

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 27<sup>th</sup> notice of voluntary dismissal of this matter until yesterday, June 11<sup>th</sup>. Although we were presented with a copy of an affidavit of service by mail on May 27<sup>th</sup>, we never received any mailed copy and first learned of the dismissal through an ECF notice dated June 11<sup>th</sup> of the Court's order dated June 5<sup>th</sup>.

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 4<sup>th</sup> 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 4<sup>th</sup>, 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 (7<sup>th</sup> Cir. February 20, 2008) and Mostly Memories, Inc. v. For Your Ease Only, Inc., – F.3d –, 2008 WL 2168642 (7<sup>th</sup> Cir. May 27, 2008)

Respectfully submitted,



Ray Beckerman (RB8783)

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