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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. 8:09-cv-0818-DOC (RNBx) **DECLARATION OF DANIEL G. McINTOSH IN SUPPORT OF 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** Ctrm: 9D Judge: Hon. David O. Carter

I, Daniel G. McIntosh, declare as follows:

1. I am a partner at the law firm of Allen Matkins Leck Gamble Mallory & Natsis LLP, and one of the attorneys representing Thomas A. Seaman, the Court-appointed permanent receiver for Medical Capital Holdings, Inc., Medical Capital Corporation, and Medical Provider Funding Corporation VI, and their subsidiaries and affiliates, including The Perfect Game, LLC (collectively, "Medical Capital" or the "Receivership Entities"). The following facts are within my knowledge and if called as a witness I would testify to them under oath.

2. I have represented clients in the entertainment industry for over thirty years and am familiar with the range of terms available to independent producers of motion pictures seeking prints and advertising to support theatrical distribution and release of their picture. In addition, I have consulted with persons in the entertainment industry (including the former head of independent film at a major talent agency who evaluated the Film, described below, for the Receiver), who are familiar with the prospects for distribution of motion pictures with a story and cast similar to the Film, regarding the expected cost of obtaining prints and advertising monies and the range of distribution terms (including distribution fees and terms of licenses) offered by distributors for independent films similar to the Film.

<u>The Film</u>

3. One of the Receivership Entities, Medical Provider Funding Corporation IV ("MPFC IV"), owns an approximate 39.3% economic interest in The Perfect Game, LLC ("TPG"). TPG possesses certain priority rights as to distribution of profits earned from the motion picture entitled *The Perfect Game,* a film produced and owned by TPG (the "Film"). The Film, which was made in 2008, stars Clifton Collins, Jr. and Cheech Marin in the principal lead and supporting roles. The Film was written by W. William Winokur and directed by William Dear, who has directed a number of other theatrically released motion pictures, including *Angels in the Outfield* and *Harry and the Hendersons*. The Film tells the

inspirational true story of a Mexican team of little leaguers who won the Little League World Series in 1957.

4. MPFC IV made loans and investments to TPG in the approximate total amount of $18 million, secured by all TPG's assets, including its rights in the Film. Separate from the economic interest held by MPFC IV, Medical Capital Holdings, Inc. holds 75% of the voting rights in TPG. Pursuant to this voting power, the Receiver currently serves as the Chief Manager of TPG.

The Assignment of Distribution Rights Agreement

5. On or about August 19, 2009, TPG entered into an Assignment of Distribution Rights Agreement ("ARA") with MIP for the purpose of obtaining monies needed to pay certain providers of goods and services in Mexico to the Film, and to obtain distribution and prints and advertising monies necessary to obtain distribution for the Film. Pursuant to the ARA, MIP agreed to provide $250,000 to these providers of goods and services, who were threatening to force release of the Film in Mexico prior to its release in the United States in order to generate revenues to pay their claims. Such release would have caused serious adverse effects to the distribution of the Film in the United States, which is a much larger market, by (among other things) providing a ready supply of pirated prints and illegal in-theater filming that could have been sold illegally in the United States.

6. In return for providing the $250,000 required by TPG to satisfy the Mexican claimants, MIP obtained foreign distribution rights (i.e., all territories other than the United States) and the right to receive a 25% foreign distribution fee from foreign revenues. MIP also obtained domestic distribution rights for 30 days during which time it agreed to seek at least $3.5 million in prints and ads monies ("P&A Funds") to support the theatrical release of the Film worldwide. Retaining domestic distribution rights beyond the initial 30 days required that MIP demonstrate it had received commitments for at least $3.5 million in P&A Funds within such 30 day period. Given the need to quickly execute the ARA to avoid the threatened

premature release of the Film in Mexico, the Receiver, on the advice of entertainment industry advisers and counsel, authorized the signing of the ARA to avoid the immediate loss of value to the Film that would have resulted from premature exhibition of the Film in Mexico.

7. When MIP was unable to obtain definitive commitments during its 30 day domestic distribution rights possession period, it requested an extension of time to continue to seek funds. After consulting with counsel and the entertainment advisers who had been seeking distribution and prints and ads monies for some time, and while continuing to pursue alternatives, the Receiver determined to grant MIP additional time to raise the P&A Funds needed to support distribution of the Film.

8. An amendment was therefore negotiated and presented to the Court, which approved the proposed amendment to the ARA.

9. After the amendment to the ARA was approved, the Receiver was contacted by a few parties expressing preliminary interest in purchasing the Receivership Entities' interest in the Film. The purchase prices discussed by such parties were very low ($1-2 million) because, among other reasons, the Film had many debts that would have to be satisfied before the Film could be released. None of the parties who expressed preliminary interest in purchasing all of the Receivership Entities' interest ever submitted a written purchase offer.

The MFP Agreement

10. On January 25, 2010, the Court approved the Distribution Agreement with MFP ("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.

11. 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.

12. The revenues generated from the theatrical release were substantially lower than anticipated. 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 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. The Receiver has since received correspondence from numerous vendors and service providers to MFP stating they have unpaid claims totaling over $2.5 million.

13. 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.

14. 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.

The Arbitration

15. 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.

The Image Agreement

16. Under the proposed 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. 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.

17. 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.

The Camelot Agreement

18. 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.

19. 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.

The Winokur Agreement

20. Pre-receivership agreements between TPG and William 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 a supplementary 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.

21. Under the proposed Winokur Agreement, 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.

22. 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.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 11, 2011, at Los Angeles, California.

Daniel G. McIntosh