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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. MEDICAL CAPITAL HOLDINGS, INC.; MEDICAL CAPITAL CORPORATION; MEDICAL PROVIDER FUNDING CORPORATION VI; SIDNEY M. FIELD; and JOSEPH J. LAMPARIELLO, Defendants.	Case No. SA CV09-0818 DOC (RNBx) **RECEIVER'S EX PARTE APPLICATION FOR APPROVAL OF (A) DISTRIBUTION AGREEMENT WITH IMAGE ENTERTAINMENT, INC., (B) DISTRIBUTION AGREEMENT WITH CAMELOT DISTRIBUTION GROUP, INC., AND (C) REACQUISITION OF RIGHTS AGREEMENT WITH WILLIAM WINOKUR** **[NO HEARING REQUIRED]** Ctrm: 9D Judge: Hon. David O. Carter

TO THIS HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Thomas A. Seaman ("Receiver"), the court-appointed Permanent Receiver for Medical Capital Holdings, Inc., Medical Capital Corporation, Medical Provider Funding Corporation VI, and their subsidiaries and affiliates, including The Perfect Game, LLC (collectively the "Receivership Entities"), hereby applies, *ex parte*, for approval of (a) Distribution Agreement between Image Entertainment, Inc. ("Image") and The Perfect Game, LLC ("TPG"),(b) Distribution Agreement between Camelot Distribution Group, Inc. ("Camelot") and TPG, and (c) Reacquisition of Rights Agreement between Laurel Street Holdings, LLC, Lone Runner Productions, LLC and William Winokur (collectively, "Winokur") and TPG.

I. INTRODUCTION

To date, the Receiver has been unable to recoup any of the more than $18 million the Receivership Entities previously provided to the motion picture entitled *The Perfect Game* (the "Film"). In January, at the request of TPG, the Court approved a distribution agreement under which MIP Film Partners, LLC ("MFP") acquired the exclusive right to exploit the Film under certain terms and conditions ("MFP Agreement"). Unfortunately, the theatrical release of the Film by MFP generated gross revenues substantially lower than expected. As discussed further below, MFP defaulted in the performance of certain of its key obligations under the MFP Agreement with respect to the theatrical release and contemplated home entertainment release. As a result of these defaults, TPG terminated the MFP Agreement and the rights of MFP thereunder in July 2010. Believing that potential replacement distributors would require a judicial determination of rights to the Film before agreeing to step in, TPG commenced an arbitration against MFP in August 2010 to obtain an order confirming the termination of the MFP Agreement and TPG's exclusive control of any further exploitation of the Film. ("Arbitration"). MFP disputes the termination and has asserted counterclaims. Although TPG sought to have a January date set for the Arbitration hearing, at the request of MFP, the Arbitrator agreed to delay the hearing until mid-February.

In the meantime, a key window in which to exploit the Film in the domestic home entertainment market is rapidly closing, and the list of capable and willing distributors is about to reach zero. The Film was released by MFP in theatres in the

United States and Mexico in April 2010 and closed within a few weeks thereafter.[1] Films are generally released in the domestic home entertainment market between four and five months after their run in theatres has concluded. The home entertainment release is therefore already substantially overdue. Nevertheless, Image, which proposes to distribute the Film in the United States and Canadian home entertainment markets (including DVDs and television), has a strategy for home entertainment release even at this late date – provided it is able to go forward immediately. Given the subject matter of the film (the true story of a late 1950's team from a poor area of Monterrey, Mexico which overcomes adversity to become the first foreign team to win the Little League World Series), Image states that the start of Little League Baseball and Major League Baseball in April is the optimal time for release of the Film into the domestic home entertainment market. This will provide opportunities to advertise and market the Film to Little Leaguers as well as baseball fans of all ages. If this window passes, Image has expressed doubt that a later release would be economically viable.

For these and other reasons set forth below, subject to Court approval, TPG has executed a distribution agreement with Image ("Image Agreement"). The lead time required to prepare for the desired home entertainment release (which requires the distributor to enter into agreements with sale and rental retailers and manufacture and deliver DVDs to these retailers from elements provided by TPG that are not yet completed) makes approval of the Image Agreement on an expedited basis absolutely critical. Notably, all other distributors acceptable to TPG (which had the right to approve all so-called "non-major" home entertainment distributors under the MFP Agreement) have now passed on the Film. Image is the only

[1] Although MFP had worldwide distribution rights under the MFP Agreement, it never presented to TPG or entered into any sub-distribution agreements for distribution of the Film (theatrical or otherwise) outside the United States, Mexico and a few theatres in Canada.

distributor left, and it requires immediate approval in order to be able to exploit the April window.

Subject to Court approval, TPG has also executed a distribution agreement with Camelot for distribution of the Film in foreign markets in all media ("Camelot Agreement"). The first objective of Camelot is to release the film theatrically in countries with significant connections to baseball and youth baseball leagues (such as Mexico, Latin American countries, Korea and Japan). Camelot has explained that the optimal months in which to release the Film in certain foreign theatrical markets are January and February. Camelot needs less lead time to prepare for theatrical release in these countries because the film elements necessary to strike the prints that will be exhibited already exist as a result of the prior United States distribution of the Film. However, in order to release the Film on the schedule Camelot requires, it is critical that the Camelot Agreement be approved as soon as possible.

Finally, TPG needs to reacquire the story rights from the author of the story on which the Film is based, William Winokur. Due to the failure of TPG to make all of the required payments to Winokur under the initial pre-receivership agreements between TPG and Winokur, in August 2009, TPG entered into a supplementary agreement with Winokur and MFP to acquire the rights (the "August 2009 Winokur Rights Agreement"). Under the August 2009 Winokur Rights Agreement, Winokur was to receive two payments. MFP failed to make the second payment in the amount of $440,000 by August 20, 2010. Pursuant to the terms of the August 2009 Winokur Rights Agreement, the rights automatically reverted to Winokur. Winokur has now agreed to sell the rights to TPG on certain terms and conditions discussed below ("Winokur Agreement"). The Film cannot be exploited by TPG or its distributors without ownership of the story rights. Accordingly, it is critical that the Winokur Agreement be approved in conjunction with the Image and Camelot Agreements.

The relief sought herein by the Receiver does not circumvent the Arbitration. While the Receiver has determined that immediate action is necessary to preserve the value of this asset, in order to avoid any potential prejudice to MFP, the Receiver proposes that all money (with the exception of certain amounts which must be paid to Winokur under the Winokur Agreement) which TPG ultimately receives from the future exploitation of the Film under the Image and Camelot Agreements be set aside and held until the Arbitration is concluded. Accordingly, in order to balance the needs for TPG to take immediate action and protect Image and Camelot against subsequent interference with their distribution of the Film, with the need to preserve the rights of the parties under the Arbitration, the proposed order sought by TPG includes the following provisions:

(a) TPG is authorized to enter into the Image, Camelot and Winokur Agreements, which agreements and the rights granted under them are binding on and enforceable against all persons having an interest in the Film;

(b) The order does not impact the Arbitration or decide any of the issues raised therein; and

(c) Other than amounts required to be paid to Winokur (discussed below), the Receiver will set aside all net proceeds received by TPG from the Image and Camelot Agreements, and certain sums received from theatrical distribution of the Film which are being held by the theatrical booker of the Film until the Arbitration is resolved.

Even if the Arbitrator were to reinstate the MFP Agreement, which TPG believes is unlikely, MFP would probably not be able to actually distribute the Film in the home entertainment market. First, MFP lacks the infrastructure, personnel and financial resources to itself effectuate home entertainment distribution.[2]

[2] Paragraph 6(b) of the MFP Agreement specifies that "Distributor shall engage Warner Bros. or Sony Pictures or another major distributor mutually approved by the parties hereto, for provision of DVD/VOD/Rentals for the Picture, provided that commercially reasonable terms can be obtained." This provision was

Second, MFP has, for all practical purposes, abandoned the Film. Since being terminated as the distributor in July 2010, it has made no attempt to bring an acceptable home entertainment distributor to TPG for approval – by way of settlement or otherwise. Third, the story rights which must be possessed by TPG and any distributor in order to exploit the Film in any additional markets have expired as a result of MFP's failure to pay Winokur any of the $440,000 required to be paid to him by August 20, 2010. Although it appears insufficient revenues were generated from the theatrical distribution of the Film by MFP to have paid the full $440,000, MFP failed to make <u>any portion</u> of the second payment to Winokur in accordance with the August 2009 Winokur Rights Agreement. Although well in excess of $1 million was paid to the sub-distributor representative of MFP out of box office receipts in Mexico, no portion of these receipts were paid into the so-called "lock box" account under the joint control of MFP and TPG as required under the MFP Agreement and the sub-distribution agreement between MFG and its Mexican sub-distributor. Instead, over $1 million was paid to Mexican affiliates of MFP.[3] (Declaration of William Winokur, ¶ 3).

In light of MFP's rejection of all but one prior proposed home entertainment distributor, its relinquishment of any right to the story rights for the Film (see Declaration of William Winokur, ¶ 3), and its failure to propose any home entertainment distributors since its termination, TPG believes it is highly unlikely that MFP would be able to obtain deals with distributors acceptable to TPG on terms as favorable as those presented herein. However, even if the Arbitrator disagrees and awards MFP damages, the net proceeds received by TPG from distribution of the Film in the home entertainment market will be set aside and available to MFP.

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included at the instance of TPG to insure an experienced and adequately resourced home entertainment distributor would be utilized because MFP could not itself perform this function.

[3] MFP has failed to respond to TPG's requests for an accounting of the receipts received from Mexican theatrical distribution.

Accordingly, approval of the proposed agreements and exploitation of the Film by Image and Camelot would not harm MFP in any material way.

II. EX PARTE NOTICE

Prior to filing, the Receiver circulated this Application to counsel for the Securities and Exchange Commission, counsel for Defendants Field and Lampariello, and counsel for MFP. The Receiver was advised by their respective counsel that the Securities and Exchange Commission has no opposition, and Defendants Field and Lampariello do not anticipate filing any opposition. MFP proposed a dismissal of all claims in the Arbitration, which proposal the Receiver is considering. In the absence of such a dismissal, MFP opposes the Application.

III. BACKGROUND FACTS

A. The Film

TPG is a North Carolina limited liability company formed prior to the institution of the Receivership for the purpose of financing, owning, producing and distributing the Film. Medical Provider Financial Corporation IV ("MPFC IV") owns an economic interest resulting from its equity investments and loans in TPG totaling over $18 million. Medical Capital Holdings, Inc. ("MCHI") holds 75% of the voting rights in TPG. Pursuant to the organizational documents for TPG, MCHI has designated the Receiver as the sole manager of TPG. (Declaration of Thomas Seaman ("Seaman Decl."), ¶ 2).

B. The Pre-Receivership Distribution Agreement

In December 2007, MCHI retained Christian Tureaud and David Salzberg of High Road Entertainment Group, an entity in which a Receivership Entity holds a substantial interest, to secure a distribution deal for the Film. (Declaration of Christian Tureaud ("Tureaud Decl."), ¶ 1). By the time the Film was completed in June 2008, Mr. Tureaud and Mr. Salzberg had secured a worldwide distribution agreement, including domestic theatrical release, from Lionsgate Entertainment ("Lionsgate") for a release date in August 2008. (*Id.* at ¶ 3). The agreement with

Lionsgate required that TPG provide its own prints and advertising funds ("P&A Funds") in the amount of $15 million, which was to be supplied by MPFC IV. (*Id.*). However, MPFC IV failed to provide all of the necessary P&A Funds and Lionsgate cancelled the release of the Film in mid-July 2008. (*Id.* at ¶ 4). Mr. Tureaud and Mr. Salzberg were only able to negotiate the return of all distribution rights to the Film to TPG in December 2008. (*Id.* at ¶ 5).

C. The Post-Receivership Agreements with MFP

Although Mr. Tureaud and Mr. Salzberg continued diligent efforts in the following months to secure a domestic distribution agreement for the Film, they were unable to do so until August 2009. (*Id.* at ¶ 6).

1. The Assignment of Distribution Rights Agreement

On August 19, 2009, TPG entered into an Assignment of Distribution Rights Agreement ("ARA") with MFP under a threat to immediately distribute the Film in Mexico in order to satisfy the claims of certain Mexican creditors of production of the Film. [4] Under the ARA, MFP received the foreign distribution rights to the Film in consideration of providing $250,000 needed to pay these creditors of the Film. MFP also obtained the right to acquire the sole and exclusive domestic rights for sale and distribution of the Film for a period of 30 days. To retain the domestic rights beyond this 30-day period, MFP was required to secure P&A Funds of at least $3.5 million. If MFP was unable to timely secure at least $3.5 million in prints & advertising funds ("P&A Funds"), the domestic rights to the Film assigned to MFP by TPG would be rescinded and returned to TPG. When the 30-day period expired on September 18, 2009, and MFP had not secured $3.5 million, its domestic

[4] Pursuant to the ARA, MFP received the foreign distribution rights to the Film in return for providing approximately $250,000 needed by TPG to avoid threatened foreign distribution by an unpaid vendor in possession of prints in Mexico. Given the adverse impact this would have had on distribution of the Film in the U.S., the Receiver authorized the Agreement to avoid immediate dissipation of the value of the Film (i.e. the likely sale of pirated copies in Mexico would have severely decreased the value of domestic distribution rights). (McIntosh Decl., ¶ 5).

distribution rights to the Film terminated. However, MFP retained its foreign distribution rights (which included Mexico). (Tureaud Decl., ¶¶ 7-9; McIntosh Decl., ¶¶ 5-6).

On October 16, 2009, the Receiver applied *ex parte* for an order permitting the Receiver to amend the ARA to extend MFP's domestic rights for sale and distribution of the Film for an additional 30 days. (Docket # 93). The application was unopposed, and the Court approved the amendment to the ARA on October 20, 2009. (Docket # 96).

Concurrently with entering into the amendment to the ARA with MFP, the Receiver and his consultants continued conferring with potential new sources of P&A Funds and domestic distribution, and addressed various issues for finalizing and marketing the Film. (Tureaud Decl., ¶ 10). Although other parties expressed interest in distributing or purchasing the Film, MFP was the only party which was ultimately willing to enter into a distribution agreement for the Film and provide the P&A Funds needed to enable theatrical distribution of the Film. (*Id.* at ¶ 12).

2. <u>The Distribution Agreement</u>

On January 25, 2010, the Court approved the MFP Agreement. Pursuant to the MFP Agreement, TPG, as the owner of the Film, granted a license to MFP, as the distributor of the Film, to distribute, exhibit and exploit the Film worldwide in the various media and outlets in which TPG and MFP believed the Film could be exploited for specified periods on specified terms. (Seaman Decl., ¶ 6; McIntosh Decl., ¶ 10).

Pursuant to the MFP Agreement, MFP was required to provide at least $5,122,500 in P&A Funds. Because MFP had no prior experience as a distributor of motion pictures, the MFP Agreement additionally required, *inter alia*, that (a) all P&A Funds be provided by MFP; (b) a lock-box account under the joint control of MFP and TPG be opened into which all revenues received by MFP would be deposited (with payments therefrom to be approved by both TPG and MFP); (c) a major home entertainment distributor be utilized for DVD distribution provided commercially reasonable terms could be obtained; (d) MFP keep complete and accurate records regarding distribution of the Film and permit TPG to do a full audit of its books and records regarding the Film; (e) that $440,000 would be paid to Winokur from the net revenues in accordance with the August 2009 Winokur Rights Agreement; and (f) that MFP would be responsible for all print, advertising and related costs and expenses for the Film which would be paid from the P&A Funds. (Seaman Decl., ¶ 7; McIntosh Decl., ¶ 11).

An April 2010 theatrical release date was carefully selected to provide the Film with the best chance for success. The release date was chosen to coincide with the typical "spring break" holiday prior to Easter, and with the start of the Little League and Major League Baseball seasons in the United States. (Tureaud Decl., ¶ 13).

The revenues generated from the theatrical release were substantially lower than anticipated. (*Id.*). Despite releasing the Film in over 400 theatres in the United States, the Receiver believes that there was very little advertising and promotion of the Film for many of the theatres in which the Film was exhibited. Pursuant to its audit rights under the MFP Agreement, TPG requested information from MFP regarding amounts it expended on P&A. MFP failed to provide all of the required documentation. The information provided indicates that MFP spent at least $1.6 million less than it was required to spend. (Seaman Decl., ¶ 8; McIntosh Decl., ¶ 12). The Receiver has since received correspondence from numerous vendors and service providers to MFP stating they have unpaid claims totaling over $2.5 million. (McIntosh Decl., ¶ 12).

TPG believes, and has notified MFP of the same, that MFP breached the MFP Agreement in numerous respects, including, the following:

(a) Failing to expend the required $5,122,500 in P&A required under the MFP Agreement or to provide all P&A Funds utilized in the distribution of the Film, instead obtaining certain of these funds from Mexican third parties not approved by TPG;

(b) Failing to cooperate with TPG in the establishment of the required lock-box account and instead causing or permitting over $1 million in Mexican theatrical revenues to be paid to Mexican affiliates of MFP (without providing an accounting of these expenditures);

(c) Failing to maintain complete records of the distribution of the Film and failing to comply with TPG's full audit rights to MFP's distribution records for the Film;

(d) Failing to engage a home entertainment sub-distributor acceptable to TPG as required by the MFP Agreement; and

(e) Failing to pay Winokur amounts to which he was entitled under the August 2009 Winokur Rights Agreement. (Seaman Decl., ¶ 9; McIntosh Decl., ¶ 13).

Accordingly, on July 26, 2010, TPG terminated the MFP Agreement. As a result of the termination, and as provided under the MFP Agreement, all rights to the Film automatically reverted to TPG. MFP disputes the termination and contends that TPG breached the MFP Agreement. (Seaman Decl., ¶ 10; McIntosh Decl., ¶ 14).

3. The Arbitration

On August 26, 2010, pursuant to the arbitration provision in the MFP Agreement, TPG commenced the Arbitration against MFP before the Independent Film & Television Alliance ("IFTA"). In anticipation of the fact that replacement distributors would require a judicial determination of the rights to the Film, TPG's arbitration demand seeks a declaration that TPG properly terminated the MFP Agreement. On November 3, 2010, MFP answered TPG's arbitration demand and asserted counterclaims against TPG. MFP seeks damages and a declaration that TPG did not have the right to terminate the MFP Agreement and that it remains in full force and effect. Although TPG requested that the Arbitration commence in January 2011, the Arbitrator granted MFP's request that the arbitration not commence until February 15, 2011. (McIntosh Decl., ¶ 15).

D. The Image and Camelot Distribution Agreements

Since the MFP Agreement was terminated, the Receiver, with the assistance of Mr. Tureaud and Mr. Salzberg, has carefully monitored the market for distribution deals to exploit the Film in domestic and foreign markets not yet exploited.[5] Several of the potential partners for such deals had already unsuccessfully sought distribution rights from MFP, and were no longer interested. Others are not interested as a result of the Film's poor performance in domestic theatres. (Tureaud Decl., ¶ 14).

Nevertheless, subject to Court approval, the Receiver has been able to negotiate a domestic home entertainment distribution agreement with Image, and a foreign distribution agreement with Camelot. The Image and Camelot Agreements are attached to the Seaman Declaration as Exhibits A and B, respectively. The Receiver and his consultants believe that the Image and Camelot Agreements constitute the best opportunities for TPG to realize a significant return on its investment in the Film. (Seaman Decl. ¶ 11; Tureaud Decl. ¶ 15). There are no other acceptable distributors interested in distributing the Film. (Tureaud Decl. ¶ 15). Neither the Image Agreement, the Camelot Agreement nor the Winokur Agreement require the receivership estate to expend significant sums in order to obtain additional distribution of the Film.[6] (McIntosh Decl. ¶ 22).

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[5] To date, the Film has been released in theatres only in the United States and Mexico, and a few theatres in Canada.

[6] The receivership estate will only incur amounts necessary to deliver the elements of the Film to Image and Camelot and to provide errors & omissions insurance coverage. The Receiver estimates that these costs will total less than $25,000.

1. The Image Agreement

Under the Image Agreement, Image will receive an exclusive license to distribute, exhibit and exploit the Film in the United States and Canada for a fifteen-year term.[7] Image will advance $250,000 to TPG as a "minimum guaranty" in consideration of the grant of these rights The minimum guaranty is non-refundable unless TPG defaults under the agreement. The gross revenues from Image's exploitation of the Film will be allocated as follows: (a) 25% to Image as its distribution fee; (b) reimbursement to Image for its deductible distribution related costs (as defined in the agreement); and (c) reimbursement to Image for the $250,000 advance, plus interest. The remaining revenues (or "net profits") will be allocated 90% to TPG and 10% to Image. (McIntosh Decl., ¶ 16).

The Image Agreement is contingent on obtaining Court approval on an expedited basis in order to give Image sufficient lead time for a home entertainment release in April 2011. Like the theatrical release of the Film, the home entertainment release date was carefully selected to coincide with the typical "spring break" holiday prior to Easter, and with the start of the Little League and Major League Baseball seasons in the United States. Image ordinarily requires at least four months to prepare for a home entertainment release. They have indicated they believe they can nevertheless place the Film into release in the home entertainment market by the April date desired if the Court approves the Image Agreement on or before February 1, 2011. If this does not occur, the Image Agreement gives them the right to terminate their obligation to distribute the Film. (McIntosh Decl., ¶ 17).

[7] The Image Agreement includes a carve out under which TPG reserves the right to distribute the Film for exhibition by churches and other faith-based organizations, and can sell DVDs directly to Boys & Girls Clubs, Latino Coalition, Amway and Little League. Messrs. Salzberg and Tureaud believe these rights to be worth between $250,000 and $500,000 to TPG. (Tureaud Decl., ¶ 16).

2. The Camelot Agreement

Under the Camelot Agreement, Camelot will receive an exclusive license to distribute, exhibit and exploit the Film worldwide, excluding the United States and Canada, for a seven-year term. Camelot will advance $75,000 to TPG as a minimum guaranty. As with the Image Agreement, the Camelot minimum guaranty is non-refundable unless TPG defaults under the agreement. The gross revenues from Camelot's exploitation of the Film will be allocated as follows: (a) 20% to Camelot as its distribution fee; and (b) reimbursement to Camelot for its recoupable expenses (as defined in the agreement), including the $75,000 advance. All remaining revenues will be paid to TPG. (McIntosh Decl., ¶ 18).

As indicated above, Camelot has stated that the optimal months in which to release the Film in certain foreign theatrical markets are January and February. Camelot believes it can place the Film into theatrical release in such markets by February provided the Camelot Agreement is approved by February 5, 2011. If the Camelot Agreement is not approved by the Court by such date, Camelot has the right to terminate its obligations under the Camelot Agreement. (McIntosh Decl., ¶ 19).

E. The Winokur Agreement

As discussed above, pre-receivership agreements between TPG and Winokur to acquire the story rights were never consummated because TPG failed to make the required payments. As a result, in August 2009, TPG executed the August 2009 Winokur Rights Agreement with Winokur and MFP to acquire these rights. Under the agreement, Winokur was to receive two payments for a total of $657,000. MFP failed to make the second payment in the amount of $440,000. Accordingly, Winokur terminated the agreement and the rights automatically reverted to him. (McIntosh Decl., ¶ 20; Winokur Decl. ¶ 2).

Under the Winokur Agreement, which is attached to the Seaman Declaration as Exhibit C, Winokur will be paid a maximum of $284,000 as follows:

(a) $125,000 from the minimum guaranties received from non-theatrical distribution agreements, (b) fifty (50%) percent of all monies received by TPG under the MFP Agreement, and (c) fifteen (15%) percent of all monies received by TPG from all other distribution and exploitation of the Film in all media. (McIntosh Decl., ¶ 21).

The Film cannot be exploited by TPG or its distributors without ownership of the story rights. Accordingly, it is critical that the Winokur Agreement be approved in conjunction with the Image and Camelot Agreements.

IV. ARGUMENT

A. <u>Ex Parte Relief is Appropriate</u>

The Image and Camelot Agreements are time sensitive in that Image and Camelot will likely walk away unless approval is obtained on an expedited basis which provides them sufficient lead time in advance of their respective target release dates. The value of the agreements to Image and Camelot is based on the Film's performance, which in turn depends on, among other things, the timing of its release. Therefore, it is reasonable for Image and Camelot to condition their agreement on expedited Court approval. The Film cannot be exploited by TPG or its distributors without ownership of the story rights. Accordingly, the Winokur Agreement must be approved in order for the Image and Camelot Agreements to take effect.

B. <u>The Image and Camelot Agreements</u>

Image, although not considered a "major" distributor, is a well-established film distributor which utilizes Sony for its so-called "back room" distribution in the home entertainment market. (Tureaud Decl. ¶ 17). The Receiver believes that Image has the knowledge, expertise and personnel to support a successful domestic home entertainment release of the Film. The Image Agreement is the product of substantial negotiations between the parties. The Receiver believes that the Image Agreement presents the best opportunity for TPG to realize a significant return from the domestic home entertainment release of the Film.

Like Image, Camelot is a well-established film distributor. Camelot has particular expertise in the distribution and exploitation of films in foreign markets. (Tureaud Decl. ¶ 18). The Camelot Agreement is the product of substantial negotiations between the parties. The Receiver believes that the Camelot Agreement presents the best opportunity for TPG to realize a significant return from the release of the Film in foreign markets.

As noted above, in light of the pending Arbitration, which involves, among other things, whether the MFP Agreement has been terminated or remains in effect, the proceeds received by TPG under the Image and Camelot Agreements (other than $125,000 of the monies to be paid to Winokur under the Winokur Agreement) will be set aside. The proposed order also provides that (a) TPG is authorized to enter into the Image, Camelot and Winokur Agreements, which agreements are binding on and enforceable against all persons having an interest in the Film, and (b) the order does not impact the Arbitration or decide any of the issues raised therein.

Granting the relief requested herein will not harm MFP. MFP will not incur any costs in connection with exploitation of the Film by Image and Camelot. The Arbitrator will decide whether TPG properly terminated the MFP Agreement, and whether MFP has any valid claims for damages. Even if the Arbitrator were to decide that TPG did not have the right to terminate the MFP Agreement, and the MFP Agreement were reinstated, TPG would have to approve all sub-distribution agreements. It is very unlikely that any distribution deals, let alone deals superior to those proposed herein, could be obtained by MFP. Moreover, if the Arbitrator were to determine that MFP has valid damage claims, the proceeds received by TPG under the Image and Camelot Agreements will be available to satisfy such claims. Accordingly, approval of the Image and Camelot Agreements does not harm MFP in any material way.

C. The Winokur Agreement

Like the Image and Camelot Agreements, the Winokur Agreement is the product of substantial negotiations between the parties. Winokur will receive less under the Winokur Agreement than he was promised in connection with prior agreements. Like TPG, however, Winokur is motivated to (a) have the Film distributed, (b) take advantage of this key window for the Film to enter the domestic home entertainment market, and (c) maximize the net revenues from distribution of the Film. The Receiver believes that the Winokur Agreement is the best deal available to acquire the story rights, which TPG must have in order to exploit the Film. Accordingly, the Winokur Agreement should be approved.

V. CONCLUSION

Based on the foregoing, the Receiver requests expedited approval of the Image, Camelot and Winokur Agreements.

Dated: January 12, 2010

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