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**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

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INCENTIVE CAPITAL, LLC, a Utah Limited  
 Liability Company,

Plaintiff,

v.

CAMELOT ENTERTAINMENT GROUP,  
 INC., a Delaware Corporation; CAMELOT  
 FILM GROUP, INC., a Nevada Corporation;  
 CAMELOT DISTRIBUTION GROUP, INC.,  
 a Nevada Corporation, ROBERT P. ATWELL,  
 an individual; JAMIE R. THOMPSON, an  
 individual; STEVEN ISTOCK, an individual;  
 TED BAER, an individual; PETER  
 JAROWEY, an individual,

Defendants.

**PLAINTIFF'S OPPOSITION TO [2<sup>ND</sup>]  
 MOTION BY DEFENDANT PETER  
 JAROWEY FOR AN ORDER QUASHING  
 SERVICE PURSUANT TO RULE 12(b)(5)**

Civil No. 2:11-cv-00288

Judge Clark Waddoups

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Plaintiff Incentive Capital, LLC ("Plaintiff" or "Incentive"), by and through counsel,  
 hereby submits this Opposition to the 2<sup>nd</sup> Motion by Defendant Peter Jarowey for an Order  
 Quashing Service Pursuant to Rule 12(b)(5) ("Motion to Quash").

## ARGUMENT

Defendant Jarowey argues that Plaintiff's second attempt to serve the Amended Complaint on Peter Jarowey II (senior) was ineffective because Mr. Jarowey was apparently attending a funeral on July 23, 2011. Defendant argues that the process server perjured himself in executing the summons. Mot. to Quash, at 4. Additionally, Defendant states that Plaintiff "misled the Court about personally serving the correct Peter M. Jarowey" when it filed the executed summons with the Court [Docket Entry No. 78]. *Id.*, at 3-4. The remainder of Defendant's brief primarily deals with recounting the history of the first complaint and service on Peter Jarowey Jr. This aspect of Defendant's brief is irrelevant to the present issue.

On July 22, 2011, the process server Mr. Cabral made a first unsuccessful attempt at service on Defendant Jarowey. **Exhibit A**, Cabral Decl., at ¶ 4. Mr. Cabral took a photograph of Defendant's home and emailed it to Plaintiff. *Id.*, at ¶ 5. On July 23, 2011, Mr. Cabral attempted service again, and this time an adult man answered the door. *Id.*, at ¶ 6-7. He identified himself as "Peter." Mr. Cabral presumed it was Peter Jarowey Sr.; however, it may have been another individual at the home. *Id.*, at ¶ 7. Defendant does not dispute that service was effectuated on the correct residence: 214 Windsor Rd Waban, MA 02468. Mot. to Quash, at 4. Thus, even if Defendant's representations about his whereabouts are true, Defendant does not contradict the simple fact that someone was at his home on July 23<sup>rd</sup> that accepted service on his behalf, going by the name Peter.

According to Rule 4(e) of the Federal Rules of Civil Procedure, service of process may be effectuated by: (1) "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located", (2) "following state law for

serving a summons in an action brought in courts of general jurisdiction in the state where...service is made,” or (3) following the requirements of Rule 4(e)(2).

Federal Rule 4(e) therefore allows for application of local Rule 4(d)(1) of the Massachusetts Rules of Civil Procedure. Rule 4(d)(1) states that service shall be made as follows:

Upon an individual by delivering a copy of the summons and of the complaint to him personally; or *by leaving copies thereof at his last and usual place of abode*; or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by statute to receive service of process, provided that any further notice required by such statute be given.

(Emphasis added). Massachusetts courts interpreting this provision have found the correctness of the address to be an important factor in attempts by defendants to quash service. *See e.g., Hamer v. Faneros*, No. 08-10012, 2008 WL 2941251, at \*2 (Mass. App. Div. July 25, 2008) (defendant’s affidavit insufficient to establish a lack of service of process where there was no contention that the address was incorrect). Here, Defendant has made no showing that service of process was effectuated at the wrong address. In fact, Defendant admits that service was made on the correct address.

Furthermore, it does not matter that the “wrong” Peter may have accepted service on behalf of the Defendant. Under the corresponding Massachusetts rule, it is not required that service be delivered to any one person, the Defendant himself, or that the person even live at the address. Therefore, it is not necessary to determine whether the Peter who was a resident. However, if the Peter who was served does live at the address, then there is no question that service was proper under 10th Circuit case law. *See Rosa v. Cantrell*, 705 F.2d 1208 (10<sup>th</sup> Cir. 1982).

Clearly the Rules of Civil Procedure need to be followed. However, there is nothing untoward about service in this case. Standard practices were followed. Proper filings were made with the Court. Granted, the process server could have been mistaken about whether the Peter at the home was Peter Jarowey Sr., but that is of little import under governing Massachusetts law.

What is more concerning here, is that Defendant has not accepted service in this case notwithstanding that the Amended Complaint was filed nearly five (5) months ago on April 14, 2011, and Defendant has had a copy since about that time. At the very least, Defendant has had a copy of the Complaint since May 23, 2011 when Mr. Jarowey's local counsel filed its first Motion to Quash [Docket Entry No 47]. Rather than continually waste the time of the Court and counsel, Mr. Jarowey's counsel should simply pick up the phone and call Plaintiff's counsel to either accept service on behalf of his client, or indicate an appropriate means by which service may be effectuated.

### CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Motion to Quash be denied.

DATED this 6th day of September, 2011.

PIA ANDERSON DORIUS REYNARD & MOSS

/Joseph Pia/  
Joseph Pia  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of September, 2011, a true and correct copy of forgoing **PLAINTIFF'S OPPOSITION TO [2<sup>ND</sup>] MOTION BY DEFENDANT PETER JAROWEY FOR AN ORDER QUASHING SERVICE PURSUANT TO RULE 12(b)(5)**

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By: /s/ Joseph Pia