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April 2, 2008

Via Hand Delivery

Honorable Stephen C. Robinson  
 United States District Judge  
 United States District Court for the  
 Southern District of New York  
 300 Quarropas Street  
 White Plains, New York 10601

Re: Warner Bros. Records Inc., et al. v. Cassin,  
 Case No. 06-CV-3089 (SCR)(GAY)  
 Supplemental Authority

Dear Judge Robinson:

We write on behalf of Plaintiffs in the above-referenced matter to advise the Court of recent authority that supports Plaintiffs' position that their Complaint is more than sufficient under Fed. R. Civ. P. 8(a) and 12(b)(6) and that Defendant's motion to dismiss should be denied.

Attached is an opinion from Judge Karas in *Elektra Entertainment Group v. Barker*, Case No. 7:05-cv-07340-KMK (S.D.N.Y. March 31, 2008). In *Barker*, Judge Karas considered a motion to dismiss that is virtually identical to the motion to dismiss filed by Defendant in this case. Judge Karas applied the standard set forth in the Supreme Court's recent decision in *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007), and denied the motion to dismiss, holding that the plaintiffs' complaint "gives Defendant adequate notice of the works subject to Plaintiffs' claim and the grounds upon which Plaintiffs allege Defendant's infringement" and is sufficient under Fed. R. Civ. P. 8. *Barker*, slip op. at 5, 7. Judge Karas further affirmed the making available right of distribution under Section 106(3), holding "that '[t]he offer[] to distribute copies or phonorecords to a group of persons for purposes of further distribution' . . . can violate the distribution right of Section 106(3)." *Id.* at 13-14.

We also attach an opinion from the Federal District Court for the Eastern District of New York, *Elektra Entertainment Group v. Schwartz*, Case No. 1:06-cv-03533-DGT-RML (E.D.N.Y. April 1, 2008). In *Schwartz*, the court considered a motion for



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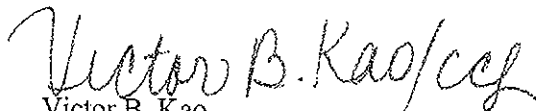
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judgment on the pleadings that was substantially similar to Defendant's motion to dismiss in this matter. The *Schwartz* court denied the defendant's motion and held that "[t]he complaint sets forth the acts allegedly constituting copyright infringement with sufficient specificity to put [the defendant] on notice of the grounds for their claim. Moreover, as required by *Twombly*, the complaint alleges enough facts to constitute a plausible, and not just a conceivable, claim of infringement." *Id.* at 8.

Respectfully submitted,

  
Victor B. Kao

Encls.

cc: Ray Beckerman (via fax (212) 763-6810)

