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# MEMO ENDORSED

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July 6, 2006

## VIA HAND DELIVERY

Honorable Kenneth M. Karas  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 920  
New York, New York 10007

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 7/7/06

**Re: World Wrestling Entertainment, Inc. v. JAKKS Pacific, Inc., et al.**  
**1:04-CV-08223-KMK**

Dear Judge Karas:

On behalf of World Wrestling Entertainment, Inc. ("WWE"), we write to seek clarification on WWE's response to the Defendants' motions to dismiss, which, pursuant to the Court's April 26, 2006 Order, is to be filed tomorrow, July 7, 2006.

As the Court is aware, WWE must respond to Defendants' remaining arguments for the dismissal of WWE's RICO claim as well as the Jakks Defendants' release argument. With regard to the Jakks Defendants' release argument, as I raised at the April 26, 2006 conference (Tr. at 11), WWE contends that the release cannot properly be raised on a Rule 12(b)(6) motion. In addition, the release cannot properly be placed before the Court on Mr. Lerner's affidavit given his lack of personal knowledge necessary to authenticate the document. Under Second Circuit law, an affidavit that is not based on the affiant's personal knowledge is subject to a motion to strike. See *Hollander v. Amer. Cynamid Co.*, 172 F.3d 192, 198 (2d Cir. 1999). In response to the Jakks Defendants' release argument, therefore, we intend to move to strike Exhibit B of Mr. Lerner's affidavit (the settlement agreement containing the release at issue) and all arguments based on that exhibit.

This motion to strike (and memorandum of law in support thereof) constitute WWE's response to the Jakks Defendants' release argument, and are ready to be filed tomorrow in accordance with the Court's April 26 Order. In an abundance of caution in light of Your Honor's Individual Practices, we want to confirm that no pre-motion conference is required with respect to such a motion to strike. To the extent, the Court would deem a pre-motion conference necessary, please treat this letter as a pre-motion letter seeking permission to file the motion to strike and memorandum of law in support thereof with our responsive papers tomorrow. Of

PS-1603073 v1



Kirkpatrick & Lockhart Nicholson Graham LLP

Honorable Kenneth M. Karas  
July 6, 2006  
Page 2

course, the combined responsive papers WWE intends to file tomorrow will not exceed WWE's ninety-five (95) page limit under the Court's April 26 Order.

Respectfully submitted,


  
Jerry S. McDevitt

JSM/sm

cc: All Counsel of Record

*No pre-motion conference is  
necessary on WWE's motion to strike.*

SO ORDERED

  
KENNETH M. KARAS U.S.D.J.  
7/6/06