

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UMG RECORDINGS, INC. *et al.*
Plaintiffs,

v.

Case No.: 8:07-cv-00368-RAL-TGW

SUZY DEL CID
Defendant.

_____ /

**ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS OF
SUZY DEL CID**

Defendant SUZY DEL CID (“Del Cid”) answers the initial complaint, and submits her affirmative defenses and counterclaims as follows.

GENERAL DENIAL AND ANSWER

Del Cid generally denies each and every allegation in the Complaint that requires a response except those items specifically admitted herein.

1. Admitted that this Court has subject matter jurisdiction over copyright claims; denied as to all other allegations of paragraphs 1-3 of the Complaint.
2. Del Cid is without knowledge as to the allegations of paragraphs 4-8, and 11 of the Complaint, and therefore denies them.
3. Del Cid admits the allegations of paragraph 9 of the Complaint.
4. Admitted that paragraph 10 restates Plaintiffs’ prior allegations. Substantive responses thereto are restated and incorporated by reference.
5. The allegations of paragraph 12 of the Complaint are legal conclusions to which no response is required.

6. Del Cid denies the allegations of paragraphs 13-16 of the Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiffs' claims fail for lack of subject matter jurisdiction. Plaintiffs have not made sufficient allegations of copyright registration. In particular, Plaintiffs have failed to identify registration numbers for the works claimed.
2. Plaintiffs' Complaint fails to state a claim upon which relief can be granted, because it does not allege any specific acts of infringement.
3. Plaintiffs' claims are barred by the doctrine of fair use.
4. Plaintiffs' claims are barred by license.
5. Plaintiffs' claims are barred by 17 U.S.C. § 512.
6. Plaintiffs' claims are barred by 17 U.S.C. § 1008.
7. Plaintiffs' claims are barred by the doctrine of unclean hands.
8. Plaintiffs' claims are barred by the doctrine of laches.
9. Plaintiffs' claims are barred by the doctrine of waiver.
10. Plaintiffs' claims are barred by the applicable statute of limitations.
11. Plaintiffs' claims are barred by accord and satisfaction.
12. Plaintiffs failed to mitigate their damages, if any.
13. 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. In addition, Defendant has never used the account name indicated in Exhibit "B" of the Complaint.
14. Plaintiffs' claims are barred because they have failed to join indispensable parties,

namely, the “online media distribution system” referred to in the Complaint, and the user of the pseudonym depicted in Exhibit “B.”

15. Plaintiffs claimed are barred by settlement. Plaintiffs have already entered into a multi-million dollar settlement with the makers of the “online media distribution system” mentioned in the Complaint, which settlement fully compensated them for any damages caused by use of the “online media distribution system.”
16. Plaintiffs’ claim for injunctive relief is barred because Plaintiffs have an adequate remedy at law.
17. Plaintiff’s claims are barred by federal and state law prohibiting unfair and deceptive trade practices.
18. Defendant is entitled to an offset for damages caused by Plaintiffs’ criminal activity.
19. Plaintiffs’ claim for attorney’s fees is barred because it is not authorized by any statute or contract.
20. Defendant is entitled to attorneys’ fees and costs pursuant to 17 U.S.C. § 505.

COUNTERCLAIMS

FACTS COMMON TO ALL COUNTERCLAIMS

1. This court has jurisdiction for counter-claims in the instant suit.
2. Defendant Del Cid resides within the District.
3. Plaintiffs are corporate entities purporting to hold a copyright ownership in certain musical works and/or musical sound recordings.

4. Plaintiffs, 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.
5. For a number of years, a group of large, multinational, multi-billion dollar record companies, including these Plaintiffs, 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 unlicensed private investigators – in violation of various state laws – who receive 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.
6. 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.

7. 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.
8. 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.
9. As part of this campaign of extortion, Plaintiffs 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 Plaintiffs' 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 Plaintiffs.

10. The instant suit is just one example, yet it is an integral part of the Plaintiffs' extortion campaign. As a result, it is but one affirmative action out of thousands taken by the Plaintiffs in furtherance of their criminal extortion campaign.
11. Del Cid has committed no infringement.

COUNT I – TRESPASS TO CHATTELS

12. Del Cid re-states and incorporates herein the allegations identified as “Facts Common to All Counterclaims.”
13. Plaintiffs intentionally and without authorization, intruded into Del Cid's personal computer to obtain information, thereby interfering with Del Cid's possession of her computer and computer network and proximately caused injury as a result.
14. Del Cid is entitled to recover those damages from Plaintiffs.

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

15. Del Cid re-states and incorporates herein the allegations identified as “Facts Common to All Counterclaims.”
16. Plaintiffs intentionally and without authorization, intruded into Del Cid's personal computer to obtain information, thereby interfering with Del Cid's possession of her computer and computer network and proximately caused injury as a result.
17. In violation of 18 U.S.C. § 1030, Plaintiffs have intentionally accessed a protected

computer – Del Cid’s - without authorization, and as a result of such conduct, caused damage in an amount exceeding \$5,000.00.

18. Del Cid is entitled to recover those damages from Plaintiffs.

**COUNT III – DECEPTIVE AND UNFAIR TRADE PRACTICES
(Fla. Stat. § 501.201)**

19. Del Cid re-states and incorporates herein the allegations identified as “Facts Common to All Counterclaims.”

20. The acts of the Plaintiffs as enumerated above are prohibited deceptive and unfair practices in the conduct of commerce.

21. Del Cid has suffered damages as a result of Plaintiffs’ violation of Fla. Stat. §501.201 *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 – CIVIL EXTORTION

22. Del Cid re-states and incorporates herein the allegations identified as “Facts Common to All Counterclaims.”

23. Plaintiffs have attempted to obtain property from Del Cid through the wrongful use of threats in violation of Ca. Penal Code §§ 519 and 523.

24. Del Cid has been damaged by Plaintiffs’ extortion attempts and is entitled to recover those damages from Plaintiffs.

COUNT V – CIVIL CONSPIRACY

25. Del Cid re-states and incorporates herein the allegations identified as “Facts

Common to All Counterclaims.”

26. Plaintiffs have also conspired to use the following unlawful means to achieve the ends of the conspiracy: (a) use of private investigators without license in violation of Fla. Stat. Chapter 493; (b) unauthorized access to a protected computer system, in interstate commerce, for the purpose of obtaining information in violation of 18 U.S.C. § 1030 (a)(2)(C); (c) extortion in violation of Ca. Penal Code §§ 519 and 523; and (d) knowingly collecting an unlawful consumer debt, and using abuse means to do so, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a *et seq.* and Fla. Stat. § 559.72 *et seq.*
27. Plaintiffs have taken overt acts to further the conspiracy, including the filing of their lawsuit for alleged copyright infringement..
28. Del Cid has been damaged by the acts of the conspiracy and is entitled to recover those damages.

JURY TRIAL DEMAND

Del Cid demands a trial by jury on all counts so triable.

PRAYER FOR RELIEF

WHEREFORE, Del Cid respectfully requests this Court grant her the following relief:

1. Payment from Plaintiff to Defendants of all damages incurred by Defendants.
2. Pursuant to Florida law, the Defendants do not at this time seek punitive damages, but reserve the right to amend this complaint in accordance with the law upon the

discovery of such facts as would support a claim for such.

3. Declaratory relief pursuant to Chapter 501 that Defendants have committed unfair and deceptive trade practices.
4. Costs of suit, including attorney's fees to the maximum extent allowed under law.
5. Such other relief as this Court deems necessary and proper.

Respectfully submitted,
RICARDO & WASYLIK, PL

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SUZY DEL CID

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 1, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Chaila D. Restall, Counsel for Plaintiffs

I further certify that I mailed the foregoing document and the notice of electronic filing by first class mail to the following non-CM/ECF participants:

None

/s/ Michael Alex Wasylik