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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

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.	**MEMORANDUM IN SUPPORT OF PLAINTIFF'S SECOND MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION** Civil No. 2:11-cv-00288 Judge Paul Waddoups **(Expedited Hearing Requested)**

Plaintiff Incentive Capital, LLC ("Plaintiff" or "Incentive"), by and through its counsel, does hereby submit the following memorandum in support of its Second Motion for a Temporary Restraining Order and Motion Preliminary Injunction against Camelot Entertainment Group,

Inc., a Delaware corporation ("CEG"), Camelot Film Group, Inc., a Nevada corporation ("CFG"), Camelot Distribution Group, Inc., a Nevada corporation ("CDG") (CEG, CFG and CDG may be collectively referred to herein as "Camelot"), Robert P. Atwell, an individual ("Mr. Atwell"), Jamie Thompson, an individual ("Thompson"), Steven Istock, an individual ("Istock"), Ted Baer, an individual ("Baer"), and Peter Jarowey, an individual ("Jarowey") (Atwell, Thompson, Mr. Baer and Jarowey are collectively referred to herein as the "Atwell Defendants") (Camelot and Atwell Defendants may be collectively referred to herein as the "Defendants").

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INTRODUCTION

The First Motion was filed with counsel's understanding that a non-evidentiary hearing on the TRO would be held first, followed by an evidentiary hearing for the preliminary injunction. Plaintiff did not understand that the TRO hearing would require the presentation of evidence, and therefore Plaintiff's manager was not available at the hearing, nor were any of Defendants' representatives available for cross-examination.

This second Motion for a Temporary Restraining Order and Preliminary Injunction ("Second Motion") includes a Declaration of James Mecham the Manager of Incentive Capital, LLC, who is prepared to testify according to his declaration. Mr. Mecham's testimony provides sufficient evidentiary basis for granting the requested restraining order and injunction. Plaintiff also intends to cross-examine one or more representatives of the Defendants at the hearing to further support the fact that Defendants are planning to dispose of the unique assets that are the heart of this action.

In this Second Motion, Plaintiff has narrowed the relief sought to prohibitory rather than mandatory relief, seeking merely to preserve the status quo. The status quo is that the Liberation Library, composed of approximately 880 unique media titles known as the "Liberation Assets" and 13 other films known as the "Distribution Assets," remain in its present state without additional encumbrances, sales, or licensing of the individual media titles until such time that the legal dispute between Plaintiff and Defendant Camelot as to rightful ownership is resolved.

For the reasons set forth below, Plaintiff respectfully submits that this narrow relief should be granted to preserve the core asset at issue, so that a trial on the merits will not be rendered futile.

PROCEDURAL HISTORY

1. On February 9, 2011, Plaintiff provided Notice of Disposition of Collateral by Public sale of "Collateral," defined in that certain Transfer Statement attached as Exhibit N to the Declaration of Plaintiff's manager James Mecham (**Exhibit 1** hereto), which includes approximately 880 media titles in addition to 13 other titles owned by Camelot (collectively "Liberation Library").

2. The Notice of Disposition of Collateral was provided after Camelot defaulted on its loan obligations which matured on January 31, 2011.

3. On February 15, 2011, Defendants Camelot and Atwell filed a declaratory judgment action in California State Court ("California State Action") seeking a declaration that Camelot has not breached its loan obligations, and for claims of breach of contract, unlawful business practices, constructive fraud, interference with prospective economic advantage, and unjust enrichment. *See* Complaint, attached without exhibits as **Exhibit 2** hereto.

4. Defendants Camelot and Atwell did not seek immediate relief from the Disposition of Collateral scheduled for February 21, 2011.

5. On February 21, 2011, Plaintiff non-judicially foreclosed on the Liberation Library by conducting a Public Sale. *See* Ex. N.

6. On March 7, 2011, CDG instituted a copyright infringement suit against various Doe Defendants with respect to a motion picture title that is encompassed in the Distribution Assets (defined below) that were pledged as security for the loan at issue and are a part of the foreclosure sale on February 21, 2011. *Camelot Distribution Group, Inc. v. Does 1-5865*, Central District of California, case No.: CV11-01949 DDP (FMOx) ("Infringement Suit"). It is

Plaintiff's contention that as a result of the foreclosure sale that took place before the Infringement suit was commenced, that Plaintiff, not Camelot, is the owner of the distribution and related copyrights; and consequently that Plaintiff, not Camelot, has the right to maintain the Infringement Suit.

7. On March 21, 2011, Plaintiff filed a Notice of Removal of the California State Action to California federal court because the case meets diversity requirements. *See Camelot Entertainment Inc. et al. v. Incentive Capital, LLC et al*., Case No. 2:11-cv-02323-GAF-JEM ("California Federal Action").

8. On March 25, 2011, Plaintiff filed this action ("Utah Action").

9. On March 26, 2011, Plaintiff filed a Motion to Dismiss the California Federal Action pursuant to Rule 12(b)(3) and 28 U.S.C. Sections 1391 and 1406 or, in the Alternative, Motion to Transfer [to Utah] Pursuant to 28 U.S.C Sections 1404 and 1406 ("Motion to Dismiss"), on the basis that the agreements at issue in the case have controlling Utah forum selection clauses and governing law provisions [California Federal Action Dckt Entry No. 3]. *See* Motion to Dismiss, attached hereto as **Exhibit 3**, without exhibits.

10. On April 3, 2011, Camelot and Atwell filed a Motion to Remand the California Federal Action to California State Court [California Federal Action Dckt Entry No. 6].

11. On April 14, 2011, Plaintiff filed an Amended Complaint in the Utah Action [Utah Action Dckt. Entry No. 2].

12. On April 15, 2011, summonses were issued to the Defendants [Utah Action Dckt. Entry Nos. 3-8].

13. On April 27, 2011, the summons for all Defendants were returned executed [Utah Action Dckt. Entry Nos. 12-18].

14. Also on April 27, 2011, Plaintiff filed an *Ex Parte* Motion for Temporary Restraining Order and Motion for Preliminary Injunction ("First Motion"). [Utah Action Dckt. Entry No. 19].

15. Notwithstanding the First Motion being filed *ex parte*, actual notice of the motion, copies of the motion papers, and the date and time of the hearing, were provided to the Istock (the President of Camelot), Defendants' Utah counsel, and Defendants' California counsel.

16. The Court set a hearing on the First Motion for May 2, 2011. Present at the hearing were counsel for Plaintiff, Defendants' Utah counsel, and Defendants' California counsel (by phone) [*see* Utah Action Dckt. Entry No. 24].

17. On May 2, 2011, the First Motion was heard before the Court, and an Order was issued denying the First Motion for reasons that included Plaintiff's failure at the hearing to provide sufficient evidence to meet its burden for requesting mandatory temporary/preliminary relief. [Utah Action Dckt. Entry No. 24].

18. On May 2, 2011, the court in the California Federal Action denied the Defendants' Motion to Remand the case to California State Court [California Federal Action Dckt Entry No. 12], and is presently considering the Motion to Dismiss.

STATEMENT OF FACTS

Unless otherwise specifically noted, exhibits numbered 1, 2, 3, etc. are directly attached hereto, and exhibits lettered A, B, C, etc. are attached to the Declaration of James Mecham, attached as **Exhibit 1** hereto.

1. In March of 2010, Defendants approached Incentive for a loan of funds to secure acquisition of a large library, known as the "Liberation Assets," which is comprised of approximately 880 motion pictures, television programs, and other media, known as the "Liberation Assets." For definitional purposes the term "Liberation Library" means both the Liberation Assets and the "Distribution Assets" as more fully defined below. Ex. 1, at ¶ 8.

2. On or about April 27, 2011, Incentive and CFG entered into a "Promissory Note Term Loan" ("Note") for the principal amount of $650,000 ("Principal"). *See* Note, a true and correct copy of which is attached to Exhibit 1 as **Exhibit A**.

3. Incentive funded the Note in two stages. First, it provided $500,000 upon execution of the Note, on or about April 27, 2011. Ex. A, at p. 1, First Paragraph. Second, it provided another $150,000 ("Operational Advance") in accordance with Camelot meeting certain obligations set forth in paragraph 1 of the Note, and the "Modification Agreement" (defined below). *Id.*

4. The Note provides that interest shall accrue at a rate of 1.5% per month, with a minimum interest period of six (6) months. *Id.*, at p. 1, Second Paragraph. The interest was payable on a monthly basis. *Id.*

5. The $650,000 Principal plus, any outstanding interest, and an origination fee and a closing fee totaling $32,500 was subject to a balloon payment ("Balloon Payment") at the "Maturity" date: January 31, 2011. *Id.*, at p. 1, First Paragraph.

6. The Note also references a requirement that Camelot pay 10% of all gross proceeds derived from the Liberation Assets, as more fully described in the Profit Participation Agreement (defined below). *Id.*

7. Attached as Exhibit A to the Note is a spreadsheet initialed by Camelot's CEO Robert Atwell representing gross proceeds to be generated from the Liberation Assets ("Gross Revenue Representations"), as follows:

a. Estimated Total Value (low): $22,845,000

b. Short Term Sales Potential (10%) [payable to Incentive]: $2,284,500

c. Estimated Total Value (med): $41,536,500

d. Short Term Sales Potential (10%) (med) [payable to Incentive]: $4,153,650.

8. In relation to the Gross Revenue Representations, the Note provides the following "Warranties":

> . . . 6. The Borrower [CFG] has furnished to the Lender financial assumptions which, in the opinion of Borrower, fairly and accurately reflect the financial assumptions for the operations of Borrower, and there has been no material adverse change in the Borrower's financial prospects since that date which would require revision of the same;
>
> 7. The Borrower represents and warrants that the international sales projections previously provided by Borrower in connection with the parties' initial term sheet shall not vary by more than 25% less than that represented therein on the

> estimated low value and short term sales potential 10% columns. A copy of the international sales projections is attached hereto [to the Note] as Exhibit A. . . .

Id., at p. 3, ¶¶ 6 – 7. (The Gross Revenue Representations and Warranties shall be collectively referred to as the "Representations.")

9. It was Incentive's understanding that these Representations made by Atwell himself on behalf of Camelot were accurate, and that Incentive would receive at least 25% of $2,284,500 to $4,153,650 in gross participation from the Library. Ex. 1, at ¶ 16.

10. Incentive materially relied upon Camelot's, Atwell's, Thompson's, Jarowey's, and Baer's representations that Incentive would receive at least 25% of $2,284,500 to $4,153,650 in gross participation from the Library in entering into the Note. *Id.*, at ¶ 17.

11. Paragraph 7 of the Note states that the same day that the Note was entered into, on April 27, 2010:

> Borrower [CFG] has secured this Note with one or more security agreements of even date herewith. This Note is guaranteed by each of (a) Camelot Distribution Group, Inc., a Nevada corporation qualified to do business in California with places of business at 318 North Carson Street, Suite 208, Carson City, Nevada 89701 and at 10 Universal City Plaza NBC/Universal Building, 20th Floor, Universal City, CA 91608; (b) Camelot Entertainment Group, Inc., a Delaware corporation qualified to do business in California with a place of business at 10 Universal City Plaza NBC/Universal Building, 20th Floor, Universal City, CA 91608; and (c) Robert P. Atwell, with an address of 28852 Rockport Drive, Laguna Niguel, CA 92677 (individually and collectively, "Guarantors") under guaranty agreements of even date herewith. As used in this Note, the term "Obligor" means (i) a person whose credit or any of whose property is pledged to payment of this Note and includes, without limitation, any Guarantor; and (ii) any signatory to a Loan Document.

Ex. A, at p. 3, ¶ 7 (True and correct copies of the "CEG Guaranty," the "Atwell Guaranty," and the "CDG Guaranty" are attached to Exhibit 1 as **Exhibit B**, **Exhibit C**, and **Exhibit D**,

respectively.)

12. The Note, and the CEG, Atwell and CDG Guarantees (collectively the "Guarantees") are secured by collateral described in two security agreements, one of which is between Incentive and CDG (the "CDG Security Agreement"), a true and correct copy of which is attached to Exhibit 1 as **Exhibit E**.

13. The CDG Security Agreement pledges as security collateral described as "Distribution Assets," a series of thirteen (13) films being distributed by CDG, attached as Schedule 1 to the CDG Security Agreement, as follows:

> 1. Grant of Security Interest. Debtor [CDG] hereby grants to the Secured Party [Incentive] a continuing first priority security interest in all property identified on Schedule 1 attached hereto and by this reference incorporated herein, and all products and proceeds thereof, including (a) the Distribution Assets [motion picture titles Samurai Avenger; First Strike; Screwball The Ted Whitfield Story (aka The Wiffler); The Fallen; One Lucky Dog (aka Weiner Dog Nationals); Never Sleep Again; Hellraiser Unleashed; Fink!; Nude Nuns with Big Guns; Zombie Culture; National Lampoons Dirty Movie; Who is KK Downey; Next of Kin]; (b) all accounts, negotiable instruments, chattel paper and electronic chattel paper, general intangibles, proceeds, and monies derived from the disposition or other exploitation of the Distribution Assets in all media, from all sources, worldwide during the term hereof; and (c) other assets of the Debtor as set forth on said Schedule 1 (collectively, the "Collateral").

Ex. E, at p. 1, Section B, ¶ 1.

14. The CDG Security Agreement contains provisions permitting inspection and prohibiting CDG from selling, assigning, or licensing of the library except in the normal course of business:

> . . . 5(e) Inspection. Debtor shall give the Secured Party such information as may be reasonably requested concerning the Collateral and shall during regular business hours and upon reasonable notice during the continuance of an Event of Default, permit the Secured Party and its agents and representatives to have full access to and the right to examine, audit and make copies and abstracts from any

> and all of Debtor's books and records pertaining to the Collateral, to confirm and verify the value of the Collateral and to do whatever else the Secured Party reasonably may deem necessary or desirable to protect its interests. Furthermore, Debtor agrees to furnish promptly to the Secured Party such information regarding the financial condition or business of Debtor or the Collateral as the Secured Party may reasonably request, and all such information hereafter furnished to the Secured Party by Debtor will be true and correct in all material respects when furnished. . . .
>
> . . . 7. Negative Covenants. Debtor covenants and agrees that until such time as the Note is indefeasibly paid or otherwise satisfied in full, without the prior written consent of the Secured Party:
>
> (a) Sale or Hypothecation of Collateral. Debtor shall not directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise (i) sell, assign, license, transfer, exchange, lease, lend, grant any option with respect to or dispose of any of the Collateral or any of Debtor's rights therein, except for sales, assignments, licenses, transfers, exchanges, leases or loans in the ordinary course of the Debtor's business; nor (ii) create or permit to exist any lien on or with respect to any of the Collateral. The inclusion of "proceeds" as a component of the Collateral shall not be deemed a consent by the Secured Party to any sale, assignment, transfer, exchange, lease, loan, granting of an option with respect to or disposition of all or any part of the Collateral. . . .

Id., at pp. 4 – 5, Section B, ¶¶ 6(e) and 7(a).

15. Incentive has not been permitted its inspection rights as provided for in the CDG Security Agreement. Ex. 1, at ¶ 22.

16. The CDG Security Agreement also provides:

> . . . 5(f) Employment of Jamie Thompson: Debtor has entered into an employment agreement with Jamie Thompson ("Thompson") as of September 1, 2009 (the "Employment Agreement"), whereunder Thompson shall render services as President of Debtor to, among other responsibilities, manage and supervise Debtor's general business operations, including without limitation services in connection with the exploitation of the Liberation Assets. Debtor hereby acknowledges and agrees that it shall use its best efforts to continue Thompson's Employment Agreement for a period of five (5) years from the date hereof. During said period of the Employment Agreement, Thompson shall be primarily responsible for the exploitation of the Liberation Assets. . . .

Id., at p. 3, Section B, ¶ 5(f).

17. Thompson ceased working for Camelot in mid-February 2011. One of the reasons that Thompson ceased working for Camelot is that Camelot failed to renew its employment agreement with Thompson. Ex. 1, at ¶ 24.

18. Thompson's employment with Camelot was a material condition to Incentive entering into the Note and other agreements, because it was Thompson who prepared the sales projections attached as Exhibit A to the Note and it was Thompson's representations about his abilities to generate revenue as the President of Distribution that induced Incentive to provide the loan. *Id.*, at ¶ 25.

19. Thompson was integral in explaining the revenue potential for the Liberation Library and setting benchmarks for Camelot. *Id.*, at ¶ 26.

20. The parties entered into a separate Security and Participation Agreement between Incentive and CFG (the "CFG Security Agreement" or "Profit Participation Agreement"), a true and correct copy of which is attached to Exhibit 1 as **Exhibit F**.

21. The CFG Security Agreement pledges as security the "Liberation Assets," as follows:

> . . . 1. Grant of Security Interest. Debtor [CFG] hereby grants to the Secured Party [Incentive] a continuing first priority security interest in all property identified on Schedule 1 attached hereto and by this reference incorporated herein, and all products and proceeds thereof, including (a) the Liberation Assets; (b) all accounts, negotiable instruments, chattel paper and electronic chattel paper, general intangibles, proceeds, and monies derived from the disposition or other exploitation of the Liberation Assets in all media, from all sources, worldwide during the term hereof; and (c) other assets of the Debtor as set forth on said

Schedule 1 (collectively, the "Collateral")." . . .

Ex. F, at p. 1, ¶ 1.

22. The CFG Security Agreement contains Inspection and Negative Covenants (Sale or Hypothecation of Collateral) provisions identical to the CDG Security Agreement. *Id.*, at p. 6, ¶¶ 6(e) and 7(a).

23. The CFG Security Agreement contains an Employment of Jamie Thompson provision identical to the CDG Security Agreement. *Id.*, at p. 5, ¶ 5(f).

24. A list of some or all of the Liberation Assets is attached to Exhibit 1 as **Exhibit G**.

25. As stated above, the Distribution Assets and the Liberation Assets are collectively referred to as the "Liberation Library." Ex. 1, at ¶ 32.

26. The CFG Security Agreement (Profit Participation Agreement) provides that CFG ("Debtor") shall pay to Incentive ("Secured Party") ten percent (10%) of one hundred percent (100%) of all gross revenues received by CFG within 14 days of receiving any such revenue, from any third party paying Camelot revenues in connection with Camelot's exploitation of the Liberation Assets in all media, worldwide, from all sources (the "Camelot Revenue"), for an initial period of five (5) years ("Initial Period") from the date of the Security Agreement. Ex. F, p. 2, ¶ 2(a). After the initial Period Camelot shall pay the Secured Party two and one half (2.5%) of all such revenues. *Id.*

27. The Guarantees are further secured by collateral described in a separate escrow agreement between Incentive and CEG (the "Escrow Agreement"), a true and correct copy of

which is attached to Exhibit 1 as **Exhibit H**.

28. The Escrow Agreement requires that a share certificate valued at the Principal amount of $650,000 worth of CEG Class F Convertible Preferred shares ("Pledged Shares") shall be delivered to an unnamed escrow agent. Ex. H, at p. 1, ¶ 1(a).

29. The Pledged Shares made out to Incentive "shall be convertible into fully paid and non-assessable shares of CEG common stock . . . While in escrow, none of CEG or its affiliates shall transfer, assign or encumber any of the Pledged Shares or the Certificate." *Id.*, at p. 1, ¶ 1(b).

30. In connection with the Profit Participation Agreement, Camelot agreed to meet minimum benchmark guarantees of profit generation. Ex. 1, at ¶ 37.

31. It was only a matter of months after Incentive made the loan that Camelot was seriously underperforming on its agreed-to benchmarks pursuant to the Gross Revenue Representations set forth in Exhibit A to the Note for distributing the Liberation Assets. *Id.*, at ¶ 38.

32. On Wednesday, June 2, 2010, Incentive's legal counsel sent a letter to Camelot entitled "Notice and No Waiver." A true and correct copy is attached to Exhibit 1 as **Exhibit I**.

33. The June 2, 2010 letter states:

> [T]here is no question that the amount of revenue generated by the acquisition represented by Camelot was and continues to be "material." It was represented to Incentive Capital that the film library was currently generating $150,000 of gross revenues each month. We reminded you of this material representation in our email to you on April 27th, which reads in relevant part as follows:

> The lender is "uneasy about advancing operational funds to a distributor before having some level of comfort that the distributor will perform as agreed – i.e., make its participation payments. As you have represented to us that the library now generates approximately $150,000 in gross revenues monthly, this should not pose much of a hardship."

Your representations in the final Note confirm this to be the case and specifically reference the sales projections enclosed herewith as Exhibit A. The Note states in pertinent part that payment is 'conditioned upon the (a) Borrower's and Guarantors' performance of all other obligations under th[e] Note and the related loan documents . . . (b) all representations and warranties by Borrower and the Guarantors in the Loan Documents being true and accurate . . .

. . . Incentive Capital now believes that the Warranties set forth in the Note are in breach. That relevant section of the Note reads: 'The Borrower represents that the international sales projections previously provided by Borrower in connection with the parties' initial term sheet shall not vary by more than 25% less than that represented therein on the estimated low value and short term sales potential 10% columns. A copy of the international sales projections is attached hereto as Exhibit A.'

Thus, it continues to be Incentive Capital's express understanding of the parties' agreements that in addition to your representations that $150,000 was being generated by the film library at the time it was acquired, that the 'Short Term Sales Potential" payments to Incentive Capital of 10% of gross are $2,284,500. This representation has been relied upon by Incentive Capital.

If the forgoing constitute accurate and truthful representations by Camelot, then during the month of May 2010 the lender should have received no less than $15,000 in participation payments. However, to date the lender has only received a participation payment of $1,012.22 on May 26, 2010 and on May 21, 2010 a payment of $4,400. The total participation payments to-date equal $5,412.22, which constitutes 10% of $54,122. The lender has also received $6,750 in interest payments.

To make sure that there was a meeting of the minds between lender and borrower on this critical issue, the Note provides for operational advances on the express condition that all representations be accurate and true, including (as mentioned above) the representation that the film library would generate revenues within 25% of the projections provided by borrower to lender (which were attached as an exhibit to the Note and incorporated by reference). Those projections indicate that the library will generate $22,845,000 annually (under the "Estimated Total Value – Low" column"). The film library would need to generate gross revenues of approximately $1,427,812.50 per month in order to hit the annualized target

amount of $17,133,750 (given the 25% margin provided for in the Note). Clearly, the participation payments made to lender thus far show that borrower's exploitation of the film library is generating revenues far below the projected amounts.

Based upon the participation payments received to date, lender is concerned that one of two things is happening: (a) borrower is not generating monthly gross revenues as it represented in order to induce lender to make this loan, or (b) borrower is not making the full participation payments as required under the loan documents. Despite the occurrence of what lender believes to be material breaches of the loan documents by borrower, lender, without waiving its rights and remedies under the loan documents, has made the promised operational advances to borrower.

Ex. I.

34. Previously, on March 24, 2010, Camelot's representative Defendant Peter Jarowey sent an e-mail to Plaintiff's counsel stating:

> It took me awhile to locate the best document to provide the detail on revenue distribution for the Liberation Library. Attached is an income statement with actuals through 9/30/2009 and monthly forecasts for the 4Q 2009. The forecast actually came in very close the final numbers for 2009. This will give you a sense of the annual and monthly cash generation. Also included in the file for your consideration, are SGA actuals for 2009 and SGA an estimate for 2010. As you know, Camelot will not be acquiring any overhead in its purchase of the Liberation assets, so all the estimated SGA goes to the bottom line.
>
> This responds to your request for specific revenue figures as we discussed the other day. After reading your note to Jamie yesterday regarding the "independent review of the library", I believe these numbers serve to solidly support that, in fact, the library does generate significant revenue exclusive of some of the territories Jamie is focusing on--supporting the cash price the Company is paying. Jamie plans to get back to you directly on the specifics raised in your email to him, but the attached is my contribution to the position that the Liberation assets are a good buy and can generate sufficient cash flow to pay back the loan in short order.

A true and correct copy of the 3/24/10 Jarowey E-mail is attached to Exhibit 1 as **Exhibit J**.

35. Attached to the March 24, 2010 Jarowey E-mail is a spreadsheet with three tabs:

(1) Year to Date Revenue; (2) 2009 Forecast and SGA Detail; (3) SGA 2009 & 2010 Forecasts. True and correct copies of the spreadsheets are attached with the e-mail in Exhibit J. Ex. J.

36. Tab 1, Year to Date Revenue shows total revenues on the Liberation Assets of $6,004,373. *Id.*

37. On March 30, 2010 Jarowey sent a follow-up e-mail stating that his estimate of monthly gross revenue for the Liberation Assets was and would continue to be "around $200,000 per month net of the overhead reductions, maybe more [c]ould be as much as $300,000 per month." A true and correct copy of the 3/30/10 Jarowey E-mail is attached to Exhibit 1 as **Exhibit K**.

38. Incentive materially relied upon Mr. Jarowey's representations in the March 24, 2010 e-mail and the March 30, 2010 e-mail. Ex. 1, at ¶ 45.

39. Camelot eventually disclosed that it had financial problems and was unable to perform in accordance with its representations. After many futile attempts to work out the issues, Camelot defaulted. *Id.*, at ¶ 46.

40. In light of Camelot's breaches and shortfall on its represented gross revenue projections, on or about June 11, 2010, Incentive agreed to enter into a loan modification agreement with Camelot and Mr. Atwell (the "Loan Modification Agreement"), whereby Camelot agreed to meet certain sales and payment benchmarks in addition to their obligations under the Note. A true and correct copy of the Loan Modification Agreement is attached to Exhibit 1 as **Exhibit L**. In exchange, Incentive agreed to continue its monetary advances to CFG

and to refrain from instituting legal action against Camelot and Mr. Atwell. Ex. L, at p. 1, Last Paragraph.

41. The Loan Modification Agreement states:

> . . . In order to induce Lender [Incentive] to make the Loan to Borrower [CFG], each of the Guarantors executed and delivered to Lender a Commercial Guaranty (collectively, the "***Guaranties***" and together with the Note, and the Participation Agreement, and all other related agreements executed by both Parties in connection with the Loan, (collectively, the "***Loan Documents***" as further defined in the Note) dated April 27, 2010, whereby in the Guaranties each of the Guarantors guaranteed the obligations of Borrower to Lender under the Loan. . . .
>
> . . . By no later than April 27, 2011 (the "*Deadline*"), Borrower shall use its best efforts to generate sales from the exploitation of the "Liberation Assets" (as defined in the Loan Documents) in an amount not less than $2,284,500 (the "***Minimum Sales Target***").
>
> In the event Borrower fails to meet the Minimum Sales Target by the Deadline, then interest shall accrue on the "Deficiency Amount" (defined as the difference between Borrower's actual gross sales revenue and the Minimum Sales Target) at the rate of 1.50% per month (the "***Shortfall Interest***"), commencing as of the Deadline. Borrower shall make monthly payments of all accrued but unpaid Shortfall Interest on the last day of each such month thereafter where there is accrued but unpaid Shortfall Interest, which payments shall be made in cash or the "Cash Equivalent Stock" of CEG's common tradeable stock, in Borrower's discretion. Cash Equivalent Stock shall be valued at the point of sale and shall be the actual sale price of the stock. . . .

Id., at p. 1, "Recitals" Section, ¶ C; p. 2, "Agreement" Section, ¶¶ 2(A) and 2(B) (emphasis in original).

42. The Loan Modification Agreement is signed by Incentive, CFG, CDG, CEG, and Atwell. *Id.*, at p. 4.

43. Camelot and Atwell failed to meet the Minimum Sales Target. Ex. 1, at ¶ 50.

44. For the months starting April 27, 2010 through December 27, 2010, Camelot substantially made its monthly 1.5% Interest payments on the Note. *Id.*, at ¶ 51.

45. Camelot failed to make the Balloon Payment on January 31, 2011 of $682,500 and was in default under the Note. *Id.*, at ¶ 52.

46. Camelot has breached the provisions of the Note. *Id.*, at ¶ 53.

47. After many unsuccessful attempts to settle the matter, Incentive began steps to foreclose on the collateral set forth in the Security and Guaranty Agreements. *Id.*, at ¶ 54.

48. On or about, February 7, 2011 (one week after the Balloon Payment was due), Camelot's counsel sent a letter to Incentive *via* its counsel with a subject line: "Satisfaction of Loan and Guaranty." A true and correct copy of the 2/7/11 Camelot Letter is attached to Exhibit 1 as **Exhibit M**.

49. The letter states that "as of February 1, 2011, CEG, on behalf of CFG, has issued 1,912,086 shares of CEG Class F Convertible Preferred Stock . . . to Lender, which [according to Camelot's calculations has] an aggregate value of $666,888" and constitutes "full satisfaction of the obligations of CEG and CFG." *Id*.

50. No shares were tendered in connection with the 2/7/11 letter. Ex. 1, at ¶ 57.

51. On February 21, 2011 at 9:00 A.M., Incentive held a creditor's sale ("Foreclosure Sale") in the state of Utah to foreclose on the collateral set forth in the Security Agreements, namely the Liberation Assets and the Distribution Assets, which have been collectively defined as the Liberation Library. *Id.*, at ¶ 58.

52. Also on February 21, 2011, Incentive issued a Transfer Statement to Debtors stating, among other things:

> The debtors, Camelot Distribution Group, Inc., Camelot Entertainment Group, Inc., and Camelot Film Group, Inc. (collectively, "Debtor"), defaulted under their loan obligations to the secured party, Incentive Capital, LLC (the "Secured Party"). As a result thereof, the Secured Party, pursuant to its Notice of Disposition of Collateral by Public Sale dated February 9, 2011, did conduct a public sale of the following personal property constituting a portion of Secured Party's collateral (the "Collateral"):
>
> > All of Debtor's rights to the film library described herein below and referred to as the "Distribution Assets", along with all products and proceeds of or from (a) the Distribution Assets; and (b) all accounts, negotiable instruments, chattel paper and electronic chattel paper, general intangibles, proceeds, and monies derived from the disposition or other exploitation of the Distribution Assets in all media, from all sources, worldwide during the term hereof. The Distribution Assets include without limitation the following films, and all of Debtor's right, title and interest therein, including distribution rights, royalty interests, and contract/account payments: Samurai Avenger; First Strike; Screwball: The Ted Whitfield Story (aka The Wiffler); The Fallen; One Lucky Dog (aka Weiner Dog Nationals); Never Sleep Again; Hellraiser Unleashed; Fink!; Nude Nuns With Big Guns; Zombie Culture; National Lampoons Dirty Movie; Who Is KK Downey; and Next of Kin.
>
> All of Debtor's personal property assets and interests as more particularly described in the Asset Purchase Agreement (the "Asset Purchase Agreement") dated April 28, 2010 between Camelot Film Group, Inc., a Nevada corporation, on the one hand, and CMBG Advisors, Inc., a California corporation in its sole and limited capacity as assignee for the benefit of creditors of Liberation Group, Inc., on the other hand, and all products and proceeds thereof, including without limitation (a) that certain film library referred to as the Liberation Assets (as defined in the Asset Purchase Agreement); (b) all accounts, negotiable instruments, chattel paper and electronic chattel paper, general intangibles, proceeds, and monies derived from the disposition or other exploitation of the Liberation Assets in all media, from all sources, worldwide during the term hereof; and (c) other assets of the Debtor as set forth in the Asset Purchase Agreement.

See Transfer Statement, attached to Exhibit 1 as **Exhibit N**.

53. As of that date of the foreclosure sale Incentive became the legal title holder to the Liberation Library.

54. On or about March 1, 2011, CEG sent Incentive a share certificate listing 1,912,086 shares of Series F Preferred Stock. A true and correct copy of the Share Certificate is attached to Exhibit 1 as **Exhibit O**.

55. On or about March 10, 2011, Incentive's counsel to send a letter responding to the March 1, 2011 delivery of the Stock Certificate, stating:

> Enclosed with this letter is a Stock Certificate that was delivered to this office. We did not request the certificate, nor do we accept it as some form of payment due under the various agreements entered into between Incentive Capital, LLC and Camelot Entertainment Group, Inc. and its affiliates.

A true and correct copy of the March 10, 2011 letter is attached to Exhibit 1 as **Exhibit P**.

56. Camelot's most recent stock quote on its website shows its current stock value to be $0.0001 per share, with total monthly earnings of $391.75. Ex. 1, at ¶ 63. Apparently, Camelot's stock is in lock-down and has been unable to trade more than a few thousand dollars per day. *Id.*

57. Investigation into Camelot's financials indicates that there is no discernable market for Camelot's stock nor can it be readily liquidated. *Id.*, at ¶ 64.

58. Atwell as a guarantor has few or no assets because, among other things, he pledged all of his assets towards the building of a motion picture studio resulting in the loss of his home and other value. *Id.*

59. Prior to and after Incentive entered into the loan transactions, Camelot and some of the Atwell Defendants provided a detailed spreadsheet listing the titles in the Liberation Assets and the rights that had been licensed and sold and the available rights for future

exploitation on a territory by territory basis, as well as by a media basis such as theatrical, ancillary, video, pay-per-view, payTV, FreeTV, Internet, merchandising, music, publishing, clip, remake, and the like. A true and correct copy of "Commercialization Spreadsheet" is attached to Exhibit 1 as **Exhibit Q**.

60. Camelot and its representatives represented that once a fractionalized right is sold or licensed, it is generally unavailable for years or even decades and there is no way to undo the deal without creating additional litigation and a permanent taint on the marketplace relative to that particular license or sale. Ex. 1, at ¶ 66.

61. Camelot provided Incentive with a series of agreements showing some of the types of agreements that it had entered into with various buyers and distributors relative to the Liberation Library. A true and correct copy of the series of the "Distribution Agreements" is attached to Exhibit 1 as **Exhibit R**.

62. The Distribution Agreements show that the license periods range from a few months to 1, 2.5, 3, 5, 9, 10, years. Ex. R.

63. Camelot has informed Incentive's counsel that it is continuing to exploit the Liberation Library by entering into license and sale agreements similar to the Distribution Agreements, and is intending to transfer titles in the Liberation Library during the Cannes Film Market, mid-May 2011. Ex. 1, at ¶ 69.

64. Camelot and the Atwell Defendants refuse to acknowledge the ownership interests of Incentive and are improperly maintaining control over the funds, physical property,

and intellectual property, including contracts and payment rights in contravention of Incentive's ownership rights. *Id.*, at ¶ 70.

65. Camelot and the Atwell Defendants are holding themselves out to the world as the owners of the Liberation Library. *Id.*, at ¶ 71.

66. CDG also wrongfully filed a copyright infringement action in California federal court against nearly 5,865 doe defendants who have allegedly downloaded one or more of the Liberation Library films without authorization. The law suit is styled *Camelot Distribution Group, Inc. v. Does 5865, inclusive*, Central District of California, Case No.: CV11-01949 DDP (FMOX) ("Infringement Suit").

67. CDG claims to possess exclusive rights to distribute the Liberation Library. Contrary to such representations, all distribution and ownership rights belong solely to Incentive. Ex. 1, at ¶ 73.

68. Camelot and the Atwell Defendants are diverting and converting revenue that is being generated from the Liberation Library that rightfully belongs to Incentive. *Id.*, at ¶ 74.

69. Camelot and the Atwell Defendants are wrongfully holding and refusing to provide information regarding the location of physical elements of the Liberation Library, such as where master video and audio recordings are stored, the many licensing contracts, where revenue and funds are being deposited that are derived from the Liberation Library. *Id.*, at ¶ 75.

ARGUMENT

A. A Preliminary Injunction is Necessary to Maintain the Status Quo.

"The object of the preliminary injunction is to preserve the status quo pending the litigation of the merits." *Penn v. San Juan Hosp., Inc*., 528 F.2d 1181, 1185 (10th Cir. 1975). "In issuing a preliminary injunction, a court is primarily attempting to preserve the power to render a meaningful decision on the merits." *Keirnan v. Utah Transit Auth*., 339 F.3d 1217, 1220 (10th Cir. 2003). Plaintiff is asking the Court to preserve assets to which it has legal claims of ownership until the merits of the case can be decided.

In order to obtain a preliminary injunction, the moving party must demonstrate "(1) a likelihood of success on the merits; (2) a likelihood that the movant will suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the movant's favor; and (4) that the injunction is in the public interest.'" *Attorney Gen. of Okla. v. Tyson Foods, Inc., 565 F.3d 769, 776* (10th Cir. 2009) (quotation omitted). Evidence of irreparable harm, injury to the plaintiff, and no adversity to the public interest, allows courts to be more lenient regarding the element of likelihood of success on the merits. *See id.*

B. Plaintiff Will Suffer Irreparable Harm Unless a Temporary Restraining Order and Preliminary Injunction are Issued.

1. The Liberation Library is Comprised of Unique Intellectual Property Works That Cannot be Replaced if Wrongfully Sold or Distributed

"Courts . . .have identified the following as factors supporting irreparable harm determinations: inability to calculate damages, . . . diminishment of competitive positions in marketplace, . . . and lost opportunities to distribute unique products." *Dominion Video Satellite, Inc. v. Echostar Satellite Corp*., 356 F.3d 1256, 1263 (10th Cir. 2004) (and cases cited

therein). "Irreparable harm . . . is often found in the loss of a unique product or service. *See Tom Doherty Assocs., Inc. v. Saban Entm't, Inc*., 60 F.3d 27, 37-38 (2d Cir.1995); *Reuters Ltd. v. United Press Int'l, Inc*., 903 F.2d 904, 907-08 (2d Cir.1990)." *Robins v. Zwirner*, 2010 WL 2035194 (S.D.N.Y. May 20, 2010).

Courts are particularly likely to impose an injunction when the irreparable harm involves unique intellectual property such as the film and television series in the Liberation Library:

> Unlike most property rights, the value of this [intellectual property] interest is often fleeting. The popular demand for a new literary, musical, sculptural or other "work of authorship," often may last only until the next fad. In such situations, the commercial value of the copyright owner's tangible expression, appropriated by an infringer, may be lost by the time litigation on the claim is complete. Furthermore, monetary recovery at that point may be inadequate to redress the harm.

Concrete Machinery Co., 843 F.2d 600, 611 (1st Cir. 1988) (internal quotations and citations omitted), citing *Apple Computer, Inc. v. Formula Int'l Inc.*, 725 F.2d 521 (9th Cir. 1984); *see also Atari, Inc. v. North American Philips Consumer Electronics Corp.*, 672 F.2d 607 (7th Cir.) *cert. denied*, 459 U.S. 880, (1982); *Novelty Textile Mills, Inc. v. Joan Fabrics Corp.*, 558 F.2d 1090 (2d Cir. 1977). Although the foregoing cases largely relate to copyright infringement, the principle favoring injunctions to preserve the status quo, holds true in this case where once the Liberation Library is disposed of there is no going back.

There are numerous cases in which courts have granted requests by a copyright owner, such as Incentive, for a preliminary injunction that enjoins a defendant from improperly distributing a motion picture or other work. *See Twentieth Century Fox Film Corp. v. Warner Bros. Entertainment, Inc*., 630 F. Supp. 2d 1140 (C.D. Cal. 2008) (granting injunction where petitioner "own[ed] at least a copyright interest consisting of, at the very least, the right to

distribute the "Watchmen" motion picture."); *see Danjaq, LLC v. Sony Corp*., 49 U.S.P.Q.2D (BNA) 1341 (C.D. Cal. 1998). That courts have routinely granted preliminary injunctions to enjoin the offering or release of motion pictures demonstrates that this is the type of relief that should be granted here.

The Liberation Library is comprised of unique motion picture, television, and media products. If it is wrongfully disposed of or distributed before the merits of the litigation are decided, it cannot be replaced if the Plaintiff ultimately prevails in this and related litigation. Attached as Exhibit Q to the Mecham Declaration is a spreadsheet showing the availabilities of each of the titles as well as where the titles have been licensed or sold. For reference, each title may be sold or licensed in every country throughout the world in a number of different broadcast or distribution media such as theatrical, ancillary, video, pay-per-view, payTV, FreeTV, Internet, merchandising, music, publishing, clip, remake, and the like. Ex. Q. Once a fractionalized right is sold or licensed, it is generally for years or even decades and there is no way to undo the deal without creating additional litigation and a taint on the marketplace relative to that particular license. Ex. 1, at ¶ 60.

Camelot provided Incentive with a series of agreements showing some of the types of agreements ("Distribution Agreements") that it had entered into with various buyers and distributors relative to the Liberation Library. *See* Stmt. of Facts, ¶ 61. The Distribution Agreements show that the license periods range from a few months to 1, 2.5, 3, 5, 9, 10, years. Ex. 1, Ex. R thereto. Once distribution agreements are entered into, the buyers begin exploiting the media title in their territory through broadcast, DVD sales, theatrical releases, and so on. *Id*.

Once the "release" has occurred, there is no way to remedy the effect – there is no way to "re-release" a title.

Camelot has informed Incentive's counsel that it is continuing to exploit the Liberation Library by entering into license and sale agreements similar to the Distribution Agreements, and is intending to transfer titles in the Liberation Library during the Cannes Film Market, mid-May 2011. Ex. 1, at ¶ 69; *see* http://distribution.camelotent.com, www.camelotent.com. It will literally be impossible to unwind all of the hundreds of deals that Camelot could continue to enter into, particularly at the Cannes Film Market. If the Liberation Library or portions thereof are disposed of, its value will be destroyed because the opportunity to take advantage of other marketing and business opportunities will be gone.

The status quo should be preserved and disposition of the Library should immediately cease.

2. Irreparable Harm is Shown, Even on Monetary Damages, Where Camelot and Mr. Atwell Do Not Appear to Have Substantial Assets.

Due to Camelot's and Mr. Atwell's lack of substantial assets to sufficiently compensate Incentive's loss, Incentive has and will continue to suffer irreparable harm. Though irreparable harm is usually not found where money damages may compensate loss, an exception to that rule exists where it is unlikely that a party will have assets to pay an award of money damages. *See*, *e.g., ClearOne Communications, Inc. v. Chiang*, 670 F. Supp. 2d 1248, 1258 (D. Utah 2009) (noting concern of court that movant will suffer irreparable harm if assets leave respondent, and respondent may be unable to respond to judgment); *Carabillo v. ULLICO Inc. Pension Plan and Trust*, 355 F.Supp.2d 49, 55 (D.D.C.2004) (economic loss may constitute irreparable harm where defendant would become insolvent or otherwise judgment proof prior to the conclusion of

litigation thus making the plaintiff's alleged damages unrecoverable"); *Foltz v. U.S. News and World Report, Inc*., 613 F. Supp. 634, 643 (D.D.C.1985) (concluding that the unavailability of assets to pay a damage award would irreparably injure the plaintiffs).

The most recent stock quote provided by Camelot on their website is $0.0001 per share, with total monthly earnings of $391.75. *See* www.camelotent.com/stock-quote.html, referenced 5/511. The stock has essentially been in lock-down for months, unable to trade more than a few thousand dollars per day. Ex. 1, at ¶ 63. When Plaintiff investigated the possibility of receiving and disposing of stock from Camelot, its broker indicated that there is no discernable market for the stock and could not be readily liquidated. *Id.*, at ¶ 64. Mr. Atwell apparently pledged all of his assets towards the building of a motion picture studio resulting in the loss of his home and other value. *Id*., at ¶ 64. It is clear that neither Camelot nor Mr. Atwell have adequate assets to compensate Incentive for losses should the Liberation Library be disposed of.

C. Plaintiff Meets the Likelihood of Success Factor with Respect to Its First and Fifth Causes of Action.

1. First Cause: Camelot and Mr. Atwell have Breached their Contracts.

In order to establish a likelihood of success sufficient to satisfy the requirement for a restraining order and preliminary injunction, Incentive need merely show a single breach of the parties' agreements. In this case, Incentive can establish numerous such instances.

This Court has held that where a contract is unambiguous, "Interpretation of the contract is a matter of law." *First Sec. Bank of Utah, N.A. v. Gillman*, 158 B.R. 498, 505 (D. Utah 1993) (citing *Ron Case Roofing & Asphalt Paving, Inc. v. Blomquist,* 773 P.2d 1382, 1385-86 (Utah 1989) and *Isaac v. Temex Energy, Inc. (In re Amarex, Inc.*), 853 F.2d 1526, 1529 (10th Cir.1988)). If contract terms are clear and unambiguous, the court also may interpret the intent

of the parties as a matter of law. *Anaconda Minerals Co. v. Stoller Chem. Co., Inc.*, 773 F. Supp. 1498, 1504 (D. Utah 1991) (citing *Gomez v. Amer. Electric Power Serv. Corp.,* 726 F.2d 649, 651-52 (10th Cir.1984) (applying Utah law)). In interpreting contracts, "[A] court must give language its usual and ordinary meaning." *See id.* (citing *Commercial Bldg. Corp. v. Blair,* 565 P.2d 776, 778 (Utah 1977)).

In the present case, the contracts known as the Loan Documents (Mecham Declaration, Exhibits A-F) are straightforward, unambiguous and direct as to the parties' intentions and agreement. Camelot and Mr. Atwell breached the parties' agreements by: (1) failing to repay Incentive the $650,000.00 in principal plus interest, fees and costs as required under the Loan Documents by January 31, 2011 (Ex. 1, at ¶ 52); (2) failing to generate income in accordance with the Minimum Sales Target of $2,284,500 by the Deadline of April 27, 2011 (Stmt. of Facts, 40-43; Ex. 1, Ex. L); and (3) failing to make interest and revenue payments as required under the terms of the Note (Ex. 1, ¶ 51 [missing January interest payment]; Ex. 1, Ex. I, ["However, to date the lender has only received a participation payment of $1,012.22 on May 26, 2010 and on May 21, 2010 a payment of $4,400. The total participation payments to-date equal $5,412.22, which constitutes 10% of $54,122."]. These are indisputable breaches of contract.

Defendants will likely argue that they somehow cured the forgoing breaches by notifying Plaintiff on February 7, 2011 (one week after the Balloon Payment was due), that according to Camelot's internal records "as of February 1, 2011, CEG, on behalf of CFG, has issued 1,912,086 shares of CEG Class F Convertible Preferred Stock . . . to Lender, which [according to Camelot's calculations has] an aggregate value of $666,888" and constitutes "full satisfaction of the obligations of CEG and CFG." Stmt. of Facts, 48; Ex 1, Ex. M thereto. However, no shares

were tendered on February 1 as referenced in the letter, or on February 7 when the letter was sent. Ex. 1, at ¶ 57.

Neither the Note nor any of the other loan documents allows a mere representation by Camelot indicating that it made an internal issuance of shares to constitute payment in full. Moreover, the fact that on March 1, 2011, CEG sent Incentive a share certificate purporting to be 1,912,086 shares of Series F Preferred Stock is irrelevant in that (1) it was not accepted by Plaintiff and was returned (Stmt. of Facts ¶ 55, Ex. 1, Ex. P thereto ["We did not request the certificate, nor do we accept it as some form of payment . . ."]; (2) it was provided more than one month after the balloon payment was due on January 31, 2011 and no provision of any of the loan documents requires Plaintiff to accept such a late payment or the tendering of shares as a substitute for payment; (3) it is impracticable or impossible to sell the stock for cash (Ex. 1, at ¶ 63); (4) the foreclosure sale on the Liberation Library had already occurred on February 21, 2011, and a Transfer Statement had been sent to Camelot, thereby making Plaintiff the owner of the Liberation Library and the tendering of shares moot (Ex. 1, ¶ 58; Ex. 1, Ex. N thereto).

Even if Camelot could somehow establish that it cured the balloon payment breach, it cannot show that it cured the failure to pay the required 10% of gross revenue. Plaintiff has met its burden to show a likelihood of success on its breach of contract claim.

2. Fifth Cause: Defendants Breached the Implied Covenant of Good Faith and Fair Dealing.

Camelot and the Atwell Defendants have breached the implied covenant of good faith and fair dealing. Inherent in each contract is the parties' implied agreement "[t]o comply with [their] obligation to perform a contract in good faith. . ." *Iadanza v. Mather*, 820 F. Supp. 1371, 1388 (D. Utah 1993) (citing *See St. Benedict's Development Company v. St. Benedict's Hospital,*

811 P.2d 194 (Utah 1991)). Further, "To state a claim for breach of the covenant of good faith and fair dealing," plaintiff must allege that Defendants "'intentionally or purposely' acted to destroy [plaintiff's] 'right to receive the fruits of the contract'." *See id.* at 199. Toward that end, Camelot and the Atwell Defendants breached the implied covenant of good faith and fair dealing by, among other things, failing to provide reports and other information required under the Security Agreements manifesting revenue amounts due to Plaintiff in order to conceal profits and divert proceeds (Stmt. of Facts 14 – 15; Ex. 1, Ex. E thereto at pp. 4 – 5, Section B, ¶¶ 6(e)); misrepresenting the actual and potential revenue of the Library as well as Camelot's financial resources and stability and ability to generate income and distribute the Library (Stmt. of Facts 7-10, 30-40), by not using its "best efforts" to keep Jamie Thompson employed as the President of Distribution a material representation made to induce Plaintiff's loan (Stmt. of Facts 16-19); and by continuing to sell and license rights to the Library in violation of Plaintiff's rights and knowing that such acts cannot be undone and are irreparable (Ex. 1, at ¶ 69; *see* http://distribution.camelotent.com, www.camelotent.com). As set forth above, Camelot and the Atwell Defendants have acted with extreme bad faith and have acted both directly and indirectly to destroy Incentive's benefits under the contracts. Incentive has sufficiently carried its burden regarding this claim.

D. The Balance of Harms Weighs in Incentive's Favor.

The balance of harms weighs in Incentive's favor. The Defendants are presently disposing of the Liberation Library and therefore property rights that are in dispute between the parties. Once the Library is hypothecated, there is no going back. Relationships and deals are

being consumated to the exclusion of Incentive. Incentive will never be able to recapture the good-will and reputational damage being done to in the marketplace through lost opportunities.

E. The Public Interest is Served by Enforcing Contracts Particularly Regarding Unique Intellectual Property.

The Plaintiff's burden here is to show that an injunction would not be adverse to the public interest. The public has no interest in prematurely handing all rights of the Liberation Library to Camelot to dispose of in any way it sees fit. Therefore, the issuance of an injunction to preserve the status quo would do no harm to the public interest.

The public does, however, have an interest in the enforcement of legitimate contracts, particularly with respect to unique intellectual property. Thus, the balance of the harms and public interest considerations weigh in favor of preserving the status quo.

E. The Plaintiff Has Raised Serious Questions Going To The Merits, Providing Fair Grounds For Litigation.

The four part test for a preliminary injunction – which requires a showing by the movant that "(1) it will suffer irreparable injury unless the injunction issues, (2) the threatened injury outweighs any damage the proposed injunction may cause the opposing party, (3) if issued, the injunction would not be adverse to the public interest, and (4) it has a substantial likelihood of success on the merits" is modified in a case, such as the present one, where the Plaintiff has shown that "the first three requirements tip strongly in [their] favor." *Oklahoma, ex rel., OK Tax Comm'n v. Int'l Registration Plan, Inc*., 455 F.3d 1107, 1112-13 (10th Cir. 2006) (internal quotations and citations omitted). "In such situations, the moving party may meet the requirement for showing success on the merits by showing that questions going to the merits are

so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation." *Id*. (internal quotation and citation omitted).

Plaintiff has established that there is a serious question about who presently owns the Library in light of Camelot's default under the Note and the foreclosure sale that followed. At the very least, Plaintiff has shown that questions as to ownership and rights to distribute the Library are "doubtful," "substantial," and "difficult." It is in this situation that the court should not allow Camelot's disposition of the Library now to render a possible resolution on the merits futile later.

CONCLUSION

For the foregoing reasons, the Court should enter a Temporary Restraining Order and grant a Preliminary Injunction.

DATED this 5th day of May, 2011.

PIA ANDERSON DORIUS REYNARD & MOSS

/s/ Joseph G. Pia
Joseph Pia
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2011, I caused to be emailed via electronic mail a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF PLAINTIFF'S SECOND MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION** to the following:

John A. Snow
Vancott
36 South State Street
Suite 1900
Salt Lake City, Utah 84111

PIA ANDERSON DORIUS REYNARD & MOSS, LLC

/S/ JOSEPH G. PIA
Joseph G. Pia