P., Recording Industry of America, and Safenet, Inc., (collectively “Counterclaim/Third-party Defendants”) states:

### THE PARTIES

1. Moursy is a citizen of the State of North Carolina.
2. 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.
3. Upon information and belief, UMG Recordings, Inc., (“UMG”) is a Delaware corporation with its principal place of business in the State of California.
4. Upon information and belief, Electra Entertainment Group, Inc., (“Electra”), is a Delaware corporation with its principal place of business in the State of New York.
5. Upon information and belief, BMG Music (“BMG”) is a New York general partnership with its principal place of business in the State of New York.
6. Upon information and belief, Motown Record Company, LP (“Motown”), is a California limited partnership with its principal place of business in the State of California.
7. Collectively, all of the First Amended Complaint Plaintiffs in the above-entitled action are referred to hereinafter as “Record Company Counterclaim Defendants.”

8. Upon information and belief, Recording Industry of America (“RIAA”) claims to be a New York not-for-profit corporation, with its principal place of business in Washington, DC.

9. Upon information and belief, SafeNet, Inc., f/k/a MediaSentry, Inc. (“MediaSentry”), is a Delaware corporation with its principal place of business in Belcamp, Maryland.

FACTS COMMON TO ALL COUNTERCLAIMS/THIRD-PARTY COMPLAINT

10. This court has jurisdiction for counterclaims and the third-party Complaint in the instant suit.

11. Record Company Counterclaim Defendants are corporate entities purporting to hold a copyright ownership in certain musical works and/or musical sound recordings.

12. Counterclaim/Third-party 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. For a number of years, a group of large, multinational, multi-billion dollar record companies, including these Record Company 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 Company Counterclaim Defendants hired an unlicensed private investigator, MediaSentry, – in violation of North Carolina and other applicable law – which receives a bounty 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. MediaSentry performs these investigations in North Carolina and other states.

13. Using information obtained from this illegal invasion, the Record Company Counterclaim Defendants file so-called “John Doe” lawsuits – reportedly against more than thirty thousand 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 to 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 record 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.

14. After harvesting the names of account holders through these subpoenas, the record companies often dismiss the John Doe suits. The Record Company Counterclaim Defendants then, upon information and belief, provide the personal information to an agent which engages in deceptive and illegal practices aimed at extracting 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 agents for the record companies.

15. The collection practices engaged in by these record company agents are 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 Record Company Counterclaim Defendants and their individual victims.

16. As part of this campaign of their sham litigation program, the Record Company 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 Record Company 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 the Record Company Counterclaim Defendants.

17. The instant suit is just one example, yet it is an integral part of the Record Company Counterclaim Defendants' intimidation campaign. As a result, it is but one affirmative action out of thousands taken by the Record Company Counterclaim Defendants in furtherance of the intimidation campaign.

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

19. Upon information and belief, the Record Company Counterclaim Defendants have filed suit against more than thirty thousand individuals alleging virtually identical claims.

20. Upon information and belief, the Record Company Counterclaim Defendants have only once proceeded to a jury trial in any contested case raising these allegations.

21. Counterclaim/Third-party Defendants have not observed any specific instance of Moursy illegally downloading any sound recording.

22. Counterclaim/Third-party Defendants have not observed any specific instance of Moursy illegally uploading any sound recording.

23. Counterclaim/Third-party Defendants have not observed any specific instance of Moursy illegally disseminating any sound recording to anyone not authorized to receive it.

24. Moursy did not authorize any person to obtain information from her computer via the “online media distribution system” alleged by the Record Company Counterclaim Defendants.

25. Moursy did not configure any computer to “share” files.

26. None of the Counterclaim/Third-party Defendants or any of their agents contacted Moursy to obtain her permission to obtain information from her computer.

27. None of the Counterclaim/Third-party Defendants or their agents contacted any person with authority to grant permission for Counterclaim/Third-party Defendants to obtain information from the computer identified in the First Amended Complaint, for the purpose of obtaining that permission.

28. Moursy has committed no infringement.

#### COUNT I – TRESPASS TO CHATTELS

29. Moursy re-states and incorporates herein the allegations identified as “Facts Common to All Counterclaims/Third-party Complaint.”

30. As an investigative precursor to their sham litigation, Counterclaim/Third-party Defendants have accessed a computer system without authorization and obtained information from that computer system in violation of Moursy's rights.

31. Counterclaim/Third-party Defendants intentionally and without authorization, intruded into a computer to obtain information.

32. Counterclaim/Third-party Defendants' unlawful intrusion deprived Moursy of the use and possession of the computer.

33. Counterclaim/Third-party Defendants proximately caused injury as a result.

34. Moursy is entitled to recover those damages from Counterclaim/Third-party Defendants.

#### COUNT II – COMPUTER FRAUD AND ABUSE (18 U.S.C. § 1030)

35. Moursy re-states and incorporates herein the allegations identified as "Facts Common to All Counterclaims/Third-party Complaint."

36. As an investigative precursor to their sham litigation, Counterclaim/Third-party Defendants have accessed a computer system without authorization and obtained information from that computer system in violation of Moursy's rights.

37. In violation of 18 U.S.C. § 1030, Counterclaim/Third-party Defendants have intentionally accessed a protected computer without authorization, and as a result of such conduct, caused damage to Moursy in an amount exceeding \$5,000.00.

38. In violation of 18 U.S.C. § 1030, Counterclaim/Third-party Defendants 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.

39. Moursy is entitled to recover damages from Counterclaim/Third-party Defendants, along with injunctive relief for such loss that cannot be remedied by an action at law, and to prevent further unauthorized access.

COUNT III –UNFAIR AND DECEPTIVE TRADE PRACTICES  
(N.C. Gen. Stat. § 75-1.1 *et seq.*)

40. Moursy re-states and incorporates herein the allegations identified as “Facts Common to All Counterclaims/Third-party Complaint.”

41. The acts of Plaintiffs occurred in commerce in the State of North Carolina and elsewhere.

42. The acts of the Counterclaim/Third-party Defendants as enumerated above are prohibited deceptive and unfair practices in the conduct of commerce.

43. Moursy has suffered damages as a result of Counterclaim/Third-party Defendants’ violation of N.C. Gen. Stat. § 75-1.1 *et seq.* and is entitled to recover actual damages, plus attorney’s fees and court costs, along with injunctive relief barring further violations.

COUNT IV – DECLARATORY JUDGMENT

44. Moursy re-states and incorporates herein the allegations identified as “Facts Common to All Counterclaims.”

45. Counterclaim/Third-party Defendants have a pattern and practice that, once their sham litigation has commenced, they will voluntarily dismiss, without prejudice, claims against defendants who contest them.

46. Counterclaim/Third-party Defendants' practice of dismissing claims without prejudice, after accusing defendants of civil and criminal wrongdoing, deprives those defendants of a final judicial resolution of the matters that Plaintiffs have brought into this Court's concern and the public eye.

47. An actual case and controversy exists between Counterclaim/Third-party Defendants and Moursy.

48. Moursy is entitled to a positive judicial declaration of non-infringement along with costs and attorney's fees.

#### COUNT V – CIVIL CONSPIRACY

49. Moursy re-states and incorporates herein the allegations identified as "Facts Common to All Counterclaims/Third-party Complaint."

50. Counterclaim/Third-party Defendants have conspired among themselves and with others to commit illegal acts and to use the illegal methods described in Counts I, II, III, and IV, of these Counterclaims/Third-party Complaint.

51. Counterclaim/Third-party Defendants have conspired among themselves and with others to commit the following illegal acts to further the ends of their conspiracy: (a) use of private investigators to conduct investigations in North Carolina against North Carolina residents, without license, in violation of N.C. Gen. Stat. § 74C-1, *et seq.*; (b) access, without authorization, of a protected computer system, in interstate commerce, for the purpose of obtaining information in violation of 18 U.S.C. § 1030; (c) extortion and attempted extortion in violation of the Hobbs Act, 18 U.S.C. § 1951; and, (d) access, without authorization, of a computer system of a North Carolina resident in violation of N.C. Gen. Stat. § 14-453 *et seq.*.

52. Counterclaim/Third-party Defendants have taken numerous overt acts to further the conspiracy.

53. Counterclaim/Third-party Defendants have acted in conscious disregard of and indifference to Moursy's rights, and intended to cause her harm.

54. Moursy has been damaged by the acts of the conspiracy and is entitled to recover those damages from Counterclaim/Third-party Defendants jointly and severally.

55. Moursy is also entitled to recover punitive damages from Counterclaim/Third-party Defendants, jointly and severally.

#### JURY TRIAL DEMAND

Moursy demands trial by jury on all counts so triable.

#### PRAYER FOR RELIEF

WHEREFORE, Moursy prays relief as follows:

1. Judgment against Counterclaim/Third-party Defendants for all damages in an amount to be proven at trial;
2. Judgment for punitive damages, as awarded by the jury;
3. Declaratory relief pursuant to N.C. Gen. Stat. § 75 that Defendants have committed unfair and deceptive trade practices, and treble damages;
4. Declaratory judgment of non-infringement;
5. Injunctive relief, pursuant to 18 U.S.C. § 1030, to prevent further violations of law and to remedy those losses for which no adequate remedy at law exists;
6. Costs of suit, including attorney's fees to the maximum extent allowed under law; including but not limited to attorney's fees pursuant to N.C. Gen. Stat. § 75-16.1;

7. Such other relief as this Court deems required by justice.

Submitted this 15<sup>th</sup> day of January, 2009.

By: /s/ Stephen E. Robertson  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on the 15<sup>th</sup> day of January, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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