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VIA ECF

The Honorable Lewis J. Liman
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Lively v. Wayfarer Studios LLC et al.*, No. 1:24-cv-10049 (LJL)

Dear Judge Liman:

Plaintiff Blake Lively respectfully submits this letter to provide notice of the Second Circuit's recent decision in *Miller v. Lamanna*, --- F.4th ---, No. 24-2314, 2026 WL 643744 (2d Cir. Mar. 9, 2026), which compels the denial of Defendants' motion for judgment on the pleadings (Dkt. No. 813).

In *Miller*, the Second Circuit held that the District Court had "committed procedural error" and abused its discretion when, after discovery and at the summary judgment stage, it dismissed the plaintiff's claims by applying the Rule 12(b)(6) standard to the plaintiff's operative complaint, rather than reviewing the evidence adduced in the summary judgment record. *Id.* at *6. And as the Second Circuit elaborated, "[e]ven if the allegations in the complaint were insufficiently detailed to survive a motion to dismiss had such a motion been made before discovery, if the evidence collected in discovery raised triable issues of fact, it would have been appropriate for [the plaintiff] to amend his complaint to conform to the evidence thus collected. Dismissing the complaint at that stage, when the evidence adduced in discovery may have been sufficient to survive a summary judgment motion, would hardly serve the efficient or just resolution of disputes, which is the very foundation of the Federal Rules." *Id.* at *9; *see id.* at *9 n.8 ("[T]he law does not evince over-concern, especially at later stages of a case, with reverting to the original pleadings when the actual evidence is sufficient to establish a claim or defense later on.").

As Ms. Lively explained in her opposition to Defendants' motion for judgment on the pleadings, the Second Amended Complaint alleges more than enough facts to survive Defendants' motion. Dkt. No. 1055, at , at 5-25. But as Ms. Lively also argued, the motion for judgment on the pleadings is directed at the wrong question, because at this stage of the case Ms. Lively's claims must be evaluated based on the evidence amassed in the summary judgment record. *Id.* at 3-4; *see* Dkt. No. 834, at 3. *Miller* thus confirms that Defendants' motion for judgment on the pleadings must be denied, that it would be "appropriate" to deem the complaint amended to conform to the summary judgment evidence, and that Ms. Lively's claims must be assessed on the basis of that evidence. 2026 WL 643744, at *9.

Respectfully submitted,

/s/ Michael J. Gottlieb

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