



Plaintiff Masterfile Corporation (“Plaintiff”), submits this Memorandum in Support of Damages Inquest pursuant to the Court’s December 27, 2006 Order. On December 14, 2006, the Honorable Shira A. Scheindlin, U.S.D.J. ordered that a default judgment be entered against Defendant Country Cycling & Hiking Tours by Brooks, Inc. d/b/a Brooks Country Cycling (“Defendant”) and referred the matter for a damages inquest.

## **I. INTRODUCTION**

Plaintiff is a stock photography library based in Canada with offices worldwide. Stock photography (or illustration) is a term of art used to describe existing imagery that is available to users after obtaining a license and payment of a fee. Stock photography is a significant source of imagery for varieties of businesses. For example, stock photographs and illustrations are published in books, magazines, and newspapers, are used in advertising campaigns by advertising agencies on behalf of their clients, are used in print and web designs by graphic designers, are incorporated into documentary films, television and movies, and are generally used by all other media companies. In sum, if you see an image published, there is a good chance that it was obtained from either a stock photography company or a photographer as “stock”, rather than created specifically for a client by a photographer or artist on an assignment.

Most companies maintain a database of images, stored in a digital format that can be searched online using keywords to find the appropriate images. Users can select the desired image and purchase a license to use the image within the boundaries of the terms of the license agreement. Unless the image is owned by the stock photography company, a percentage of the license fee obtained is distributed to the photographer who created the image according to terms of his or her contract.

Many photographers make a living by licensing their images through stock companies. Contracts between stock companies and photographers provide that photographers will receive royalties from each licensed use and further, that the company is authorized to pursue infringements on their behalf. Most stock companies have a “price calculator” on their website that estimates the license fee based on a variety of factors; a major factor of which is whether the images are licensed under a rights-managed or royalty free model.

The difference between rights-managed and “royalty-free”

Stock photography companies offer clients several different licensing models that allow different types of images to be licensed at different price points. Clients may license images from stock photography companies on a “royalty-free” or “rights-managed” basis. Other licensing models exist as well. Both are forms of licensing according to specified terms and royalty-free images indicate that the permitted uses are broad but not free. Rights-managed images are licensed for a specific, clearly defined use for a limited duration. The license fee for rights-managed images is calculated by how the image is used and is based on a specific project's criteria, such as image size, total print run, distribution territory, industry, scope of use, etc.

Rights-managed images are more expensive to license than royalty-free ones, but the user can elect to purchase exclusive rights to use the image for a period of time. This is important for advertisers because the exclusivity guarantees their expensive campaign will not be duplicated by competitors. Stock photography libraries maintain license histories of rights-managed photographs so a potential user can determine if the same image was previously used in a similar industry. Infringement of rights-managed images can be very damaging because the

unauthorized use can violate the rights of clients who have paid a premium for exclusivity and violate the integrity of the licensing history.

Royalty free images on the other hand are generally simpler images that are licensed on a non-exclusive basis for permitted uses. These images may be used for an unlimited duration but there is no license history maintained and many companies can license the same image at the same time including competitors. A lower license fee is charged because the same image is expected to be licensed multiple times.

#### Stock Companies Approach to Infringement

In today's digital age, stock photo companies that advertise and offer their images online face a tremendous risk of piracy. Technology has become so advanced that it is possible for individuals to circumvent the licensing system set up on these websites. Users can visit a stock photography company's website, download images without licensing them, remove the watermark and use them in both print and digital form.

The ease in which images can be illegally used creates a difficult situation for stock companies who rely on license fees for the use of photographs in their collection. It is not possible for a stock photo agency to track the unauthorized acquisition of photographs without continually policing the internet- an enormously time consuming, inefficient and impossible task. These problems led to the development of companies that track images for stock companies. One such company is Picscout. Using proprietary image recognition technology, PicScout monitors commercial Internet sites to discover who is using copyrighted images online. In a sense, Picscout assigns each photograph from a company's collection a "fingerprint". Then it scans the entire Internet using webcrawl technology. Stock photo companies that subscribe to

Picscout receive detailed reports of any instances of unauthorized use of their photographs. Picscout receives a percentage of the recovery.

When an infringement is discovered, it is customary for the stock photo company to attempt to resolve the matter by offering the infringers an opportunity to pay a retroactive license fee. This license is calculated based on what the fee would have been had the user properly licensed in the first place, plus an infringement factor of usually three to five times the license fee. See Declaration of Geoff Cannon ¶ 29. The logic behind the infringement factor is that an infringer should not be rewarded for infringing and should not receive the “best offer” fee as a good customer who properly licenses the image before use. If there was no deterrent to infringement, stealing images would be encouraged and there would be no reason to license images before use.

## **II. FACTUAL BACKGROUND**

Masterfile entered into a contract with Picscout in 2004. In November 2005, Picscout sent a report to Masterfile indicating that 4 of Masterfile’s rights-managed images were featured on Defendant’s website, [www.brookscountrycycling.com](http://www.brookscountrycycling.com). *Id.*, ¶18. Upon receiving the report, Masterfile checked its records to see if the uses were properly licensed. They did not find any record of a license issued to Brooks Country Cycling (hereinafter “Brooks”) for any of the images. A search of [www.archive.org](http://www.archive.org) indicated that the images had been displayed on the Brooks site since 2002. *Id.*, ¶ 27.

On November 18, 2005, Masterfile Corporation sent a Notice of Infringement to Brooks and included an invoice for payment of a compliance fee of \$5880 for use of the four images. In that correspondence, Masterfile offered Brooks the option of keeping the images on its website

until November 30, 2005 on the condition that the fee be paid in full by that time. If not, the offer would be rescinded and legal action would be commenced.

On December 1, Masterfile noticed that the images had been removed from the website. On that same date, Masterfile sent another letter to Brooks rescinding their retroactive license and giving them yet another opportunity to settle the matter without resorting to litigation. Still there was no response. *Id.* ¶ 21.

On December 20, 2005, Masterfile contacted Brooks via telephone and spoke to a principal of the company. The individual confirmed that he had received the notices that were sent, but refused to make payment.

When the Defendant failed to pay the licensing fee, Plaintiff filed the instant action alleging that Defendant infringed its copyrights. Plaintiff was granted a default judgment against Defendant by Order of the Honorable Shira A. Scheindlin dated December 14, 2006, with the amount of damages and attorneys' fees to be determined by inquest by Magistrate Judge Frank Maas.

By Order of Judge Maas, Plaintiff was to serve an inquest memorandum on defendant on or before Feb. 28, 2007. In early January 2007, Michael Kwon, law clerk to the Honorable Judge Maas scheduled a settlement conference to be held on January 25, 2007 in lieu of an inquest. Although Plaintiff and Defendant agreed to this date, the conference was subsequently cancelled because of Defendant's assurance that his insurance company would be getting involved in the settlement and hence there would be no need for a conference. See Declaration of Zehra J. Abdi ¶7. By letter dated February 23, 2007, Defendant informed Plaintiff's counsel that the insurance company would not provide coverage. *Id.*, ¶8.

In light of Defendant's conduct and their default herein, Plaintiff seeks the entry of a final judgment including: (a) statutory damages provided by Section 504 of the Copyright Act in the amount of \$5600 for each of the four infringements alleged in the Complaint for a total amount of \$22,400; (b) an injunction pursuant to Section 502 of the Copyright Act; and (c) costs, attorneys' fees and expenses, pursuant to Section 505 of the Copyright Act in the amount of \$2633.40 (exclusive of costs and fees incurred in preparation of this motion).

### III. ARGUMENT

#### A. Defendant Has Admitted Liability for the Copyright Infringement Plaintiff Alleges in Its Complaint.

In this case, Plaintiff has alleged and, through its default, Defendant has conceded, that Defendant has infringed Plaintiff's copyrights in the images. The default concedes the truth of the allegations of the Complaint as to Defendant's liability as a matter of law. Video Aided Instruction, Inc. v. Y&S Express, Inc., 1996 U.S. Dist. LEXIS 18477 at \*3 (E.D.N.Y. Oct. 29, 1996) ("Once a default judgment is entered, a defendant is deemed to have admitted all of the well-pleaded allegations in the complaint pertaining to liability") (citing Broadcast Music, Inc. v. R Bar of Manhattan, Inc., 919 F. Supp. 656, 658 (S.D.N.Y. 1996)); Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155, 158 (2d Cir. 1992) ("A party's default is deemed to constitute a concession of all well-pleaded allegations."); TWA v. Hughes, 449 F.2d 51, 69 (2d Cir. 1971), rev'd on other grounds, 409 U.S. 363, 93 S. Ct. 647, 34 L. Ed. 2d 577 (1973) ("default judgment entered on well-pleaded allegations in a complaint establishes a defendant's liability"). Defendant's default has established its liability to Plaintiff for copyright infringement. Accordingly, Plaintiff seeks the relief set forth below.

**B. The Court Should Award Statutory Damages of \$5600 for Each of the Four Works Infringed, a Permanent Injunction and an Award of Attorneys' Fees and Costs.**

Plaintiff seeks: (1) statutory damages in the amount of \$5600 for each of the four infringements alleged in the Complaint for a total amount of \$22,400; (2) a permanent injunction enjoining Defendant from infringing Plaintiff's copyrights and (3) attorneys' fees and costs in the amount of \$2620.50 (excluding the costs and fees incurred in bringing this motion).

**1. Plaintiff Seeks Statutory Damages of \$5600 for Each of the Four Works Infringed.**

As a result of Defendant's conduct, Plaintiff is entitled to an award of statutory damages of \$5600 for each of the four copyrighted photographs that Defendant illegally displayed on its website. Under 17 U.S.C § 504(c) a party may elect statutory damages, at any time before final judgment is rendered, of a sum of not less than \$750 or more than \$30,000 instead of seeking either actual damages or disgorgement of profits by the defendant. Courts in this and other jurisdictions award statutory damages pursuant to 17 U.S.C. § 504(c) for each separate work infringed. See Twin Peaks Prods., Inc. v. Publications Int'l, Ltd., 996 F. 2d 1366, 1381 (2d Cir. 1993); Gamma Audio & Video, Inc. v. Ean-Chea, 11 F.3d 1106, 1117-18 (1st Cir. 1993); Columbia Pictures Television v. Krypton Broad. of Birmingham, Inc., 106 F.3d 284, 295-96 (9th Cir. 1997); and MCA Television Ltd. v. Feltner, 89 F.3d 766, 768-70 (11th Cir. 1996).

In light of Defendant's default and refusal to pay the compliance fee or negotiate in good faith, Plaintiff opts for statutory damages of five times the original license fee.

While the underlying principle of statutory damages is that damages are appropriate even where they cannot be calculated exactly, "statutory damages should bear some relation to actual damages suffered." RSO Records v. Peri, 596 F.Supp. 849, 862 (S.D.N.Y. 1984). When Plaintiff first learned of the infringement from Picscout, it sent a notice of infringement and a retroactive

license fee of \$5880 to Defendant. Plaintiff calculated this fee by taking the fee for web use for one year (in Defendant's case the amount was \$1960) and multiplying it by three, which is standard practice in the industry. Courts have accepted that multipliers are an appropriate measure of damages for the infringement of photographs. See Bruce v. Weekly World News, 310 F.3d 25 (1st Cir. 2002) (allowing for a multiplier of 5 times the license fee); Van Der Zee v. Greenidge, 2006 U.S. Dist. LEXIS 400 (D.N.Y. 2006) (awarding photographer twice the amount of licensing fees). It was not until legal action was commenced and Defendant refused to settle that Plaintiff learned that Defendant had actually been using Plaintiff's images on its website since 2002. In this case, since the images were used on the Brooks site for nearly four years, Plaintiff would have received approximately \$4480 in licensing fees had the Defendant properly licensed the images in the first place. See Declaration of Geoff Cannon ¶ 27. The compliance fee of \$5880 that was ignored by Defendant was more than fair considering Defendant had the benefit of using Plaintiff's images to advertise its business for nearly four years. The failure of Defendant to pay this fee represents a specific loss to Plaintiff in that amount. Whereas further losses are speculative at best, there would be little deterrent value in awarding damages equal to what a defendant would have paid in acting properly. Therefore Plaintiff believes its request of \$5600 per copyrighted work, for a total amount of \$22,400, to be reasonable and in line with legal precedent.

**c. Only a Higher than Market Value Award of Damages Will Ensure That Defendant Will Be Deterred From Further Infringing Conduct.**

Long ago, the Supreme Court affirmed that the statutory damages remedy of the Copyright Act is designed as much to deter future infringements as to compensate the plaintiff. F.W. Woolworth Co., 344 U.S. at 233 (noting that the "statutory rule, formulated after long experience, not merely compels restitution of profit and reparation for injury but also is designed

to discourage wrongful conduct”). Only an award of damages higher than market value will ensure that the defendant will be deterred from further infringing conduct.

For the purposes of determining statutory damages in the present case, there is no evidence of what profits were derived from the use of the photographs. However, a damages award is necessary to effectuate the statutory policy of protecting original works through deterrence. Thus, even for uninjurious and unprofitable invasions of copyright, the court may, if it deems it just, impose a liability within statutory limits to sanction and vindicate the statutory [deterrence] policy." United States Media Corp. v. Edde Entertainment, Inc., 1998 U.S. Dist. LEXIS 10985, 1998 WL 401532, at \*18 (S.D.N.Y. July 17, 1998). As the Defendant operated a business using a website to rely on advertising and is in a position to repeat the unauthorized reproduction of copyrighted material, there is deterrent value in assessing damages against Defendant.

Defendant's conduct in the present case necessitates a damages award that includes a deterrent factor. Defendant blatantly ignored Plaintiff's retroactive license fee and gave no indication of any willingness to comply with the copyright laws. Rather, they have ignored, or simply elected to become unavailable to participate in, this proceeding. Therefore, this Court's award needs to be sufficiently high to ensure that the Defendant will consider it extremely unprofitable to violate the Plaintiff's copyrights in the future.

**d. An Award of Damages is Needed To Deter Infringing Conduct by Others in the Photo Piracy Business.**

Given the nature of the stock photography business and the purpose behind "rights-managed" images, this Court should render a higher than market value award of damages to ensure a deterrent effect on others besides the Defendant. See, e.g., Walt Disney Co. v. Video 47, Inc., 972 F. Supp. 595, 603 (S.D. Fla. 1996) (noting that the purpose of statutory damages

included “deterrence of further wrongful conduct by the defendants and others”). An infringing Defendant must not reap a benefit from its violation of the copyright laws, i.e., statutory damages should exceed the unpaid license fees so that defendant will be put on notice that it costs less to obey the copyright laws than to violate them. Policing for piracy such as Defendant’s conduct here is notoriously difficult. The internet is an ever expanding universe; with hundreds of thousands of websites formed each day. As a result, copyright owners such as the Plaintiff here cannot locate every photo infringement, gather evidence of infringements, and obtain a judgment against a solvent defendant.

This type of infringement is immensely damaging to the stock photography industry, which sustains itself based on the licensing of images. Accompanying the loss of licensing fees is the harm to Plaintiff’s reputation as a top provider of stock imagery. When a client wishes to license a rights-managed image, it is vital that the stock photo company have an accurate license history for that image so that a client can see where and how the image has been used in the past. It would be against a company’s interest to use images similar to ones used by a competitor, and maintaining accurate licensing records helps ensure that this doesn’t happen. The stock photo company clearly cannot provide accurate information to customers if there are websites that are posting the images without proper licenses to do so. Even more damaging is the effect these infringements have on the exclusivity of the rights. If a client wants to purchase the exclusive rights to use an image for an ad campaign, the company must be able to guarantee this exclusivity. That is the purpose behind “rights-managed” images. If there are unauthorized uses of rights-managed images abound on the web, the company cannot make this guarantee.

Therefore, whenever an infringer is caught and brought before the court, it is particularly important in such cases for the court to award sufficient statutory damages so as to deter others

involved in this illegal activity. A Defendant should not be rewarded for infringing behavior by paying what he would have had to pay if he had properly licensed the image in the first place. This Court's award will go far in protecting the Plaintiff's copyrights by discouraging infringement by others who, without a substantial deterrent, might otherwise feel that it could be worth the risk to see what they can get away with.

**2. No Evidentiary Hearing is Necessary to Award Statutory Damages Where Record Evidence Provides a Sufficient Basis.**

Plaintiff's request for an award of statutory damages does not require the Court to conduct an evidentiary hearing. Courts frequently award statutory damages without a hearing when the plaintiff provides evidence to support its request for greater than the minimum statutory damages. See Original Appalachian Artworks, Inc., 5 U.S.P.Q.2d (BNA) 1516; Fallaci, 568 F. Supp. at 1173; see also Tamarin v. Adam Caterers, Inc., 13 F.3d 51, 54 (2d Cir. 1993) (not necessary to hold a hearing to assess post-default damages where the court relied on affidavits and documentary evidence); Fustock v. Conticommodity Svc., Inc., 873 F.2d 38, 40 (2d Cir. 1989) ("While it is true ... that the damages in this case were neither liquidated nor capable of mathematical calculation, it was not necessary for the District Court to hold a hearing, as long as it ensured that there was a basis for the damages specified in a default judgment").

**3. Plaintiff Seeks a Permanent Injunction Enjoining Defendant from Infringing Any of Its Copyrights.**

Plaintiff requests that this Court enter an order enjoining Defendant from infringing any of Plaintiff's copyrights. Section 502(a) of the Copyright Act specifically provides for injunctive relief: "Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant . . . final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright." 17 U.S.C. § 502(a); see also

Playboy Enters., Inc. v. Webworld, Inc., 991 F. Supp. 543, 561 (N.D. Tex. 1997), aff'd, 168 F.3d 486 (5th Cir. 1999).

Injunctions are regularly issued pursuant to the mandate of Section 502, because “the public interest is the interest in upholding copyright protections.” Autoskill, Inc. v. Nat’l Educ. Support Sys., Inc., 994 F.2d 1476, 1499 (10th Cir. 1993); see also Fame Publ’g Co., 507 F.2d at 668. “[I]t is virtually axiomatic that the public interest can only be served by upholding copyright protections and, correspondingly, preventing the misappropriation of the skills, creative energies, and resources which are invested in the protected work.” Apple Computer, Inc. v. Franklin Computer Corp., 714 F.2d 1240, 1255 (3d Cir. 1983).

Courts also regularly issue injunctions as part of default judgments. See Fitzgerald Publ’g Co., 807 F.2d at 1113; see also Claremont Flock Corp. v. Alm, 281 F.3d 297, 300 (1st Cir. 2002) (affirming award of default judgment and injunction); SEC v. Coldicutt, 258 F.3d 939, 945 (9th Cir. 2001) (affirming refusal to terminate permanent injunction issued on default judgment); Johnson v. Kakvand, 192 F.3d 656, 663 (7th Cir. 1999) (affirming default judgment with injunction); SEC v. McNulty, 137 F.3d 732, 741 (2d Cir. 1998) (affirming default judgment enjoining corporate officer from violating securities laws).

While Defendant has removed the images from the website, Plaintiff has no assurance that Defendant will not display these images on another site in the future. Consequently, Plaintiff seeks a permanent injunction to prevent future harm. Any further or continued use will continue to cause Plaintiff’s irreparable injury that cannot be fully compensated by or measured in money damages. In copyright cases, irreparable harm is presumed on a showing of a reasonable likelihood of success on the merits. See, e.g., Micro Star v. Formgen, Inc., 154 F.3d 1107, 1109 (9th Cir. 1998); Atari, Inc. v. North Am. Phillips Consumer Elec. Corp., 672 F.2d

607, 620 (7th Cir. 1982), superseded by statute on other grounds, as noted in Scandia Down Corp. v. Euroquilt, Inc., 772 F.2d 1423, 1429 (7th Cir. 1985); Global Arts Prod., 45 F. Supp. 2d at 1347.

Damages cannot begin to compensate Plaintiff for the harm caused to its business and the business of its clients who rely on Plaintiff to provide them with exclusive use. The blatant and reckless nature of Defendant's infringements more than warrant the requested injunction.

Moreover, Defendants' failure to respond to Plaintiff's retroactive license as well as the Complaint herein suggests that Defendants do not take seriously the illegality of their infringing activity. Thus, without an injunction, Plaintiff's images would remain vulnerable to continued, repeated infringement.

In light of the scope and nature of Defendant's infringement, the need to protect Plaintiff's copyrighted works, and the public interest, the requested injunction prohibits Defendant from infringing any of Plaintiff's copyrighted images. Courts routinely enjoin infringement of not only the copyrighted works at issue, but all copyrighted works owned by the Plaintiff. See Playboy Enters., 991 F. Supp. at 562 (enjoining infringement of any of plaintiffs' copyrighted images); Global Arts Prod., 45 F. Supp. 2d at 1347 (enjoining defendants from infringing any of the copyrighted works owned by plaintiff, including, but not limited to, those listed in the complaint); Canopy Music, Inc. v. Harbor Cities Broad. Inc., 950 F. Supp. 913, 916 (E.D. Wis. 1997) (enjoining radio station that infringed ten musical composition copyrights "from performing any songs to which ASCAP possesses the right to license"); Columbia Pictures Indus. Inc. v. Babella, 1996 U.S. Dist. LEXIS 7990 at \*10-11 (N.D. Ill. 1996) (enjoining infringing of any of plaintiffs' works).

For the same reasons, and because Plaintiff continually adds new works – works that would be vulnerable to infringement if the injunction were limited to existing works, and that would require new litigation to redress each future infringement – the requested injunction follows standard practice in copyright cases by covering works to be created in the future. See, e.g., Princeton Univ. Press v. Michigan Document Servs., Inc., 99 F.3d 1381, 1392 (6th Cir. 1996) (“The weight of authority supports the extension of injunctive relief to future works”); Olan Mills, Inc. v. Linn Photo Co., 23 F.3d 1345, 1349 (8th Cir. 1994) (permanent injunction includes works created in the future); Basic Books, Inc., 758 F. Supp. at 1542 (enjoining infringement of present and future copyrighted works); Orth-O-Vision, Inc. v. Home Box Office, 474 F. Supp. 672, 686 (S.D.N.Y. 1979) (“[I]t is well within [the Court’s] equitable powers to enjoin infringement of future registered works”).

#### **4. Plaintiff Seeks Costs of Suit and Attorneys’ Fees.**

Plaintiff requests that this Court award them their costs and reasonable attorneys’ fees associated with this action in the amount of \$2633.40, exclusive of the costs and fees incurred in bringing this motion. See Abdi Decl. ¶9, 12. Section 505 of the Copyright Act expressly authorizes courts to award full costs, which may include reasonable attorneys’ fees to the prevailing party. 17 U.S.C. § 505. This Court has discretion whether to award attorneys’ fees to the prevailing party in a suit for copyright infringement. See Fogerty v. Fantasy, Inc., 510 U.S. 517, 534 (1994).

In Fogerty v. Fantasy, Inc., the Supreme Court discussed the factors courts should consider in awarding costs and fees under this statute. Among the factors are “frivolousness, motivation, objective unreasonableness (both in the factual and in the legal components of the case) and the need in particular circumstances to advance considerations of compensation and

deterrence.” Id. at 534 n.19 (quoting Lieb v. Topstone Indus., Inc., 788 F.2d 151, 156 (3d Cir. 1986)). Courts have traditionally applied such considerations in copyright infringement cases. Courts award plaintiffs their full costs and attorneys fees in order to “(1) deter future copyright infringement; (2) ensure that all holders of copyrights which have been infringed will have equal access to the court to protect their works; and (3) penalize the losing party and compensate the prevailing party.” A&N Music Corp., 733 F. Supp. at 959 (E.D. Pa. 1990); Boz Skaggs Music v. KND Corp., 491 F. Supp. 908, 915 (D. Conn. 1980).

This is a case where the Court should exercise its discretion to award Plaintiff its reasonable attorneys’ fees and costs incurred herein. First, because Defendant ignored Plaintiff’s attempts to resolve this matter prior to litigation, Plaintiff was forced to file this action. Second, an award of Plaintiff’s reasonable attorneys’ fees and costs is justified by the Defendant’s conduct and their failure to participate in these proceedings. Third, an award of Plaintiff’s attorneys’ fees and costs will serve the important functions of deterring future infringements and compensating Plaintiff for the fees and costs they were forced to incur in order to protect their copyrights.

Courts regularly award attorneys’ fees and costs on default judgment. See Getaped.com, Inc. v. Cangemi, 188 F. Supp. 2d 398 (D.N.Y. 2002) (awarding attorneys’ fees in default judgment after inquest); J & J Sports Prods. v. Lopez, 2006 U.S. Dist. LEXIS 60105 (D.N.Y. 2006) (awarding attorneys’ fees in default judgment after inquest); BMG Music v. Montes, CV-03-2693 (awarding attorneys’ fees in default judgment against retail store owners); BMG Music v. Billy’s Records, No. 03-21473-VIC (same); Arista Records, Inc., 298 F. Supp. 2d at 1316 (same); Cassette Prods., 1996 U.S. Dist. LEXIS 21549 at \*6 (copyright infringement default

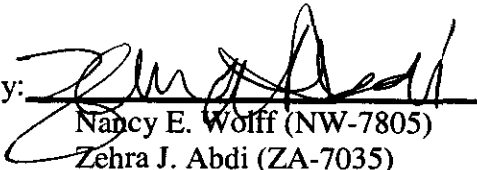
judgment awarding attorneys' fees and costs based on affidavits submitted with application for default judgment)

**IV. CONCLUSION**

WHEREFORE, Plaintiff respectfully request this Court's entry of final default judgment in favor of Plaintiff and against Defendant, for statutory damages in the total amount of \$22,400 (\$5600 for each of the four infringements), for an injunction in the form sought in the Complaint, and for an award of attorneys' fees and costs in the amount of \$2633.40 (excluding fees and costs incurred in preparing this motion).

Dated: New York, New York  
February 28, 2007

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