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*Attorneys for Defendant Ted Baer*

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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,

vs.

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.

:  
 : **REPLY MEMORANDUM IN**  
 : **SUPPORT OF DEFENDANT TED**  
 : **BAER'S MOTION TO DISMISS**  
 : **PLAINTIFF'S AMENDED**  
 : **COMPLAINT FOR LACK OF**  
 : **JURISDICTION**

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 : Civil No. 2:11-CV-00288

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 : Honorable Clark Waddoups  
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Defendant Ted Baer appears specially, by and through his attorneys Dennis R. James, Morgan, Minnock, Rice & James, L.C., and submits this Reply Memorandum in Support of Defendant Ted Baer's Motion to Dismiss Third-Party Complaint as follows:

**RESPONSE TO INCENTIVE STATEMENT OF FACTS**

1. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive's Statement of Fact No.1.
2. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive's Statement of Fact No.2.
3. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive's Statement of Fact No.3.
4. Defendant Ted Baer disputes Statement of Fact No. 4. The email from Ted Baer to Dorius dated 3/29/2010 speaks for itself, and it does not state that there were only four individuals participating in reviewing and preparing the Loan Transaction document on behalf of Camelot. In connection with Defendant Ted Baer's representation of Camelot Entertainment Group, Defendant Ted Baer participated in negotiations with legal counsel for Plaintiff Incentive Capital regarding the final language and execution of the loan agreements, security agreements, guaranty agreements, and escrow agreements identified in Plaintiff Incentive Capital's Amended Complaint. (Affidavit of Julius Arthur Ted Baer III at ¶30, attached as Exhibit "B" to Defendant Ted Baer's Memorandum in Support of Motion to Dismiss).

5. For purposes of this motion only, Defendant Ted Baer does not dispute that his communications with representatives of Plaintiff Incentive Capital were limited to phone calls and email messages while he was in the State of California.
6. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive's Statement of Fact No. 6.
7. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive's Statement of Fact No.7 regarding what it has alleged in its Amended Complaint.
8. Defendant Ted Baer disputes Plaintiff Incentive's Statement of Fact No. 8 on the grounds that the Amended Complaint and the paragraphs cited by Plaintiff Incentive do not anywhere specifically refer to or include Defendant Ted Baer in the allegations and therefore, Plaintiff Incentive has not actually alleged that Defendant Ted Baer misrepresented Camelot's financial stability, etc., as stated in Statement of Fact No. 8. (See Exhibit "A" to Defendant Ted Baer's Memorandum in Support of Motion to Dismiss, at ¶¶2, 75).
9. Defendant Ted Baer does not dispute what the April 1, 2010 email referred to states. However, the language of the email speaks for itself. Defendant Ted Baer disputes that he was an owner of Camelot, and the fact remains that Defendant Ted Baer did not personally guarantee any of the loans Plaintiff Incentive made. (Affidavit of Julius Arthur Ted Baer III at ¶¶ 17-18, 36, attached as Exhibit "B" to Defendant Ted Baer's Memorandum in Support of Motion to Dismiss).

10. The language of the April 1, 2010 email speaks for itself. Defendant Ted Baer disputes that in the April 1, 2010 email correspondence he made any representations about the financial stability of the company. He only communicated information from his client about potential terms or conditions that could be included in the loan agreements.
11. Plaintiff Incentive's Statement of Fact No. 11 takes a quote from the email out of context, and Defendant Ted Baer disputes that he made the representations that Plaintiff Incentive asserts were made in the email.
12. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive's Statement of Fact No. 12. Defendant Ted Baer notes, however, that he was not involved in preparing any of the documents sent as attachments nor did he calculate any of the information or estimates contained in the attachments. (*Id.* at ¶¶ 17-18, 36, attached as Exhibit "B" to Defendant Ted Baer's Memorandum in Support of Motion to Dismiss). Moreover, Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in the April 1, 2010 email or the attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital's allegations about the information are true. (Supplemental Affidavit of Julius Arthur Ted Baer III at ¶¶ 3-5, attached as Exhibit "1").
13. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive's Statement of Fact No. 13. Defendant Ted Baer notes, however, that he was not involved in preparing any of the documents sent as attachments nor did he calculate any of the information or estimates contained in the attachments. (Affidavit of Julius Arthur Ted Baer III at ¶¶ 17-18, 36, attached as Exhibit "B" to Defendant Ted Baer's

Memorandum in Support of Motion to Dismiss). Moreover, Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in the April 1, 2010 email or the attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital's allegations about the information are true.

(Supplemental Affidavit of Julius Arthur Ted Baer III at ¶¶ 3-5, attached as Exhibit "1").

14. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive's Statement of Fact No. 14. Defendant Ted Baer notes, however, that he was not involved in preparing any of the documents sent as attachments nor did he calculate any of the information or estimates contained in the attachments. (Affidavit of Julius Arthur Ted Baer III at ¶¶ 17-18, 36, attached as Exhibit "B" to Defendant Ted Baer's Memorandum in Support of Motion to Dismiss). Moreover, Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in the April 1, 2010 email or the attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital's allegations about the information are true.

(Supplemental Affidavit of Julius Arthur Ted Baer III at ¶¶ 3-5, attached as Exhibit "1").

15. Defendant Ted Baer did not act as Camelot's general counsel in the Loan Transaction and, moreover, despite any involvement Defendant Ted Baer had in the Note referred to in Plaintiff Incentive's Statement of Fact No. 15, Defendant Ted Baer did not prepare the document referred to as File #1 in Plaintiff Incentive's Statement of Fact No. 17, nor did he prepare or calculate any of the information or estimates contained in File #1. (Affidavit of Julius Arthur Ted Baer III at ¶¶ 24-29, attached as Exhibit "B" to Defendant Ted Baer's Memorandum in Support of Motion to Dismiss). Moreover, Defendant Ted Baer had no

reason to believe, and did not know, that any of the information contained in the April 1, 2010 email or the attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital's allegations about the information are true.

(Supplemental Affidavit of Julius Arthur Ted Baer III at ¶¶ 3-5, attached as Exhibit "1").

16. Despite any involvement Defendant Ted Baer had in the Note referred to in Plaintiff Incentive's Statement of Fact No. 15, Defendant Ted Baer did not prepare the document referred to as File #1 in Plaintiff Incentive's Statement of Fact No. 17, nor did he prepare or calculate any of the information or estimates contained in File #1 that was previously provided. (*Id.*, attached as Exhibit "B" to Defendant Ted Baer's Memorandum in Support of Motion to Dismiss). Moreover, Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in the April 1, 2010 email or the attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital's allegations about the information are true. (Supplemental Affidavit of Julius Arthur Ted Baer III at ¶¶ 3-5, attached as Exhibit "1").
17. Plaintiff Incentive's Amended Complaint does not contain an allegation supporting Plaintiff Statement of Fact No. 17 as asserted. More importantly, Defendant Ted Baer did not prepare the document referred to as File #1 in Plaintiff Incentive's Statement of Fact No. 17, nor did he prepare or calculate any of the information or estimates contained in File #1 that was previously provided and that Plaintiff Incentive claims it relied on. (*Id.*, attached as Exhibit "B" to Defendant Ted Baer's Memorandum in Support of Motion to Dismiss). Moreover, Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in the April 1, 2010 email or the attachments was

incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital's allegations about the information are true. (Supplemental Affidavit of Julius Arthur Ted Baer III at ¶¶ 3-5, attached as Exhibit "1").

18. Defendant Ted Baer did not prepare the document or calculated any of the information or estimates that Plaintiff Incentive is claiming it relied on and which are referred in Plaintiff Incentive's Statement of Fact No. 18. (*Id.*, attached as Exhibit "B" to Defendant Ted Baer's Memorandum in Support of Motion to Dismiss). Moreover, Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in the April 1, 2010 email or the attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital's allegations about the information are true. (Supplemental Affidavit of Julius Arthur Ted Baer III at ¶¶ 3-5, attached as Exhibit "1").

19. Defendant Ted Baer did not prepare the documents referred to as File #2 and File #3 in Plaintiff Incentive's Statement of Fact No. 18, nor did he prepare or calculate any of the information or estimates contained in File #1 that was previously provided and that Plaintiff Incentive claims it relied on. Moreover, Defendant Ted Baer did not make any misrepresentations or falsify any information or documents that Plaintiff Incentive claims it relied on. (Affidavit of Julius Arthur Ted Baer ¶¶ 24-29, 38, attached as Exhibit "B" to Defendant Ted Baer's Memorandum in Support of Motion to Dismiss). Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in the April 1, 2010 email or the attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital's allegations about the information are

true. (Supplemental Affidavit of Julius Arthur Ted Baer III at ¶¶ 3-5, attached as Exhibit “1”).

20. Defendant Ted Baer did not prepare the documents referred to as File #2 and File #3 in Plaintiff Incentive’s Statement of Fact No. 18, nor did he prepare or calculate any of the information or estimates contained in File #1 that was previously provided and that Plaintiff Incentive claims it relied on. Moreover, Defendant Ted Baer did not make any misrepresentations or falsify and information or documents that Plaintiff Incentive may have relied on. (Affidavit of Julius Arthur Ted Baer III at ¶¶ 24-29, 38, attached as Exhibit “B” to Defendant Ted Baer’s Memorandum in Support of Motion to Dismiss). Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in the April 1, 2010 email or the attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital’s allegations about the information are true. (Supplemental Affidavit of Julius Arthur Ted Baer III at ¶¶ 3-5, attached as Exhibit “1”).
21. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive’s Statement of Fact No. 21. However, Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in the April 1, 2010 email or the attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital’s allegations about the information are true. (*Id.* at ¶¶ 3-5, attached as Exhibit “1”).
22. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive’s Statement of Fact No. 22.



23. Contrary to Plaintiff Incentive's Statement of Fact No. 23, the affidavit of Defendant Ted Baer is clear that he did not make any misrepresentations or falsify any information or documents that Plaintiff Incentive may have relied on. He did not prepare any of the documents nor did he prepare or calculate any of the information or estimates Plaintiff Incentive claims it relied on. (Affidavit of Julius Arthur Ted Baer III at ¶¶ 24-29, 38, attached as Exhibit "B" to Defendant Ted Baer's Memorandum in Support of Motion to Dismiss). Defendant Ted Baer had reviewed the information but had no reason to believe, and did not know, that any of the information contained in the April 1, 2010 email or the attachments was incorrect, inaccurate, false, or misleading in any way. (Supplemental Affidavit of Julius Arthur Ted Baer III at ¶¶ 3-5, attached as Exhibit "1").
24. Defendant Ted Baer does not deny sending the April 1, 2010 email, however, he did not make any misrepresentations or falsify and information or documents that Plaintiff Incentive may have relied on. He did not prepare any of the documents nor did he prepare or calculate any of the information or estimates Plaintiff Incentive claims it relied on. (*Id.*, ¶¶ 24-29, 38, attached as Exhibit "B" to Defendant Ted Baer's Memorandum in Support of Motion to Dismiss). Moreover, Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in the April 1, 2010 email or the attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital's allegations about the information are true. (Supplemental Affidavit of Julius Arthur Ted Baer at ¶¶ 3-5, attached as Exhibit "1").
25. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive's Statement of Fact No. 25. However, the document speaks for itself, and

Defendant Ted Baer did not prepare any of the information or estimates contained in the March 24, 2010 email or its attachments. (*Id.* at ¶¶ 6-8, attached as Exhibit “1”).

26. Defendant Ted Baer did not prepare any of the information or estimates contained in the March 24, 2010 email or its attachments. Moreover, even after reviewing the information, Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in March 24, 2010 email correspondences or its attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital’s allegations about the information are true. (*Id.* at ¶¶ 6-8, attached as Exhibit “1”).
27. Defendant Ted Baer disputes that the March 24, 2010, email was provided as a joint representation. The fact that Defendant Ted Baer may have been copied on an email does not make the email a joint representation from Defendant Ted Baer, and Defendant Ted Baer has denied participating in the making of any misrepresentations or falsifying any information or documents Plaintiff Incentive may have relied on. (*Id.* at ¶¶ 6-8, attached as Exhibit “1”).
28. Defendant Ted Baer did not prepare any of the information or estimates contained in the March 30, 2010 email or its attachments. Moreover, even after reviewing the information, Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in March 30, 2010 email correspondences or its attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital’s allegations about the information are true. (*Id.* at ¶¶ 6-8, attached as Exhibit “1”).
29. The fact that Defendant Ted Baer may have been copied on an email does not make the email a joint representation from Defendant Ted Baer and Defendant Ted Baer has denied

participating in the making of any misrepresentations or falsifying any information or documents Plaintiff Incentive may have relied on. Moreover, even after reviewing the information, Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in March 30, 2010 email correspondences or its attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital's allegations about the information are true. (*Id.* at ¶¶ 6-8, attached as Exhibit "1").

30. The paragraph of Plaintiff's Amended Complaint cited in Plaintiff Incentive's Statement of Fact No. 30 does not support this fact as alleged. Defendant Ted Baer did not prepare any of the information or estimates contained in the March 24, 2010 and March 30, 2010 email correspondences or their attachments. Moreover, even after reviewing the information, Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in March 30, 2010 email correspondences or its attachments was incorrect, inaccurate, false, or misleading in any way, even assuming Plaintiff Incentive Capital's allegations about the information are true. (*Id.* at ¶¶ 6-8, attached as Exhibit "1").
31. The paragraph of Plaintiff's Amended Complaint cited in Plaintiff Incentive's Statement of Fact No. 31 does not support this fact as alleged. Moreover, Defendant Ted Baer  
Moreover, Defendant Ted Baer did nor prepare any of the information had no reason to believe, and did not know, that any of the information, calculations, or estimates that Plaintiff Incentive refers to and had no reason to believe, and did not know, that any of the information was incorrect, inaccurate, false, or misleading in any way when it was

provided to Plaintiff Incentive, even assuming Plaintiff Incentive Capital's allegations about the information are true. (*Id.* at ¶¶ 3-8, attached as Exhibit "1").

32. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive's Statement of Fact No. 32.
33. The paragraph of Plaintiff's Amended Complaint cited in Plaintiff Incentive's Statement of Fact No. 33 does not support this fact as alleged.
34. The paragraph of Plaintiff's Amended Complaint cited in Plaintiff Incentive's Statement of Fact No. 34 does not support this fact as alleged.
35. The paragraph of Plaintiff's Amended Complaint cited in Plaintiff Incentive's Statement of Fact No. 35 does not support this fact as alleged. He did not prepare any of the information or documents that were sent as attachments to the April 1, 2010 email and he did not prepare or calculate any of the information or estimates contained in the April 1, 2010 email or its attachments. He had reviewed the information contained in the April 1, 2010 email and the attachments but had no reason to believe, and did not know, that any of the information was incorrect, inaccurate, false, or misleading, even assuming Plaintiff Incentive Capital's allegations about the information are true. (Supplemental Affidavit of Julius Arthur Ted Baer III at ¶¶ 3-5, attached as Exhibit "1").
36. The paragraph of Plaintiff's Amended Complaint cited in Plaintiff Incentive's Statement of Fact No. 36 does not support this fact as alleged.
37. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive's Statement of Fact No. 37.

38. Defendant Ted Baer has not indicated anywhere in his affidavit that he was “lead counsel” in connection with the alleged Loan Transaction. (Affidavit of Julius Arthur Ted Baer III at ¶ 30, attached as Exhibit “B” to Defendant Ted Baer’s Memorandum in Support of Motion to Dismiss).
39. Defendant Ted Baer has not indicated anywhere in his affidavit that he was “lead counsel” in connection with the alleged Loan Transaction. (*Id.* at ¶ 30, attached as Exhibit “B” to Defendant Ted Baer’s Memorandum in Support of Motion to Dismiss). For purposes of this motion only, Defendant Ted Baer otherwise does not take issue with Plaintiff Incentive’s Statement of Fact No. 39.
40. For purposes of this motion only, Defendant Ted Baer otherwise does not take issue with Plaintiff Incentive’s Statement of Fact No. 40. The agreement, however, speaks for itself.
41. Defendant Ted Baer terminated his representation of Camelot Entertainment Group in November 2010 because he was not being paid for the work he performed. (Supplemental Affidavit of Julius Arthur Ted Baer III at ¶9, attached as Exhibit “1”).
42. Defendant Ted Baer was not paid for the services he rendered to Camelot Entertainment Group out of the proceeds of the loan that is the subject of Plaintiff Incentive’s Amended Compliant and he did not expect to be paid out of the proceeds of the loan. (*Id.* at ¶¶ 3-5, attached as Exhibit “1”).
43. For purposes of this motion only, Defendant Ted Baer does not take issue with Plaintiff Incentive’s Statement of Fact No. 43.

## ARGUMENT

### **I. PLAINTIFF INCENTIVE DOES NOT ESTABLISH THAT THE COURT HAS PERSONAL JURISDICTION OVER DEFENDANT TED BAER.**

Based on Plaintiff Incentive's memorandum in opposition, Plaintiff Incentive's argument that the Court should exercise specific, personal jurisdiction over Defendant Ted Baer in this case requires the Court to conclude that three email correspondences sent March 24, 2010, March 30, 2010, and April 1, 2010, are sufficient to meet Plaintiff's burden of establishing that personal jurisdiction in Utah over Defendant Ted Baer is proper. It is Plaintiff Incentive's position that specific, personal jurisdiction over Defendant Ted Baer exists because these three email correspondences show that Defendant Ted Baer either personally committed a tort directed or felt in Utah, or as an agent or representative of Camelot he personally transacted business which affected Incentive in Utah, that but for these three correspondences the injury to Plaintiff Incentive would not have occurred, and that relying on these three email correspondences satisfies the due process requirements.

Plaintiff Incentive has conceded that it is not arguing that Defendant Ted Baer's contact with Utah would invoke "general jurisdiction" over him. Thus, despite Plaintiff Incentive's attempts to otherwise portray Defendant Ted Baer as having a significant amount of email and telephone contact with Utah, Plaintiff Incentive really only points to these three specific email correspondences as providing the basis for arguing that personal jurisdiction is proper. Plaintiff Incentive has conceded that Defendant Ted Baer never personally conducted business within Utah but argues that Defendant Ted Baer's connection to these three email correspondence, sent from outside the jurisdiction, affected Incentive's business within the state of Utah and that this

out-of-state conduct caused Plaintiff Incentive to be injured in Utah, allowing for personal jurisdiction to be exercised over Defendant Ted Baer. However, when Plaintiff's actual proof is put to the test, as required on a motion to dismiss for lack of personal jurisdiction, Plaintiff Incentive's conclusory allegations regarding these three email correspondences are not sufficient to allow the Court to exercise personal jurisdiction over Defendant Ted Baer. *See, e.g., Shaw v. Am. Cyanamid Co.*, 534 F. Supp. 527, 528 (D. Conn. 1982)(stating that "a motion to dismiss under Rule 12(b)(2) is a test of the plaintiff's actual proof" and noting that "the party asserting jurisdiction must do more than rely on merely conclusory allegations").

Courts have been clear that where communications such as email or phone calls to the forum state are involved, "the exercise of jurisdiction depends on the *nature* of those contacts." *Rambo v. Am. S. Ins. Co.*, 839 F.2d 1415, 1418 (10th Cir. 1988) (emphasis in original). Thus, to satisfy the due process protections, these three email correspondences must demonstrate, "first, that the out-of-state defendant must have purposefully directed its activities at residents of the forum state, and second, that the plaintiff's injuries must 'arise out of' defendant's forum related activities." *Dudnikov v. Chalk & Vermillion Fine Arts, Inc.*, 514 F.3d 1063, 1071, (10<sup>th</sup> Cir. 2008) (quoting *Burger King v. Rudzewicz*, 471 U.S. 462, 472 (1985)). Importantly, the court must decide whether Plaintiff Incentive's claim "arises out of or results from 'actions by the defendant *himself* that create a substantial connection with the forum state.'" *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1091 (10th Cir. 1998) (quoting *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 109 (1987))(emphasis added).

Defendant Ted Baer only sent one of the three email correspondences that Plaintiff Incentive has identified—the April 1, 2010 email correspondence. Plaintiff Incentive claims that

in this April 1, 2010 email correspondence Defendant Ted Baer made several misrepresentations and provided false information to Plaintiff Incentive. However, the facts show that Defendant Ted Baer's role in sending the April 1, 2010 email correspondence was to merely pass along or forward, to counsel for Plaintiff Incentive, information and documentation of Camelot Entertainment Group's estimation of the value of the unencumbered assets of Camelot Entertainment Group's subsidiaries and the value of the "Library" referenced in Plaintiff Incentive's Amended Complaint. Defendant Ted Baer has been clear that he was not general counsel for Camelot Entertainment Group. In his limited representation of Camelot Entertainment Group, Defendant Ted Baer participated in negotiating the final language and obtaining signatures on the loan agreements, security agreements, guaranty agreements, and escrow agreements. He was not involved in the valuation of the assets of Camelot Entertainment Group's subsidiaries or the value of any assets that Camelot was attempting to purchase with any loan proceeds.

The fact that Defendant Ted Baer sent this one communication which simply passed along information given to him by his client, Camelot Entertainment Group, email does not provide a sufficient connection between Defendant Ted Baer and the Utah forum for jurisdiction to be exercised. While Plaintiff Incentive may insist that their injuries and claims in this action are tied to the accuracy of the information contained in the April 1, 2010 email correspondence, it is clear that Defendant Ted Baer did not prepare or calculate any of the information or estimates contained in the April 1, 2010 email correspondence or its attachments. All of the information was prepared by someone else and provided to Defendant Ted Baer to send to Plaintiff Incentive. Defendant Ted Baer had, of course, reviewed the information contained in the April 1, 2010 email as well as information in the attachments, but because he was not involved in the preparation of the



information and had not himself performed any calculations or estimates found in the information, he had no reason to believe, and did not know, that any of the information was incorrect, inaccurate, false, or misleading—even assuming Plaintiff Incentive Capital is able to ultimately prove that those allegations are true.

Thus, Defendant Ted Baer did not personally make any misrepresentations of fact to Plaintiff Incentive that would subject him to personal jurisdiction. In fact, Defendant Ted Baer's affidavit testimony is clear that he had no reason to believe, and did not know, that any of the information contained in the April 1, 2010 email or the attachments that were sent to counsel for Plaintiff Incentive Capital was incorrect, inaccurate, false, or misleading in any way. Plaintiff Incentive's claims in this case do not arise out of the act of sending the April 1, 2010 email and the information it contained. Their claims arise out of the accuracy of the information upon which they relied. The information Plaintiff purportedly relied on was prepared by someone other than Defendant Ted Baer. Consequently, because Plaintiff Incentive's claims do not arise out of the specific act of sending the email, that act by Defendant Ted Baer does not create a substantial connection with the forum state.

The same argument also applies to the March 24, 2010 and March 30, 2010 email correspondences that Plaintiff Incentive also points to as providing a basis for personal jurisdiction over Defendant Ted Baer. In fact, these email correspondences have an even more tenuous connection to Defendant Ted Baer because he was only copied on the email correspondences. There is not, nor can there be, in good faith, an allegation that Defendant Ted Baer authored those two email communications. The March 24, 2010 and March 30, 2010 email correspondences were sent by Peter Jarowey and the information and attachments contained in the correspondences were

not prepared by Defendant Ted Baer. Plaintiff Incentive nevertheless tries to assert that Defendant Ted Baer failed to correct false claims made in the March 24, 2010 and March 30, 2010 correspondences and because he was copied on them, jurisdiction should be exercised personally over him.

It is clear, however, that Defendant Ted Baer had no reason to believe, and did not know, that any of the information contained in March 24, 2010 and March 30, 2010 email correspondences was incorrect, inaccurate, false, or misleading in any way—even assuming Plaintiff Incentive Capital’s allegations about the information are ultimately proven true. While he may have reviewed the information contained in the email communications, because Defendant Ted Baer was not involved in the preparation of the information and had not himself performed any calculations or estimates found in the information, he had no reason to believe, and did not know, that any of the information was incorrect, inaccurate, false, or misleading. Consequently, Defendant Ted Baer did not personally make any misrepresentations of fact or provide false information to Plaintiff Incentive in connection with the March 24, 2010 and March 30, 2010 email correspondences and he had no basis for attempting to correct anything in the correspondences.

Plaintiff Incentive’s claims in this case do not arise out the act of Defendant Ted Baer receiving the March 24, 2010 and March 30, 2010 email correspondences, but arise out of the accuracy of the information contained in the correspondences that was prepared by someone other than Defendant Ted Baer. The mere fact that Defendant Ted Baer was copied on the email correspondences received by Plaintiff Incentive in Utah does not create a substantial connection with the forum state that would allow for the exercise of personal jurisdiction over him.

Moreover, while Plaintiff Incentive suggests that Defendant Ted Baer stood to personally benefit from the loan transaction by having his fees paid, his affidavit testimony is clear that he was not paid out of the loan proceeds and did not expect to be paid from the loan proceeds.

All of Plaintiff Incentive's arguments for personal jurisdiction incorrectly assume that Defendant Ted Baer was a primary participant in creating the information and documentation presented in the April 1, 2010, March 24, 2010, and March 30, 2010 email correspondences that Plaintiff Incentive asserts contained the misrepresentations, false information, or misleading information that induced Plaintiff Incentive to enter into a loan. With that groundless and incorrect assumption, Plaintiff Incentive argues that where corporate counsel communicates false information or otherwise participates in conduct that constitutes a tort directed at a forum state, a tort has been committed by corporate counsel which subjects corporate counsel to personal jurisdiction.

However, the cases cited by Plaintiff Incentive to argue that personal jurisdiction should be exercised over Defendant Ted Baer, in his official capacity as an attorney representing Camelot Group, all require that corporate counsel intentionally or knowingly provide false information, have knowledge of the wrongful nature of the corporate client's acts to exercise jurisdiction, or otherwise personally participate in the wrongful conduct which is not present in this case.

First, Defendant Ted Baer was not "corporate counsel" as that term is generally understood, making Plaintiff Incentive's reliance on case law referencing "corporate counsel" or "general counsel" misplaced. Defendant Ted Baer was a private, independent attorney asked by Camelot Group to perform certain legal tasks as specifically assigned. The case law Plaintiff Incentive is relying on is simply not applicable to Defendant Ted Baer's situation. In fact, in the

two cases Plaintiff Incentive relies on, the attorneys involved were actually considered employees of the company or had ownership interests that factored into the courts' finding of personal jurisdiction. Moreover, most of the other cases cited in footnotes do not actually address challenges to personal jurisdiction, nor are any of them analogous to Defendant Ted Baer's situation here.

Second, Defendant Ted Baer did not participate in the creation of any of the information that Plaintiff Incentive is claiming was false or misleading and he had did not know, and had no reason to believe, that the information was not accurate. Therefore, Defendant Ted Baer's act of forwarding the information does not otherwise manifest the kind of intentional or knowing conduct that other courts have used to exercise jurisdiction over counsel acting on behalf of a corporate client.

Defendant Ted Baer's tenuous connection to the information contained in the email correspondences is not sufficient to justify the exercise of personal jurisdiction over him, nor it is reasonable in light of the circumstances. Given the nature of the three email correspondences and Defendant Ted Baer's connection to them, it would offend notions of fair play and substantial justice to subject him to personal jurisdiction in Utah. Defendant Ted Baer respectfully requests that his motion to dismiss for lack of jurisdiction be granted.

## **II. LIMITED DISCOVERY ON DEFENDANT TED BAER'S JURISDICTION CHALLENGE IS UNNECESSARY**

Plaintiff Incentive fails to demonstrate that limited discovery on the issue of personal jurisdiction over Defendant Ted Baer would actually bear fruit on revealing any additional relevant information to determine whether the Court has personal jurisdiction. In re Chocolate

Confectionary Antitrust Litig., 602 F. Supp. 2d 538, 572 (M.D. Pa. 2009) (“Plaintiffs must identify particular facts that demonstrate the likelihood of contacts sufficient to corral defendants within the court's jurisdiction. General allegations that defendants transact business within the forum do not entitle plaintiffs to jurisdictional discovery; plaintiffs must produce evidence suggesting that discovery will bear fruit.”). Moreover in light of the supplemental affidavit of Defendant Ted Baer filed herewith, it is unnecessary for any additional discovery to be conducted before the Court decides the jurisdictional issue.

Defendant Ted Baer’s affidavit addresses the two issues Plaintiff Incentive suggests it needs discovery on and puts to rest whether he reviewed and knew that any of the information provided in the three email correspondences to Plaintiff Incentive was false, inaccurate, or misleading when it was provided. Defendant had reviewed the information but had no reason to believe, and did not know, that any of the information contained in any of the email correspondences or the attachments was incorrect, inaccurate, false, or misleading in any way at the time it was provided to Plaintiff Incentive. Pursuing additional discovery would only elicit the same testimony from Defendant Ted Baer and would not provide any additional information for the Court on the issue of whether jurisdiction is proper. Defendant Ted Baer accordingly asks that Plaintiff Incentive’s request for limited discovery be denied.

## **CONCLUSION**

For the foregoing reasons, Defendant Ted Baer’s Motion to Dismiss for Lack of Jurisdiction should be granted.

DATED this 14<sup>th</sup> day of September, 2011.

MORGAN, MINNOCK, RICE & JAMES, L.C.

/s/ Dennis R. James

Dennis R. James

Brian H. Hess

*Counsel for Defendant Ted Baer*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of September, 2011, I electronically filed a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF DEFENDANT TED BAER'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT FOR LACK OF JURISDICTION** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

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