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June 12, 2008

By Fax (914-390-4179)

The 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. v. Cassin
SDNY No. 06 Civ. 3089 (SCR)

Dear Judge Robinson:

We are attorneys for defendant. We did not learn of plaintiffs' May 27th notice of voluntary dismissal of this matter until yesterday, June 11th. Although we were presented with a copy of an affidavit of service by mail on May 27th, we never received any mailed copy and first learned of the dismissal through an ECF notice dated June 11th of the Court's order dated June 5th.

Today we received an even bigger surprise. That the plaintiffs have filed yet a third action (the one before Your Honor was the second, the first being an action against defendant as "John Doe" in the District of Columbia, which was voluntarily dismissed). Even more surprising, they did not designate the third action as a "related" case to the instant action, and it has therefore been assigned to Judge Brieant. In the new action they seek immediate discovery. Thus it is clear that the dismissal of the action before Your Honor was a naked attempt to do an end run around the Court's imminent decision of defendant's motion to dismiss complaint.

As is customary with these plaintiffs, they did not serve us with proper notice of the papers they filed on June 4th in the new action, but telephoned me today to apologize for not having effected such service.

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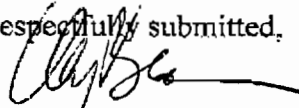
As Your Honor knows the dismissal of the within action operated as an “adjudication on the merits” under Fed. R. Civ. P. 41(a)(1)(B). Accordingly we respectfully request that Your Honor recall the order dated June 4th, and enter an order specifically stating that

- the dismissal is “with prejudice” and
- the dismissal “operates as an adjudication on the merits, Fed. R. Civ. P. 41(a)(1)(B)”;

and omitting

- any reference to fees and costs, as it is clear that defendant is a “prevailing party” and is entitled to an attorneys fee award for her reasonable attorneys fees. Riviera Distributors, Inc. v. Jones, 517 F. 3d 926 (7th Cir. February 20, 2008) and Mostly Memories, Inc. v. For Your Ease Only, Inc., – F.3d –, 2008 WL 2168642 (7th Cir. May 27, 2008)

Respectfully submitted,



Ray Beckerman (RB8783)

cc: Timothy M. Reynolds, Esq.
(303-866-0200)