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MEMORANDUM

April 29, 2009

To: Official Committee of Unsecured Creditors of Muzak Holdings LLC, *et al.* (the
"Committee")

From: Akin Gump Strauss Hauer & Feld LLP

Re: *In re Muzak Holdings LLC, et al., Summary of Pleadings Scheduled for May
13, 2009 Hearing*

I. ADMINISTRATIVE MOTIONS

1. "Bar Date Motion" - Motion of the Debtors for Entry of an Order Establishing Bar Dates for Filing Proofs of Claim, Including for Claims Under 11 U.S.C. § 503(b)(9), Approving the Form and Manner for Filing Proofs of Claim and Approving Notice Thereof

Pursuant to the Bar Date Motion, the Debtors request entry of an order (the "Bar Date Order") establishing the dates by which proofs of claim must be filed and procedures for filing proofs of claims.

Proposed Bar Dates

In order to maintain momentum in these chapter 11 cases and foster the best possible environment for a comprehensive and meaningful plan process, the Debtors request that the Court establish the following bar dates:

- **Bar Date:** The Debtors request that the Court establish July 2, 2009 at 5:00 p.m. prevailing Eastern Time as the date by which all entities (other than governmental units) holding claims that arose or are deemed to have arisen prior to February 10, 2009 (the "Petition Date") must file proofs of claim (the "Bar Date"). The Bar Date will also apply to claims asserted against the Debtors' estates by all claimants asserting administrative expense claims under section 503(b)(9) of the Bankruptcy Code.¹

¹ Section 503(b)(9) of the Bankruptcy Code provides an administrative expense claim equal to the value of goods sold to the Debtors within 20 days of the commencement of their cases, provided such sales were in the ordinary course of the Debtors' businesses. All other claimants asserting administrative claims pursuant to section 503(b) must do so by making separate requests for payment in accordance with section 503(a).

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- Governmental Unit Bar Date: The Debtors request that the Court establish August 10, 2009 at 5:00 p.m. prevailing Eastern Time as the date by which all governmental units holding claims must file proofs of claim (the “Governmental Unit Bar Date”).
- Amended Schedule Bar Date: In the event that the Debtors amend their schedules, the Debtors request claimants holding claims affected by the amendment be required to file proofs of claims with respect to such claims by the later of (i) the Bar Date and (ii) 30 days from the date on which the Debtors provided notice of the amendment to the schedules (or another time period as may be fixed by the Court).
- Rejection Bar Date: The Debtors request that any holder of a claim arising from the Debtors’ rejection of an unexpired lease or executory contract be required to file a proof of claim by the later of (i) the Bar Date and (ii) the date set forth in the order authorizing the Debtors to reject a contract or lease (the “Rejection Order”) or, if no such date is provided in the Rejection Order, then claimants will have no more than 30 days from the date the Rejection Order is entered to file a proof of claim.
- Supplemental Bar Date: The Debtors assert that it may become necessary to establish supplemental bar dates on a limited basis to ensure that all known and unknown creditors receive notice thereof (“Supplemental Bar Dates”). Accordingly, the Debtors seek to establish Supplemental Bar Dates, subject to the written consent of counsel for the Committee, with respect to (i) creditors to whom a re-mailing of the Bar Date Notice is appropriate, but cannot be accomplished in time to provide at least 30-days’ notice of the applicable bar date and (ii) other creditors that become known to the Debtors after the applicable bar date.

Notice of Bar Date

In order to provide appropriate notice of the Bar Date, the Debtors propose to serve all known persons or entities holding potential prepetition claims with written notice of the Bar Date (the “Bar Date Notice”). After the initial mailing of the Bar Date Notice, the Debtors seek to, in their discretion, make supplemental mailings of Bar Date Notices at any time 23 days in advance of the Bar Date. The Debtors also propose to publish the Bar Date Notice in the *Wall Street Journal* and certain regional newspapers and/or trade journals on or before June 7, 2009.

Bondholders Not Required to File Proofs of Claim

The Debtors propose that, among other claim holders, a holder of a claim that is limited exclusively to the repayment of a debt owed under any bond or note issued by the Debtors pursuant to an indenture (a “Debt Instrument”) who would otherwise be subject to the Bar Date need not file proofs of claim; *provided, however* that:

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- The exclusion will not apply to the indenture trustee or designated agent under any of the Debt Instruments or related documents;
- An indenture trustee under a Debt Instrument must file one proof of claim, on or before the Bar Date, with respect to the repayment by the Debtors of principal, interest and other applicable fees, charges or other claims on or under the Debt Instrument;
- Any person or entity that wishes to assert a claim arising out of or relating to a Debt Instrument, other than a claim for the repayment by the Debtors of principal, interest and other applicable fees and charges on or under the Debt Instrument, will be required to file a proof of claim on or before the Bar Date; and
- Any indenture trustee or designated agent under any of the Debt Instruments or related documents will only be required to file a proof of claim against the chapter 11 estates of the Debtors that are the primary obligors on the underlying debt, and if such proof of claim identifies the Debtors, together with their respective chapter 11 case numbers, that are guarantors or otherwise secondary obligors under the applicable Debt Instruments, that proof of claim will be deemed to have been filed against the chapter 11 estate of each guarantor or secondary obligor.

Procedures for Filing Proofs of Claim

The Debtors request that each person or entity that asserts a claim (including section 503(b)(9) claims) that arose before the Petition Date against any of the Debtors, be required to file proofs of claim, substantially in the form attached to the Bar Date Order, so that it is actually received on or before the Bar Date (except in the case of certain exceptions) and that all governmental units file proofs of claim so that they are actually received on or before the Governmental Bar Date. The Debtors also propose that the Court (i) deem the filing of a proof of claim as satisfying the procedural requirements for claimants asserting administrative priority claims under section 503(b)(9) of the Bankruptcy Code; and (ii) require all holders of 503(b)(9) claims to file such claims on or before the Bar Date.

Pursuant to the Bar Date Motion, any person or entity who is required, but fails, to file a proof of claim in accordance with the terms of the Bar Date Order on or before the applicable bar date shall be barred from asserting such claim against the Debtors and prohibited from voting to accept or reject any plan of reorganization filed in these chapter 11 cases or participating in any distribution on account of such claim.

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2. “Removal Extension Motion” - Motion of the Debtors for Entry of an Order Enlarging Period within which Debtors May Remove Civil Actions

By the Removal Extension Motion, the Debtors seek entry of an order enlarging the period of time during which the Debtors may seek removal to federal court of certain pending civil actions (the “Actions”) to which the Debtors are party to no earlier than September 8, 2009 (*i.e.*, a 120 day extension), without prejudice to the Debtors’ right to seek further extensions.

The Actions include, but are not limited to, personal injury cases, discrimination cases, breach of contract actions and other litigation. The Debtors have not currently determined whether any Action should be removed, but contend that they will determine whether to seek removal of any particular Action based on a number of factors, including: (i) the importance of the Action to the expeditious resolution of these chapter 11 cases; (ii) the time required to complete the Action in its current venue; (iii) the presence of federal subject matter jurisdiction in the proceeding that may allow for one or more aspects thereof to be heard by a federal court; (iv) the relationship between the Action and matters to be considered in connection with any future chapter 11 plan, the claims allowance process, and the assumption or rejection of executory contracts and unexpired leases; and (v) the progress made to date in the Action. The Debtors assert that extending the removal period for the Actions will enable them to reach informed decisions concerning the potential removal of any Action.

II. BUSINESS OPERATIONS OF THE DEBTORS

1. “ASCAP Motion” – Motion of the Debtors for Entry of an Order Authorizing the Debtors (A) to Amend and Assume Certain Executory Contracts with the American Society of Composers, Authors and Publishers and (B) to File the Contracts and Letter Agreement Under Seal

By the ASCAP Motion, the Debtors seek entry of an order: (i) authorizing the Debtors to amend and assume the Contracts (as defined below) pursuant to section 365 of the Bankruptcy Code; (ii) authorizing the Debtors to pay the Prepetition Balance (as defined below) to ASCAP and thereby cure all outstanding defaults with respect to the Contracts; and (iii) approving the terms and conditions of the Letter Agreement entered into by and between the Debtors and ASCAP. Specifically, the Debtors seek authority to assume certain licensing agreements that govern the Debtors’ rights to use ASCAP’s musical repertory with respect to the Debtors’ commercial customers (the “Commercial Agreement”) and residential customers (the “Residential Agreement,” and together with the Commercial Agreement, the “Contracts”), subject to a letter agreement between the Debtors and ASCAP that stipulates certain pricing and other adjustments to the Contracts (the “Letter Agreement”).

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Terms of the Letter Agreement

The salient terms of the Letter Agreement and Contracts are as follows:

- The Commercial Agreement shall be modified so that the total license fee paid by the Debtors to ASCAP for calendar year 2009 is reduced to \$6.0 million, to be paid to ASCAP in equal monthly installments (representing a savings of approximately \$800,000 during 2009);
- The Debtors and ASCAP agree that the prepetition balance due to ASCAP with respect to the Contracts is \$681,473.22 (the “Prepetition Balance”);
- The Debtors agree to pay the Prepetition Balance upon entry of a final order approving the ASCAP Motion and at the same time the Debtors agree to report and pay any unpaid post-petition license fees to ASCAP pursuant to the Residential Agreement (calculated as a percentage (2.5%) of adjusted gross revenue from the Debtors’ “Dish-CD” product). The pricing structure of the Residential Agreement are not amended by the ASCAP Motion;
- Since the Debtors paid license fees to ASCAP for the period February 10 – March 31, 2009 at the existing rate pursuant to the Commercial Agreement, the Debtors may apply a credit in the amount of approximately \$111,000 against its license fees payable to ASCAP for the month of April 2009;
- ASCAP and the Debtors have also agreed that, for the period commencing January 1, 2010, in the event that they have not by then agreed on license fees, terms and conditions for a license for the Debtors’ music service, the Letter Agreement shall be deemed an application for an ASCAP license for such service and the interim license fee for such license shall be at the \$6.0 million annual rate negotiated for calendar year 2009;
- The agreement of the parties with respect to interim license fees for periods beginning January 1, 2010 shall be without prejudice to either party’s right to seek modification of the agreed upon interim license fees in a rate proceeding; and
- For the post-petition period and continuing until the end of the license term, the Debtors shall pay license fees to ASCAP in accordance with the terms and conditions of the Residential Agreement.

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Benefits of the Letter Agreement

The Debtors assert that assuming the Contracts under the terms of the Letter Agreement is a proper exercise of their business judgment because the ability to use ASCAP's repertory is vital to music programming and a critical component of their businesses and cannot be substituted by another provider. Moreover, the Debtors contend that the Contracts, as amended by the Letter Agreement, will be beneficial to their estates because the Letter Agreement: (i) provides an \$800,000 reduction in pricing for the Debtors during calendar year 2009; (ii) guarantees that the Debtors maintain access to ASCAP's unique music collection to provide top-flight music programming to their customers; (iii) resolves the \$681,473.22 Prepetition Balance due and owing to ASCAP; (iv) retroactively applies the lower pricing to all 2009 ASCAP amounts paid under the Commercial Agreement, offering an additional \$111,000 in cost savings to the Debtors; and (v) allows the Debtors to credit this "overpayment" as a result of the retroactive application of the Letter Agreement to the April 2009 monthly recurring payment to ASCAP.

Filing the Contracts and Letter Agreement under Seal

The Debtors assert that the Contracts and the Letter Agreement contain highly sensitive information that the Debtors and ASCAP regard as proprietary, sensitive and confidential, including, without limitation, the pricing structures negotiated between the parties. The Debtors contend that public disclosure of such confidential, commercial information could harm the parties' competitive positions. Accordingly, the Debtors filed the Contracts and Letter Agreement under seal and redacted the pricing structure information cited above from the ASCAP Motion.

2. "Employee Compensation Motion" – Motion of the Debtors for Entry of an Order Authorizing the Debtors to (A) Pay Certain Prepetition Compensation, Reimbursable Employee Expenses and Severance Obligations (B) Pay and Honor Certain Prepetition Employee Medical and Similar Benefits and (C) Continue Employee Compensation and Benefits Programs

In the Employee Compensation Motion, which was filed on the Petition Date and approved, in part, on February 12, 2009, the Debtors stated their intent to seek authority to perform obligations under a senior management bonus plan (the "Management Bonus Plan")² and a discretionary bonus program (the "Discretionary Bonus Program," and together with the

² The Debtors state that any employees covered under the KEIP will be ineligible to participate in the Management Bonus Plan.

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Management Bonus Plan, the “Bonus Plans”). The Debtors intend to seek authority to perform their obligations under the Bonus Plans at the May 13, 2009 Omnibus Hearing. The Debtors assert that the total amount owed under the Bonus Plans is \$248,859. Below is a description of each of the Bonus Plans.

The Management Bonus Plan

The Management Bonus Plan provides annual incentive-based bonuses to the Debtors’ senior vice presidents and other executives. The Debtors contend that the purpose of the Management Bonus Plan is to provide incentives to upper management to increase the Debtors’ financial performance. Compensation under the Management Bonus Plan is tied to certain performance targets. Each eligible employee receives compensation under the Management Bonus Plan as a percentage of his base salary. The target compensation categories and corresponding compensation include: (i) EBITDA (15% of base salary); (ii) attainment of budgeted cash flows (7.5% of base salary); (iii) attainment of budgeted net gains (10% of base salary); and (iv) attainment of personal objectives (7.5% of base salary).

Although the Debtors did not achieve their financial targets in 2008, sixteen employees achieved their personal objective targets. Bonuses for attaining personal objectives under the Management Bonus Plan are determined by the Chief Executive Officer and Board of Directors. The Debtors assert that \$98,909 is owed to employees under the Management Bonus Plan based on achievement of 100% of 2008 personal objectives. The Debtors further assert that the payments under the Management Bonus Plan are essential to morale and provide proper performance-based incentives.