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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12	CAMELOT ENTERTAINMENT, INC. a)	Case No.: CV11-02323 GAF (JEMx)
13	Delaware Corporation, CAMELOT FILM)	(Assigned to the Hon. Gary A. Feess)
14	GROUP, INC., a Delaware Corporation,)	
15	CAMELOT DISTRIBUTION GROUP, INC., a)	DEFENDANT’S NOTICE OF MOTION
16	Nevada Corporation, ROBERT P. ATWELL, an)	AND MOTION TO DISMISS
17	individual,)	PLAINTIFFS’ COMPLAINT PURSUANT
18)	TO RULE 12(b)(3) AND 28 U.S.C. §§ 1391
19	Plaintiffs,)	AND 1406 OR, IN THE ALTERNATIVE,
20	vs.)	MOTION TO TRANSFER PURSUANT
21)	TO 28 U.S.C. §§ 1404 and 1406;
22	INCENTIVE CAPITAL, LLC, a Utah limited)	MEMORANDUM OF POINTS AND
23	Liability Company and DOES 1 – 50,)	AUTHORITIES AND DECLARATION OF
24)	NATHAN DORIOUS (EX. "J") IN
25	Defendant.)	SUPPORT THEREOF.
26)	

27 **Date: April 25, 2011**
28 **Time: 9:30 a.m.**
Place: Dept. "740"

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 25, 2011, at 9:30 a.m., in Courtroom "740" of
3 the United States District Court for the Central District of California, located at 255 E. Temple
4 Street, Los Angeles, CA 90012, Defendant Incentive Capital, LLC, a Utah Limited Liability
5 Company ("Incentive" or "Defendant") will, and hereby does, move this Court to dismiss the
6 entirety of the Complaint filed by Plaintiffs Camelot Entertainment, Inc., a Delaware
7 Corporation ("CEI"); Camelot Film Group, Inc. ("CFG"), a Nevada Corporation; Camelot
8 Distribution Group, Inc., a Nevada corporation ("CDG") (collectively, the "Camelot Entities");
9 and Robert P. Atwell ("Atwell" and collectively with the Camelot Entities, "Plaintiffs" or
10 "Debtors") pursuant to Fed. R. Civ. P. Rule 12(b)(3) and 28 U.S.C. §§ 1391 and 1406 or, in the
11 alternative, transfer this action to the Central District of Utah pursuant to 28 U.S.C. §§ 1404
12 and 1406 on the grounds that:

13 (a) The Security Agreements at issue contain mandatory forum selection provisions
14 which require that this dispute be litigated in Utah.

15 (b) The facts set forth below demonstrate that the Central District of California is
16 not a proper forum and that the Central District of Utah is the proper forum to hear this dispute
17 in any event.

18 This motion is based upon this notice, the memorandum of points and authorities in
19 support thereof, the Declaration of Nathan Dorius and the exhibits attached hereto, any reply
20 papers, all pleadings and papers on file with the Court in this action, such matters of which this
21 Court may take judicial notice and such oral and documentary evidence as may be presented at
22 the time of hearing.

23 Dated: March 25, 2011

WYMAN & ISAACS LLP

24
25 By: /s/Bruce Isaacs

26 Bruce Isaacs, Esq., No. 100926
27 Attorneys for Defendant Incentive
28 Capital, LLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Under well-settled Ninth Circuit law, Plaintiffs’ Complaint should be dismissed because venue is not proper in California under the mandatory forum selection clauses contained in the agreements between the parties central to this dispute. This dispute involves a loan made by Incentive to Debtors/Plaintiffs in the initial principal amount of \$650,000.00 (the “Loan”) to be used by Plaintiffs for purposes of purchasing all rights, title and interest in and to a large film library (the “Film Library” or “Liberation Library”) of approximately 880 existing motion picture titles (each a “Film”). The Loan made by Incentive to Plaintiffs for the Film Library is evidenced by a promissory note (the “Note”), guaranteed by several guaranty agreements (collectively, the “Guaranties”) and secured by the Film Library itself (along with a participation in revenues) as set forth in two separate security agreements (collectively, the “Security Agreements”) executed between the parties all on April 27, 2010.

Incentive is a Utah LLC and the Note, Guarantees, and Security Agreements all contain Utah choice of law provisions. The Security Agreements themselves, which will be central to the dispute, contain mandatory forum selection clauses, *requiring* that any suit relative thereto be brought in Utah. Despite the forum selection clauses, this case was brought by Debtors/Plaintiffs in California, and subsequently removed to this Court. Incentive has instituted a similar action in the Central District of Utah – the only forum where such an action may be maintained.

The Security Agreements, which are the primary agreements relevant to this dispute, consist of the following: First, Plaintiff CDG (as “Debtor”) and Incentive (as “Secured Party”) entered into a “Security Agreement” dated April 27, 2010 (the “CDG Security Agreement”), pursuant to which CDG granted to Incentive “a continuing first priority security interest in all of Debtors rights to” thirteen (13) of the Films of the Film Library. Second, Plaintiff CFG (as “Debtor”) executed the “Security and Participation Agreement” with Incentive (again as “Secured Party”), dated April 27, 2010 (the “CFG Security Agreement”) pursuant to which CFG granted Incentive “a continuing first priority security interest” in the Liberation Library

1 (including all titles therein) in addition to a profit participation of initially ten percent (10%) of
2 all gross revenues generated from the Film Library.

3 Although Plaintiffs made each of their monthly scheduled interest payments due under
4 the Note, they failed to make the balloon principal and interest payment. In addition, Incentive
5 discovered that Plaintiffs had failed to pay Incentive an amount actually equal to 10% of the
6 gross revenues Plaintiffs had generated from the Film Library in each of the participation
7 payments Plaintiffs had made to Incentive (as required by CFG Security Agreement), while
8 misrepresenting to Incentive that they had. These actions constituted defaults under the plain
9 terms of the Note and the CFG Security Agreement. When Plaintiffs defaulted on the Note and
10 the Security Agreements, Incentive (after first providing notice to Plaintiffs and several
11 opportunities to cure) exercised its rights under the Security Agreements and (after proper
12 notice and advertising) conducted a creditor's sale ("Foreclosure Sale") on the Film Library in
13 Utah, whereby Incentive obtained legal title to the entire Library.

14 The key agreements between the parties that lie at the heart of this dispute are the two
15 separate Security Agreements. These Security Agreements set forth the rights of the parties
16 with regard to the Film Library (as collateral for the Note) and what is to happen with the
17 collateral upon any default by Plaintiffs of the Note. Unlike the Security Agreements, the basic
18 terms of the Note and the Guaranties are not in dispute by the parties and do not provide the
19 basis for any of Plaintiffs' claims.

20 The allegations of Plaintiffs' Complaint confirm that the dispute between the parties
21 focuses on what rights Incentive possesses under the Security Agreements with regard to the
22 Film Library and whether it had the right under these Agreements to obtain title to the Film
23 Library through the Foreclosure Sale. Accordingly, the Security Agreements are the center of
24 this dispute.

25 Incentive's present Motion is primarily based on mandatory forum selection clauses
26 found in both Security Agreements that consist of identical language and require any legal
27 action "regarding," "arising from" or "in connection with" either Security Agreement "***must be***
28 ***brought in the federal or state courts located in the State of Utah.***" (Emphasis added). See

1 Exs. "C" and "D" hereto. Under well-settled Ninth Circuit precedent, these forum selection
2 clauses are valid and must be strictly enforced. As a result, Plaintiffs were required under the
3 Security Agreements to bring their action against Incentive in Utah (as mandated by the forum
4 selection clauses contained therein). However, when Plaintiffs filed their Complaint in a
5 California state court, they ignored these forum selection clauses and breached their agreement
6 to initiate any claims they had against Incentive relating to the Security Agreements in Utah.
7 Accordingly, for the reasons more fully set forth below, based on the valid and enforceable
8 mandatory forum selection clauses contained in the Security Agreements, this action should be
9 dismissed pursuant to Fed. R. Civ. P. Rule 12(b)(3) and/or 28 U.S.C. §§ 1391 and 1406, or,
10 alternatively, transferred to the Central District of Utah, pursuant to 28 U.S.C. §§ 1404 and/or
11 1406, where, at present, a case essentially identical to this one involving the same parties,
12 transactions, facts and witnesses is pending.

13 This action should also be dismissed or, alternatively, transferred based on the fact that,
14 as established below, none of the significant events giving rise to Plaintiffs' claims occurred in
15 California, all wrongful conduct alleged as to Incentive occurred outside of California and, a
16 transfer of this action (if it is not outright dismissed by the Court) to the Central District of Utah
17 would avoid duplicative litigation, promote judicial efficiency, and protect against unnecessary
18 and inconvenient expense.

19 20 **II. FACTUAL BACKGROUND**

21 **Parties and Jurisdiction**

22 1. Defendant Incentive Capital, LLC ("Incentive") is a Utah limited liability with
23 its principal place of business in Utah. See Exhibit A, Secretary of State Filings for all parties.

24 2. The Manager of Incentive is also a Utah citizen with a primary residence in
25 Utah. *Id.*

26 3. Plaintiff Camelot Entertainment Group, Inc. ("CEG"), is a Delaware
27 corporation. *Id.*

28 4. Plaintiff Camelot Film Group, Inc. ("CFG"), is a Nevada corporation. *Id.*

1 5. Plaintiff Camelot Distribution Group, Inc. (“CDG”), is a Nevada corporation. *Id.*

2 6. Plaintiff Robert P. Atwell (“Mr. Atwell”), CEO of the “Camelot Entities” is a
3 resident of the State of California. *See* Plaintiffs’ Original Complaint (“Original Complaint”),
4 at ¶4, on file with the Court.

5 7. Pursuant to 28 U.S.C.A. § 1332, the Parties satisfy the requirements for diversity
6 jurisdiction by way of complete diversity of citizenship and the amount in controversy.

7 8. Plaintiffs filed the Original Complaint in California State Court.

8 9. Defendant properly removed the case to this Court because the requirements of
9 diversity jurisdiction are met.

10 10. However, this case should be dismissed because of the controlling forum
11 selection clauses and choice of law provisions under the binding provisions of the parties’
12 agreements. Alternatively, this Court should transfer the above-captioned action to the Central
13 District of Utah where another action arising under the same nucleus of operative facts,
14 transactions and occurrences was brought in the correct forum. *See* INCENTIVE CAPITAL,
15 LLC, a Utah limited liability company v. CAMELOT ENTERTAINMENT, INC. a Delaware
16 Corporation, CAMELOT FILM GROUP, INC., a Delaware Corporation, CAMELOT
17 DISTRIBUTION GROUP, INC., a Nevada Corporation, ROBERT P. ATWELL, an individual,
18 JAMIE THOMPSON, an individual, and STEVEN ISTOCK, an individual (the “Utah
19 Action”).

20 **Controlling Utah Forum Selection and Choice of Law Provisions**

21 1. Defendant Incentive is in the business of providing financing in the
22 entertainment sector, primarily in the form of collateralized loans coupled with security
23 agreements and guarantees.

24 2. Plaintiffs CEG, CFG, CDG and Mr. Atwell (collectively “Plaintiffs”) operate a
25 media distribution company.

26 3. On or about April 27, 2010, Incentive entered into a loan agreement with CFG
27 (the “Note”), attached hereto as **Exhibit B**, whereby Incentive agreed to loan CFG the principal
28 amount of \$650,000.00 with fees and interest. *See* Exh. B.

1 4. The Note's "Governing Law" section provides in part: "This Note shall be
2 construed and *enforced under the laws of the State of Utah* and any applicable federal laws."

3 *See id.* (emphasis added.)

4 5. The Note, and the CEG, Atwell and CDG Guarantees (collectively the
5 "Guarantees" explained below) are secured by collateral described in a security agreement
6 between Incentive and CDG (the "CDG Security Agreement"), attached hereto as **Exhibit C**, as
7 "Distribution Assets," a series of films being distributed by Camelot. *See* Exh. C.

8 6. The "Governing Law; Terms" section of the CDG Security Agreement provides:

9 *This Security Agreement shall be deemed to have been made in the state of Utah and*
10 *the validity, construction, interpretation, and enforcement hereof, and the rights of*
11 *the parties hereto, shall be determined under, governed by, and construed in*
12 *accordance with the internal laws of the state of Utah.* Debtor hereby consents to the
jurisdiction of any Utah state or United States Federal Court sitting in Utah with respect
to disputes arising out of this Security Agreement.

13 *See id.* (emphasis added).

14 7. The "Waiver of Jury Trial" section of the CDG Security Agreement provides:

15 *Any legal action or proceeding with respect to this Security Agreement must be*
16 *brought before the federal or state courts located in the State of Utah,* unless Secured
17 Party elects to bring such legal action property, generally and unconditionally, the
jurisdiction of the federal or state courts located in the State of Utah as having proper
18 venue. *Debtor hereby irrevocably waives any objection which it may have now or*
19 *hereafter have to the laying of venue of any of the aforesaid actions or proceedings*
20 *arising out of or in connection with this Security Agreement brought in the aforesaid*
21 *Utah courts and irrevocably waives and agrees not to plead or claim in any such court*
22 *that any such action or proceeding brought in any such court has been brought in an*
inconvenient forum, and also consents to the service of process by any means
authorized by the State of Utah.

23 *See id.* (emphasis added).

24 8. The parties entered into another security and participation agreement between
25 Incentive and CFG (the "CFG Security Agreement"), attached hereto as **Exhibit D**, for the
26 "Liberation Assets," a large library of motion pictures and television series. *See* Exh. D.

27 9. The "Governing Law; Terms" section of the CFG Security Agreement is
28 identical to the CDG Security agreement:

1 ***This Security Agreement shall be deemed to have been made in the state of Utah and***
2 ***the validity, construction, interpretation, and enforcement hereof, and the rights of***
3 ***the parties hereto, shall be determined under, governed by, and construed in***
4 ***accordance with the internal laws of the state of Utah.*** Debtor hereby consents to the
jurisdiction of any Utah state or United States Federal Court sitting in Utah with respect
to disputes arising out of this Security Agreement.

5 *See id.* (emphasis added).

6 10. The “Waiver of Jury Trial” section of the CFG Security Agreement provides:

7 ***Any legal action or proceeding with respect to this Security Agreement must be***
8 ***brought before the federal or state courts located in the State of Utah,*** unless Secured
9 Party elects to bring such legal action property, generally and unconditionally, the
jurisdiction of the federal or state courts located in the State of Utah as having proper
venue. ***Debtor hereby irrevocably waives any objection which it may have now or***
10 ***hereafter have to the laying of venue of any of the aforesaid actions or proceedings***
11 ***arising out of or in connection with this Security Agreement brought in the aforesaid***
12 ***Utah courts and irrevocably waives and agrees not to plead or claim in any such court***
13 ***that any such action or proceeding brought in any such court has been brought in an***
14 ***inconvenient forum,*** and also consents to the service of process by any means
authorized by the State of Utah.

15 *See id.* (emphasis added).

16 11. On or about April 27, 2010, Incentive entered into a guaranty agreement with
17 CEG (the “CEG Guaranty”), attached hereto as **Exhibit E**, whereby CEG unconditionally and
18 absolutely guaranteed CFG’s repayment obligations under the Note. *See Ex. E.*

19 12. The CEG Guaranty’s “Governing Law” section provides:

20 The provisions of this Guaranty and the respective rights and duties of Guarantor and
21 Lender hereunder shall be governed by and ***construed in accordance with Utah law***
22 ***and any applicable federal laws.*** . . . Guarantor hereby irrevocably agrees that ***all***
23 ***claims in respect of such action or proceeding may be heard and determined in such***
24 ***Utah state or federal court.*** The Guarantor hereby waives any objection that it may nor
or hereafter have to the venue of any suit or any such court or that such suit is brought in
any inconvenient court.

25 *See id.*

26 13. On or about April 27, 2010, Incentive entered into a guaranty agreement with the
27 CEO of the Camelot Entities, Robert Atwell (the “Atwell Guaranty”), attached hereto as
28 **Exhibit F**, whereby Atwell unconditionally and absolutely guaranteed CFG’s repayment
obligations under the Note. *See Ex. F.*

1 14. The Atwell Guaranty’s “Governing Law” section provides:

2 The provisions of this Guaranty and the respective rights and duties of Guarantor and
3 Lender hereunder ***shall be governed by and construed in accordance with Utah law***
4 ***and any applicable federal laws***. Guarantor hereby irrevocably submits to the non-
5 exclusive jurisdiction of any Utah state or federal court sitting in Salt Lake County, over
6 any action or proceeding arising out of or relating to this Guaranty, or any document
7 related to the Obligations, and Guarantor hereby irrevocably agrees that ***all claims in***
8 ***respect of such action or proceeding may be heard and determined in such Utah state***
9 ***or federal court***. The Guarantor hereby waives any objection that it may nor or
10 hereafter have to the venue of any suit or any such court or that such suit is brought in
11 any inconvenient court.

12 *See id.* (emphasis added.)

13 15. On or about April 27, 2010, CDG entered into a third guaranty agreement with
14 Incentive (the “CDG Guaranty”) as further inducement for the Note, attached hereto as **Exhibit**
15 **G**, whereby CDG unconditionally and absolutely guaranteed CFG’s repayment obligations
16 under the Note. *See Ex. G.*

17 16. The CDG Guaranty’s “Governing Law” section provides:

18 The provisions of this Guaranty and the respective rights and duties of Guarantor and
19 Lender hereunder ***shall be governed by and construed in accordance with Utah law***
20 ***and any applicable federal laws***. Guarantor hereby irrevocably submits to the non-
21 exclusive jurisdiction of any Utah state or federal court sitting in Salt Lake County, over
22 any action or proceeding arising out of or relating to this Guaranty, or any document
23 related to the Obligations, and Guarantor hereby irrevocably agrees that ***all claims in***
24 ***respect of such action or proceeding may be heard and determined in such Utah state***
25 ***or federal court***. The Guarantor hereby waives any objection that it may nor or hereafter
26 have to the venue of any suit or any such court or that such suit is brought in any
27 inconvenient court.

28 *See id.*

17. The Guarantees are further secured by collateral described in a separate escrow
agreement between Incentive and CEG (the “Escrow Agreement”), attached hereto as **Exhibit**
H. *See Ex. H.*

18. The Escrow Agreement provides in part: “These Escrow Instructions and this
Escrow Agreement shall be ***governed by the internal laws of the State of Utah*** applicable to
contracts negotiated and entered into and performed wholly within the State of Utah.” *See id.*
(emphasis added).

1 19. On or about June 11, 2010, Incentive entered into a loan modification agreement
2 with Plaintiffs (the “Loan Modification Agreement”), attached hereto as **Exhibit I**, whereby
3 Plaintiffs agreed to meet certain sales and payment benchmarks in addition to their obligations
4 under the Note. In exchange, Incentive agreed to continue its monetary advances to CFG and
5 to refrain from instituting legal action against Plaintiffs. *See Ex. I. (emphasis added).*

6 20. The “Recitals” section of the Loan Modification Agreement provides in part:
7 “Unless specifically and expressly modified herein, all remaining terms of the Loan Documents
8 shall remain in full force and effect.” *See id.* Furthermore, the Loan Modification Agreement
9 does not modify any of the choice of law provisions in the Loan Documents. *See id.*

10 21. Pursuant to the Loan Documents and the Loan Modification Agreement, the
11 applicable law as agreed to and acknowledged by Plaintiffs is Utah law.

12 22. Due to the mandatory Utah forum selection clauses in the Security Agreements
13 squarely at issue in this matter and integral to the Note and Guarantees, and the Utah choice of
14 law provisions, the present action in California should be dismissed and/or transferred to Utah
15 where it can be consolidated with the Utah Action.

16 **Foreclosure on the Note and Triggering the Security Agreements**

17 23. Pursuant to the terms of the Note, the principal amount of \$650,000.00, fees of
18 approximately \$32,500.00, and applicable interest were due on or before January 31, 2011. *See*
19 *Ex. B.*

20 24. Additional terms of the Loan Documents require Plaintiffs to pay: (a) interest of
21 one and one-half percent (1.5%) of the outstanding balance of the Note per month commencing
22 May 27, 2010; and (b) ten percent (10%) of all gross revenues received by Plaintiffs for the
23 exploitation of the Liberation Assets described in the CFG Security Agreement. *See id.*

24 25. Plaintiffs failed to meet their obligations under the Loan Documents just months
25 after receiving funds from Incentive. *See Declaration of Nathan Dorius, ¶7, attached hereto as*
26 **Exhibit J.**

27 26. On or about June 11, 2010, in an attempt to resolve the disputes surrounding
28 Plaintiffs’ breach of the Loan Documents, Incentive entered into the Loan Modification

1 Agreement, whereby Plaintiffs agreed to meet certain sales and payment benchmarks in
2 addition to their obligations under the Note. *See* Ex. H. In exchange, Incentive agreed to
3 continue its monetary advances to CFG and to refrain from instituting legal action against
4 Plaintiffs. *See id.*

5 27. Despite Incentive's good-faith attempt to work through Plaintiffs' initial breach
6 of the Loan Documents by entering into the Loan Modification Agreement, Plaintiffs failed to
7 meet their obligations under the Loan Modification Agreement. *See* Ex. J.

8 28. To date, none of the parties liable under the Loan Documents and the Loan
9 Modification Agreement, namely Plaintiff CFG as borrower and Plaintiffs CEG, Mr. Atwell,
10 and CDG as guarantors, has met their obligations in full to Incentive. *See id.*

11 29. Incentive has notified Plaintiffs of their breach of the Loan Documents and the
12 Loan Modification Agreement on numerous occasions. *See id.*

13 30. After many unsuccessful attempts to settle the matter, Incentive began steps to
14 foreclose on its collateral set forth in the security agreements and guarantee agreements.

15 31. On February 9, 2011, Incentive issued a proper Notice of Disposition of
16 Collateral by Public Sale that set as the sale date February 21, 2011. *See Exhibit L*, attached
17 hereto.

18 32. Plaintiffs/Debtors hired Utah counsel to represent them during this process.

19 33. On February 21, 2011 at 9:00 a.m., Incentive held a properly noticed creditor's
20 sale ("Foreclosure Sale") in the state of Utah to foreclose on the collateral set forth in the
21 Security Agreements. *See* Ex. K, ¶8, Declaration of Nathan Dorius.

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

24 The debtors, Camelot Distribution Group, Inc., Camelot Entertainment Group, Inc., and
25 Camelot Film Group, Inc. (collectively, "Debtor"), defaulted under their loan
26 obligations to the secured party, Incentive Capital, LLC (the "Secured Party"). As a
27 result thereof, the Secured Party, pursuant to its Notice of Disposition of Collateral by
28 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

1 proceeds of or from (a) the Distribution Assets; and (b) all accounts,
2 negotiable instruments, chattel paper and electronic chattel paper, general
3 intangibles, proceeds, and monies derived from the disposition or other
4 exploitation of the Distribution Assets in all media, from all sources,
5 worldwide during the term hereof. The Distribution Assets include without
6 limitation the following films, and all of Debtor's right, title and interest
7 therein, including distribution rights, royalty interests, and
8 contract/account payments: Samurai Avenger; First Strike; Screwball: The
9 Ted Whitfield Story (aka The Wiffler); The Fallen; One Lucky Dog (aka
10 Weiner Dog Nationals); Never Sleep Again; Hellraiser Unleashed; Fink!;
11 Nude Nuns With Big Guns; Zombie Culture; National Lampoons Dirty
12 Movie; Who Is KK Downey; and Next of Kin.

13 All of Debtor's personal property assets and interests as more particularly
14 described in the Asset Purchase Agreement (the "Asset Purchase
15 Agreement") dated April 28, 2010 between Camelot Film Group, Inc., a
16 Nevada corporation, on the one hand, and CMBG Advisors, Inc., a
17 California corporation in its sole and limited capacity as assignee for the
18 benefit of creditors of Liberation Group, Inc., on the other hand, and all
19 products and proceeds thereof, including without limitation (a) that certain
20 film library referred to as the Liberation Assets (as defined in the Asset
21 Purchase Agreement); (b) all accounts, negotiable instruments, chattel
22 paper and electronic chattel paper, general intangibles, proceeds, and
23 monies derived from the disposition or other exploitation of the Liberation
24 Assets in all media, from all sources, worldwide during the term hereof;
25 and (c) other assets of the Debtor as set forth in the Asset Purchase
26 Agreement.

27 (Included with Exhibit L).

28 35. Debtors' Utah counsel was present at the Foreclosure Sale. *See* Ex. J, ¶9,
Declaration of Nathan Dorius.

36. No objection was made to the Foreclosure Sale and, as of that date, Incentive
became the legal title holder to the Liberation Library.

37. The Foreclosure Sale transferred ownership of all of the collateral set forth in the
Security Agreements (with the exception of any collateral provided for under the Guarantees).
The central dispute in this Action will be the efficacy of this transfer and the rights and
obligations of the parties resulting therefrom.

38. A central issue in this case is the effectiveness of the Foreclosure Sale and
therefore the rights and remedies of the parties as set forth under the Security Agreements.

1 **III. ARGUMENT**

2 **A. BOTH FEDERAL LAW AND THE MANDATORY FORUM SELECTION**
3 **CLAUSES CONTAINED IN THE PARTIES' AGREEMENTS RELEVANT TO**
4 **THIS DISPUTE REQUIRE DISMISSAL OF THIS ACTION.**

5 **1. *Legal Standard for a Motion to Dismiss Premised on the Enforcement of a Forum***
6 ***Selection Clause.***

7 "A motion to dismiss premised on the enforcement of a forum selection clause should
8 be treated as a motion to dismiss for improper venue under Federal Rule of Civil Procedure
9 12(b)(3)." *Vogt-Nem, Inc. v. M/V Tramper*, 263 F. Supp. 2d 1226, 1229 (N.D. Cal. 2002), citing
10 *Kukje Hwajae Ins. Co., Ltd. v. M/V HYUNDAI LIBERTY*, 294 F.3d 1171 (9th Cir.2002).

11 Accordingly, "unlike an analysis under Rule 12(b)(6), the pleadings need not be accepted as
12 true, and facts outside the pleadings may be considered by the district court." *Vogt-Nem, Inc. v.*
13 *M/V Tramper*, 263 F. Supp. 2d 1226, 1230 (N.D. Cal. 2002), citing *id.* It is well established
14 that "[o]nce venue is challenged, the burden is on the plaintiff to show that venue is proper."
15 *Whiteman v. Resort*, 1999 WL 163044, at *1 (N.D.Cal.1999), citing *Piedmont Label Co. v. Sun*
16 *Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir.1979).

17 **2. *Federal Law Governs Enforceability of Forum Selection Clauses in Diversity***
18 ***Cases***

19 In cases based on diversity jurisdiction, federal law governs the enforceability of forum
20 selection clauses. *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 513 (9th Cir.1988)
21 ("We conclude that the federal procedural issues raised by forum selection clauses significantly
22 outweigh the state interests, and the federal rule announced in [*M/S Bremen v. Zapata Off-*
23 *Shore Co.*, 407 U.S. 1 (1972),] controls enforcement of forum clauses in diversity cases...)
24 Moreover, because enforcement of a forum clause necessarily entails interpretation of the
25 clause before it can be enforced, federal law also applies to interpretation of forum selection
26 clauses" (citation omitted)). "Interpretation and enforcement of contractual forum-selection
27 clauses are procedural issues to be decided under federal law." *Vogt-Nem, Inc. v. M/V*
28 *Tramper*, 263 F. Supp. 2d 1226, 1230 (N.D. Cal. 2002), citing *Argueta v. Banco Mexicano*,

1 S.A., 87 F.3d 320, 324 (9th Cir.1996); *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 590
2 (1991).

3 **3. Forum Selection Clauses are Prima Facie Valid Under Federal Law.**

4 Forum selection clauses are *prima facie* valid and enforceable absent a strong showing
5 by the party seeking to avoid the effect of the clause “that enforcement would be unreasonable
6 or unjust, or that the clause [is] invalid for such reasons as fraud or overreaching.” *M/S Bremen*,
7 407 U.S. at 15; *see also Comerica Bank*, 352 F.Supp.2d at 1080 (“If a forum selection clause is
8 part of a contract, it is prima facie valid and should be enforced ‘[a]bsent some evidence
9 submitted by the party opposing enforcement of the clause to establish fraud, undue influence,
10 overweening bargaining power, or such serious inconvenience in litigating in the selected
11 forum so as to deprive that party of a meaningful day in court,’ ” quoting *Pelleport*, 741 F.2d at
12 280); *Manetti-Farrow*, 858 F.2d at 514-15 (“The opposing party has the burden ‘to show that
13 trial in the contractual forum would be so gravely difficult and inconvenient that he will for all
14 practical purposes be deprived of his day in court,’ ” quoting *M/S Bremen*); *Pelleport*, 741 F.2d
15 at 279 (“Although *The Bremen* involved an international forum selection question, and the
16 Court emphasized the commercial realities of international trade, we see no reason why the
17 principles announced in *The Bremen* are not equally applicable to the domestic context. Courts
18 addressing the issue uniformly apply *The Bremen* to cases involving domestic forum selection
19 questions”).

20 In 1996, the Ninth Circuit followed *M/S Bremen* enforcing a forum selection clause
21 absent evidence establishing: “fraud, undue influence, overweening bargaining power, or such
22 serious inconvenience in litigating in the selected forum so as to deprive that party of a
23 meaningful day in court.” *Argueta v. Banco Mexicano*, 87 F.3d 320, 324 (9th Cir.1996), citing
24 *Pelleport Investors, Inc. v. Budco Quality Theatres, Inc.*, 741 F.2d 273, 280 (9th Cir.1984) and
25 *M/S Bremen*, 407 U.S. at 12-19. Thus, “[w]here a choice of forum was made in arm's-length
26 negotiations by experienced and sophisticated businessmen, ‘absent some compelling and
27 countervailing reason, the forum selection clause should be honored by the parties and enforced
28 by the courts.’ ” *Vogt-Nem, Inc. v. M/V Tramper*, 263 F. Supp. 2d 1226, 1234 (N.D. Cal. 2002),

1 quoting *M/S Bremen*, 407 U.S. at 12, 92 S.Ct. 1907. Accordingly, “a valid forum selection
2 clause is given controlling weight in all but the most exceptional cases.” *Manetti-Farrow, Inc.*,
3 858 F.2d at 513, citing to *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 33, 108 S.Ct. 2239,
4 101 L.Ed.2d 22 (1988) (Kennedy, J., concurring). Moreover, the burden of showing that a
5 valid and enforceable forum selection clause is unreasonable is “heavy” and must be borne by
6 the party challenging the clause. *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 92, 92 S.Ct.
7 1907, 32 L.Ed.2d 513 (1992). Here, Plaintiffs have made no allegation in their Complaint that
8 the forum selection clauses at issue here are unreasonable. Thus, if the Court finds the clauses
9 to be enforceable then there is no reason that they should not be given controlling weight and
10 enforceability.

11 **4. The Court Must Determine Whether the Forum Selection Clauses at Issue in this**
12 **Case are Mandatory or Permissive.**

13 Ninth Circuit precedent requires that the court pay careful attention to whether the
14 language in a forum selection clause is mandatory or permissive. If the language is mandatory,
15 the clause must be enforced and venue will lie in the designated forum only. *See, e.g.*,
16 *Docksider, Ltd. v. Sea Technology, Ltd.*, 875 F.2d 762, 764 (9th Cir.1989) (“The prevailing rule
17 is clear from these and other cases that where venue is specified with mandatory language the
18 clause will be enforced. When only jurisdiction is specified the clause will generally not be
19 enforced without some further language indicating the parties' intent to make jurisdiction
20 exclusive”); *Interactive Music Technology, LLC v. Roland Corp. U.S.*, CV No. 6:07-CV-282,
21 2008 WL 245142, *3 (E.D.Tex. Jan.29, 2008) (“The distinction between specifying jurisdiction
22 and venue in forum selection clauses is often important. While analyzing a forum selection
23 clause is extremely context specific, the Tenth Circuit found a general uniformity in the federal
24 courts when analyzing the law on this matter: where venue is specified in a forum selection
25 clause with mandatory or obligatory language, the clause will be enforced, while where only
26 jurisdiction is specified, the clause will generally not be enforced without some further
27 language indicating the parties' intent to make venue exclusive”); *see also Hunt Wesson*, 817
28 F.2d at 77 (“[I]n cases in which forum selection clauses have been held to require litigation in a
particular court, the language of the clauses clearly required *exclusive* jurisdiction” (emphasis

1 original)); *Koresko v. RealNetworks, Inc.*, 291 F.Supp.2d 1157, 1161 (E.D.Cal.2003) (“A forum
2 selection clause will be enforced where venue is specified with mandatory language,” citing
3 *Docksider*); *Northern Cal. Dist. Council of Laborers v. Pittsburg-Des Moines Steel Co.*, 69
4 F.3d 1034, 1037 (9th Cir.1995) (“To be mandatory, a clause must contain language that clearly
5 designates a forum as the exclusive one”).

6 If, however, the language of the forum selection clause is permissive, the clause will not
7 preclude a party from bringing suit (or removing) elsewhere. A forum selection clause is
8 permissive when the parties merely consent to bestow jurisdiction on a court without stating
9 that the court has exclusive jurisdiction to hear their disputes. See, e.g., *Pong v. American*
10 *Capital Holdings, Inc.*, Civ. S-06-2527 LKK/DAD, 2007 WL 657790, * 3 (E.D.Cal. Feb.28,
11 2007) (“Preliminarily, the court must determine if the forum selection clause is mandatory or
12 permissive. The Ninth Circuit has held that ‘where venue is specified with mandatory language
13 the clause will be enforced.’ ... However, if the language is merely permissive, the forum
14 selection clause will not bar suits from being filed in other venues,” quoting *Docksider*);
15 *Radian Int’l, LLC v. Alpina Ins. Co.*, C-04-4537 SC, 2005 WL 1656884, *1 (N.D.Cal. July 14,
16 2005) (“[The Ninth Circuit] does not enforce ‘permissive’ clauses which merely grant
17 jurisdiction to a particular forum without ruling out concurrent jurisdiction in other forums”
18 (citations omitted)).

19 “A forum selection clause is permissive if does not preclude suit elsewhere with express
20 language.” *Koresko*, 291 F. Supp. 2d at 1162, citing *Hunt*, 817 F.2d at 77. “Permissive
21 language will not stop the party opposing the forum selection clause from suing elsewhere.”
22 *Id.*, citing *Kachal*, 738 F.Supp. at 373. “On the contrary, a forum selection clause with
23 mandatory language ‘mandates that the designated courts are the only ones which have
24 jurisdiction.’” *Id.*, citing *Hunt*, 817 F.2d at 77-78.

25 When faced with the question of whether or not to enforce a forum selection clause, a
26 District Court must look to examples of both mandatory and permissive forum selection clauses
27 to determine into which category the one at issue falls. See, e.g., *Koresko v. RealNetworks, Inc.*,
28 291 F.Supp.2d 1157 (E.D.Cal.2003). An example of an enforceable, mandatory clause is:

1 This agreement shall be deemed to be a contract made under the laws of the
2 State of Virginia ... Licensee hereby agrees and consents to jurisdiction of the
3 courts of the State of Virginia. Venue of any action brought hereunder shall
be deemed to be in Gloucester County, Virginia.

4 *Docksider, Ltd. v. Sea Tech. Ltd.*, 875 F.2d 762 (9th Cir.1989). In holding the clause
5 enforceable, the *Docksider* court focused on the final sentence's inherent meaning of
6 exclusivity. *Id.* at 763. On the other hand, an example of a permissive, unenforceable clause is:

7 The courts of California, County of Orange, shall have jurisdiction over the
8 parties in any action at law relating to the subject matter or the interpretation
of this contract.

9 *Hunt*, 817 F.2d at 76.¹

10 In holding this clause to be unenforceable, the *Hunt* court stated, "Although the word
11 'shall' is a mandatory term, here it mandates nothing more than that the Orange County courts
12 have jurisdiction." *Id.* at 77. The court continued, "Such consent to jurisdiction, however, does
13 not mean that the same subject matter cannot be litigated in any other court." *Id.*

14 Therefore, the issue before this Court is thus whether the forum selection clauses at
15 issue are permissive like the *Hunt* clause or mandatory like the *Docksider* clause. Here, as
16 demonstrated below the forum selection clauses at issue expressly state that any legal action
17 instigated with respect to the key agreements relevant to this case "must be brought" in a Utah
18 court. This language is mandatory, not permissive, as it excludes Plaintiffs from suing
19 anywhere but Utah.
20

21
22 ¹ The following forum selection clauses were also found to be mandatory. *See e.g., Air Ion*
23 *Devices v. Air Ion*, 2002 WL 1482665 (N.D.Cal.2002) ("In the event AI has failed to meet its
24 obligations under this agreement ... then the parties agree that any action commenced by AID to
25 enforce its rights against AI shall be brought in the County of Marin, State of California");
26 *Nascone v. Spudnuts, Inc.*, 735 F.2d 763, 765 (3d Cir.1984) ("This franchise shall be construed
27 according to the laws of the State of Utah, and venue for any proceeding relating to the
28 provisions hereof shall be Salt Lake County, State of Utah" construed as mandatory); *In re*
Fireman's Fund Insurance Companies, 588 F.2d 93, 94 (5th Cir.1979) ("If the Sub-contractor
shall institute any suit or action for the enforcement of any of the obligations under this
agreement, the venue of such suit or action shall be laid in the County of Essex and State of
New Jersey" deemed enforceable); *Excell, Inc. v. Sterling Boiler & Mechanical, Inc.*, 106 F.3d
318, 320 (10th Cir.1997) (holding the following words mandatory: "Jurisdiction shall be in the
State of Colorado, and venue shall lie in the County of El Paso, Colorado").

1 5. ***The Forum Selection Clauses at Issue in This Case Are Mandatory and***
2 ***Therefore Must be Enforced.***

3 On April 27, 2010, the parties executed, among other things, two agreements that are
4 crucial to this dispute. First, Plaintiff CDG (as “Debtor”) and Incentive (as “Secured Party”)
5 entered into a “Security Agreement” dated April 27, 2010 (the “CDG Security Agreement”),
6 pursuant to which CDG granted to Incentive “a continuing first priority security interest in all
7 Debtor rights to” thirteen (13) Films of the Film Library. Second, Plaintiff CFG (as “Debtor”)
8 executed “Security and Participation Agreement” with Incentive (again as “Secured Party”),
9 dated April 27, 2010 (the “CFG Security Agreement”), pursuant to which CFG granted
10 Incentive “a continuing first priority security interest” in all titles contained in the Liberation
11 Library in addition to a profit participation of ten percent (10%) of all gross revenues generated
12 from the Film Library.

13 These two Security Agreements contain mandatory forum selection clauses requiring
14 that any dispute between the parties “must be brought in the federal or state courts located in
15 the State of Utah.” (Exs. C and D, CDG Security Agreement at Section 19; CFG Security
16 Agreement at Section 19.) The Security Agreements are central to the parties’ dispute because
17 their construction and interpretation will govern whether Incentive obtained ownership of the
18 Plaintiffs’ assets through the Foreclosure Sale.²

19 Section 18 of both the CDG Security Agreement and the CFG Security Agreement,
20 entitled “Governing Law; Terms,” reads as follows:

21 This Security Agreement shall be ***deemed to have been made in the state***
22 ***of Utah*** and the validity, construction, interpretation, and enforcement
23 hereof, and the rights of the parties hereto, shall be determined under,
24 ***governed by, and construed in accordance with the internal laws of the***
25 ***state of Utah. Debtor hereby consents to the jurisdiction of any Utah***
 state or United States Federal court sitting in Utah with respect to disputes
 arising out of this Security Agreement.

26 (Exs. C and D, CDG and CFG Security Agreements at Section 18.)
27

28 ² The interpretation of the plain terms of the Guarantees and Note, that contain permissive
forum selection clauses, do not appear to be in dispute by either side.

1 Section 19 is likewise identical in both Security Agreements and provides, in relevant
2 part, as follows:

3 Any legal action or proceeding with respect to this Security Agreement
4 **must be brought in the federal or state courts located in the State of**
5 **Utah**, unless Secured Party elects to bring such legal action or proceeding
6 elsewhere. **Debtor [i.e. CDG] hereby irrevocably accepts for itself and**
7 **in respect of its property, generally and unconditionally, the jurisdiction**
8 **of the federal or state courts located in the State of Utah as having**
9 **proper venue.** Debtor hereby irrevocably waives any objection which it
10 **may now or hereafter have to the laying of venue of any of the aforesaid**
11 **actions or proceedings arising out of or in connection with this Security**
12 **Agreement** brought in the aforesaid Utah courts and irrevocably waives
13 and **agrees not to plead or claim in any such court that any such action**
14 **or proceeding brought in any such court has been brought in an**
15 **inconvenient forum. . . .**

16 (Id.)

17 The forum selection clauses contained in the CDG Security Agreement and CFG
18 Security Agreement are precisely the type of clauses which the Ninth Circuit and California
19 federal courts have found to constitute mandatory forum selection clauses. *See, e.g., Pelleport*
20 *Investors, Inc. v. Budco Quality Theatres, Inc.*, 741 F.2d 273 (9th Cir.1984) (holding that “shall
21 be litigated only in the Superior Court for Los Angeles, California” is an enforceable forum
22 selection clause). Because the forum selection clauses contained in the Security Agreement are
23 mandatory they are presumed valid and must be strictly enforced. *Hsu v. OZ Optics Ltd.*, 211
24 F.R.D. 615, 618 (N.D. Cal. 2002) (“A mandatory forum selection clause is presumed valid and
25 is to be strictly enforced.”), citing *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12 (1972)
26 “A forum selection clause will be enforced where venue is specified with mandatory language.”
27 *Koresko*, 291 F. Supp. 2d at 1161, citing *Docksider*, 875 F.2d at 764.³

28 ³ It is also important to note that the fact that the parties also executed agreements in connection
with the underlying transaction of Incentive loaning to Plaintiffs the funds necessary to
purchase the Film Library which do not contain mandatory forum selection clauses but rather
permissive ones does not affect the enforceability of the mandatory clauses contained in the
Security Agreements. Courts have routinely held that the mere fact that differing clauses as to
venue or governing law may exist in the parties’ agreements does not undermine or affect the
enforceability of the mandatory forum selection clauses in those agreements. *See, e.g.,*
Fireman's Fund, 131 F.3d at 1338 (9th Cir.) (concluding that some uncertainty as to where an
action may be brought does not rise to the level of a “serious inconvenience” that would

1 **6. Because the Forum Selection Clauses Contained in the Security Agreements are**
2 **Enforceable, this Action Must be Dismissed.**

3 Because, for the reasons set forth above, the forum selection clauses contained in the
4 Security Agreements are enforceable, and because under California federal law valid and
5 enforceable forum selection clauses must be “strictly enforced,” this action must be dismissed.
6 As noted above, the forum selection clauses set forth in the Security Agreements clearly and
7 unequivocally provide that an legal action “with respect to,” “arising out of,” or “in connection
8 with” the Security Agreements “must be brought in the federal or state courts located in the
9 State of Utah,” Plaintiffs were required to commence their dispute against Incentive, which
10 indisputably relates to and/or arises out of the terms and conditions of the Security Agreement
11 along with Incentive’s conduct based thereon, in a state or federal court located in Utah.
12 Accordingly, Plaintiffs’ lawsuit which was initiated originally in a California state court and
13 then removed to this California federal court should be dismissed for improper venue under
14 Fed. R. Civ. Pro. Rule 12(b)(3).

15 **B. THIS ACTION SHOULD ALSO BE DISMISSED UNDER 28 U.S.C. §1406(a)**
16 **FOR IMPROPER VENUE BECAUSE PLAINTIFFS CANNOT DEMONSTRATE**
17 **THAT ANY OF THE VENUE REQUIREMENTS SET FORTH IN 28 U.S.C.**
18 **§1391(a) FOR A DIVERSITY ACTION SUCH AS THIS CAN BE MET.**

19
20 invalidate an otherwise enforceable forum selection clause), citing *Carnival Cruise Lines, Inc.*
21 *v. Shute*, 499 U.S. 585, 595 (1991); *Union Steel America Co v. M/V Sanko Spruce* (“*Union*
22 *Steel I*”), 14 F.Supp.2d 682, 687 (D.N.J.1998) (holding “that a potential plaintiff cannot be
23 certain as to where it should bring suit does not mean that the forum selection clause no longer
24 is mandatory.”); *see also Vogt-Nem, Inc. v. M/V Trumper*, 263 F. Supp. 2d 1226, 1231-32 (N.D.
25 Cal. 2002) (“The court holds that the fact that the contract specifies two types of law to govern
26 two different types of disputes that may arise under the contract does not undermine the
27 mandatory nature of the forum-selection clause.”). The agreements between the parties in the
28 present action which contain permissive forum selection clauses; namely, the Commercial
 Guaranties and the Promissory Note, are not disputed by either side and do not contain terms
 relevant to the claims asserted by Plaintiffs in this action. Because Plaintiffs do not seek to
 challenge the enforceability of the Guaranties or the Note and instead base their claims on an
 interpretation of the Security Agreements, the fact that the Guaranties and Note contain
 permissive forum selection clauses is irrelevant to this case and in no way affects the
 enforceability of the mandatory forum selection clauses contained in the Security Agreements.

1 Even if the parties had not expressly agreed to bring any and all claims related to or
2 arising out of the Security Agreements in Utah, as set forth in the forum selection clauses
3 contained therein, this action should be dismissed under Fed. R. Civ. P. 12(b)(3) and 28 U.S.C.
4 §1406(a) for the independent reason that California is not the proper venue for this action under
5 28 U.S.C. §1391(a) in any event. Section 1406(a) provides that “[t]he district court of a district
6 in which is filed a case laying venue in the wrong division or district *shall dismiss*, or if it be in
7 the interest of justice, transfer such case to any district or division in which it could have been
8 brought.” 28 U.S.C. §1406(a) (emphasis added).

9 Section 1391(a) provides that an action founded on diversity of citizenship, such as the
10 present action, may be brought *only* in “(1) a judicial district where any defendant resides, if all
11 defendants reside in the same State, (2) a judicial district in which a substantial part of the
12 events or omissions giving rise to the claim occurred, or a substantial part of property that is the
13 subject of the action is situated, or (3) a judicial district in which any defendant is subject to
14 personal jurisdiction at the time the action is commenced, if there is no district in which the
15 action may otherwise be brought.” 28 U.S.C. §1391(a). Under this standard, California is not
16 the proper venue for this action.

17 As noted above, it is well established that “[o]nce venue is challenged, the burden is on
18 the plaintiff to show that venue is proper.” *Piedmont Label Co. v. Sun Garden Packing Co.*, 598
19 F.2d 491, 496 (9th Cir.1979). Plaintiffs allegations in their Complaint fail to meet this burden.
20 The Complaint does not claim that Incentive resides in California, but admits that Incentive is a
21 Utah limited liability company, with its principal place of business in Utah. Accordingly, under
22 28 U.S.C. §1391(a)(1), venue is proper in Utah, not California. Similarly, 28 U.S.C.
23 §1391(a)(3) does not apply here, since this action obviously could be brought in Utah (where
24 Incentive operates).

25 Section 1391(a)(2) also does not apply here because the Complaint fails to allege that
26 any of the significant events or transactions relevant to this dispute occurred in California, as
27 required for venue under that section. For example, Plaintiffs have not, and indeed, cannot
28 assert that the agreements they rely on were entered into in California, or that any breach,

1 misrepresentation or other wrongful conduct was committed by Incentive in California and, as
2 such, Plaintiffs have failed to establish that California is the proper venue for this action under
3 28 U.S.C. §1391(a)(2). In addition, it is important to note that the Foreclosure Sale on the Film
4 Library occurred in Utah and that it was advertised before-hand to be scheduled to occur in
5 Utah. Indeed, Utah counsel appointed by Plaintiffs even attended the Foreclosure Sale, in
6 person in Utah, on Plaintiffs' behalf. These events and acts, which are all critical to Plaintiffs'
7 claims in this case, each occurred in Utah, not California. *See Ex. L.*

8 Moreover, Incentive has never conducted business, maintained bank accounts or any
9 other property in California. *See Exhibit K, ¶11, Declaration of Nathan Dorius.* Incentive was
10 formed and conducts business in Utah. *Id.*, ¶10. All negotiations with Incentive concerning the
11 loan for the Film Library were conducted with a Utah company. *Id.*, ¶5. Accordingly,
12 Plaintiffs have not and cannot allege any specific events giving rise to their claims that occurred
13 in California. Venue under 28 U.S.C. §1391(a)(2) is therefore improper.

14 Because venue is improper under each of the standards for venue set forth in 28 U.S.C.
15 §1391(a), this Court must dismiss this diversity action under 28 U.S.C. §1406(a). As
16 previously cited, that statute provides that when a case is filed in the wrong venue, the district
17 court "shall dismiss, or if it be in the interest of justice, transfer such a case" to the proper
18 venue. 28 U.S.C. §1406(a). Given that California is not the proper venue for this action, and
19 given that, as discussed in greater detail below, a pending action arising from the same set of
20 facts already is progressing in the U.S. District Court for the Central District of Utah (the "Utah
21 Action"), the proper venue for this action both under the forum selection clauses of the Security
22 Agreements (as discussed above) and under federal law, this action should be dismissed.

23 **C. ALTERNATIVELY, THIS ACTION SHOULD BE TRANSFERRED,**
24 **PURSUANT TO 28 U.S.C. §1406(a) AND THEN CONSOLIDATED WITH THE**
25 **UTAH ACTION.**

26 In the event that this Court is disinclined to dismiss this action for any of the
27 reasons set forth above, 28 U.S.C. §1406(a) requires that this action be transferred to a district
28 court in the proper venue—in this case, the Central District of Utah. As noted, Incentive is a
resident and operates in Utah and a majority (if not all) of the events giving rise to Plaintiffs'

1 claims occurred in Utah. An action concerning these events is already pending in the Central
2 District of Utah, which as demonstrated above (and more fully below) is the proper venue for
3 this action. Based on these factors and given the forum selection clauses contained in the
4 Security Agreements which are mandatory, enforceable and require that this action be brought
5 in Utah, transfer of this action and consolidation with the already-pending action in the U.S.
6 District Court for the Central District of Utah is appropriate under 28 U.S.C. §1406(a). *See*
7 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 497 (9th Cir.2000) (holding that a forum-
8 selection clause analysis under Section 1406(a) is identical to a forum-selection clause analysis
9 under Rule 12(b)(3)).

10 **D. ALTERNATIVELY, THIS ACTION SHOULD BE TRANSFERRED,**
11 **PURSUANT TO 28 U.S.C. §1404(a) AND THEN CONSOLIDATED WITH THE**
12 **UTAH ACTION.**

13 In addition to the foregoing, transfer of this action to the Central District of Utah is also
14 appropriate under 28 U.S.C. §1404(a). This Court may transfer any civil action to another
15 district where the action might have been brought, “. . . [f]or the convenience of the parties and
16 witnesses, in the interest of justice.” 28 U.S.C. §1404(a). Federal law has permitted transfer of
17 litigations between federal district courts in order to avoid duplicative litigation, to promote
18 judicial efficiency, and to protect against unnecessary and inconvenient expense. *See Colorado*
19 *River Water Conversation Dist. v. United States*, 420 U.S. 800, 817 (1976); *Van Dusen v.*
20 *Barrack*, 376 U.S. 612, 616 (1964).

21 Of note is that all agreements (Note, Security Agreements, Guarantees) state that *Utah*
22 *law shall govern* any dispute based upon, related to or arising from the agreements. Clearly,
23 Utah and a federal court sitting in Utah would be most familiar with Utah law—the governing
24 law. The interests of justice are better served by transfer of the action to Utah, where another
25 federal suit is pending concerning the same transactions and events, where the law of the State
26 of Utah will need to be applied, where the foreclosure sale occurred, where the principals of
27 Incentive reside, where the negotiation of the Modification Agreement happened, and where
28 witnesses will be readily available.

1 The Plaintiffs' choice of forum should be given little weight here given that Plaintiffs'
2 commencement of this action was an "anticipatory filing." "A suit is anticipatory when the
3 plaintiff filed upon receipt of specific, concrete indications that a suit by defendant was
4 imminent." *Z-Line Designs, Inc. v. Bell'O Int'l LLC*, 218 F.R.D. 663, 665 (N.D.Cal.2003).⁴
5 "Such anticipatory suits are disfavored because they are examples of forum shopping." *Id.* The
6 purpose of the anticipatory filing exception is "to eliminate the race to the courthouse door in
7 an attempt to preempt a later suit in another forum," *Guthy-Renker Fitness LLC v. Icon Health*
8 *& Fitness*, 179 F.R.D. 264, 271 (C.D.Cal.1998). Even if the Court for some reason chose to
9 ignore the mandatory forum selection clauses which require dismissal or transfer of this action,
10 the Court should not allow Plaintiffs' race to the courthouse to supersede Incentive's choice of
11 forum as the true plaintiff in this case.

12 Prior to Plaintiffs filing their Complaint in California, Incentive had informed Plaintiffs
13 on several occasions that if they did not cure their breach of the Note and CFG Security
14 Agreement, then Incentive would commence a legal action in Utah against Plaintiffs to enforce
15 its rights under these agreements. Exhibit K, ¶7, Declaration of Nathan Dorius. Plaintiffs,
16 while continuing to assure Incentive that it would cure it default of the Note and CFG Security
17 Agreement, instead ran to the state courthouse in California to file their own action in order to
18 avoid having to litigate the breach of their obligations in Utah. This pre-emptive strike was
19 done while they were disingenuously assuring Incentive that they would cure their default of
20 the Note and Security Agreement.

21 In addition, with regard to judicial efficiency, it would certainly be inefficient for the
22 parties to litigate this action in both California and Utah, and transferring the action to Utah will
23 prevent wasting resources, duplicating work, or inconsistent determinations. See *Star Stone*

24 _____
25 ⁴ An exception to the first-to-file rule also exists if "the balance of convenience weighs in favor
26 of the later-filed action." *Ward v. Follett Corp.*, 158 F.R.D. 645, 648 (N.D.Cal.1994). This is
27 analogous to "the convenience of the parties and witnesses" under a transfer of venue motion,
28 28 U.S.C. § 1404(a). *Med-Tec Iowa, Inc. v. Nomos Corp.*, 76 F.Supp.2d 962 (W.D.Iowa 1999);
800-Flowers, Inc. v. Intercontinental Florist, 860 F.Supp. 128, 133 (S.D.N.Y.1994). As
Defendants demonstrate below in connection with arguing, in the alternative, that this action be
transferred to the Central District of Utah, the balance of convenience weighs in favor of the
Utah Action.

1 *Quarries, Inc. v Garland*, 300 F. Supp.2d 1177, 1182-83 (D. Utah 2003). Again, the claims
2 asserted by Plaintiffs in this action are based on events or transactions that occurred in the State
3 of Utah. While it is true that Plaintiffs CEI, CFG and CDG are either *Delaware* or *Nevada*
4 corporations which operate in California, upon information and belief Plaintiff Atwell is a
5 resident of Nevada not California.

6 Moreover, in addition to Incentive and its principals, many of the other witnesses are
7 located in Utah. For such parties, having the action go forward in Utah would be more
8 convenient than it going forward in California. Given that the factors outlined by the Ninth
9 Circuit in *Jones* each weigh in favor of transfer, that a majority of the witnesses are located in
10 or around Utah and that an action is already going forward in the Central District of Utah (the
11 proper forum for this action under the parties' agreed-upon forum selection clauses), transfer to
12 that judicial district and consolidation of this action with the Utah Action is entirely appropriate
13 under 28 U.S.C. 1404(a).

14 **IV. CONCLUSION**

15 For the reasons set forth above, this action should be dismissed pursuant to Fed. R. Civ.
16 Pro. Rule 12(b)(3) and 28 U.S.C. §1406(a) (and 28 U.S.C. §1391(a)) or, alternatively,
17 transferred to the Central District of Utah pursuant to 28 U.S.C. §1406(a) and 28 U.S.C.
18 §1404(a).

19
20 Dated: March 25, 2011

WYMAN & ISAACS LLP

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By: /s/Bruce Isaacs, Esq.
Bruce Isaacs, Esq.
Attorneys for Defendant INCENTIVE CAPITAL,
LLC

EXHIBIT A

Utah Business Search - Details

INCENTIVE CAPITAL, LLC

Entity Number: 7369396-0160

Company Type: LLC - Domestic

Address: Unknown, NA 00000

State of Origin:

Registered Agent: JAMES MECHAM

Registered Agent Address:

2755 E. COTTONWOOD PKWY. SUITE 100 SALT LAKE CITY UT 84121

Status

Status: Expired  as of 10/04/2010

Status Description: Failure to File Renewal

Employment Verification: Not Registered with Verify Utah

History

Registration Date: 06/01/2009

Last Renewed: N/A

Additional Information

NAICS Code: 9999 **NAICS Title:** 9999-Nonclassifiable Establishment

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CAMELOT FILM GROUP, INC.

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Business Entity Information			
Status:	Active	File Date:	2/07/2007
Type:	Domestic Corporation	Entry Number:	E0085212007-7
Qualifying State:	NV	List of Officers Due:	2/29/2012
Managed By:		Expiration Date:	
NV Business ID:	NV20071127932	Business License Exp:	Exempt - 005

Additional Information	
Central Index Key:	

Registered Agent Information			
Name:	PARACORP INCORPORATED	Address 1:	318 N CARSON ST #208
Address 2:		City:	CARSON CITY
State:	NV	Zip Code:	89701
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

[View all business entities under this registered agent](#)

Financial Information			
No Par Share Count:	0	Capital Amount:	\$ 25.00
Par Share Count:	20,000.00	Par Share Value:	\$ 0.001
Par Share Count:	5,000.00	Par Share Value:	\$ 0.001

Officers			
<input type="checkbox"/> Include Inactive Officers			
Treasurer - STEVEN ISTOCK			
Address 1:	318 N CARSON STREET #208	Address 2:	
City:	CARSON CITY	State:	NV
Zip Code:	89701	Country:	USA
Status:	Active	Email:	
Secretary - STEVEN ISTOCK			

Address 1:	318 N CARSON STREET #208	Address 2:	
City:	CARSON CITY	State:	NV
Zip Code:	89701	Country:	USA
Status:	Active	Email:	
President - ROBERT P ATWELL			
Address 1:	318 N CARSON STREET #208	Address 2:	
City:	CARSON CITY	State:	NV
Zip Code:	89701	Country:	USA
Status:	Active	Email:	
Director - ROBERT P ATWELL			
Address 1:	318 N CARSON STREET #208	Address 2:	
City:	CARSON CITY	State:	NV
Zip Code:	89701	Country:	USA
Status:	Active	Email:	

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CAMELOT DISTRIBUTION GROUP, INC.

Business Entity Information			
Status:	Active	File Date:	5/13/2005
Type:	Domestic Corporation	Entity Number:	E0290002005-9
Qualifying State:	NV	List of Officers Due:	5/31/2011
Managed By:		Expiration Date:	
NV Business ID:	NV20051246701	Business License Exp:	Exempt - 005

Additional Information	
Central Index Key:	

Registered Agent Information			
Name:	PARACORP INCORPORATED	Address 1:	318 N CARSON ST #208
Address 2:		City:	CARSON CITY
State:	NV	Zip Code:	89701
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

[View all business entities under this registered agent](#)

Financial Information			
No Par Share Count:	0	Capital Amount:	\$ 25.00
Par Share Count:	25,000.00	Par Share Value:	\$ 0.001

Officers <input type="checkbox"/> Include Inactive Officers			
Director - ROBERT P ATWELL			
Address 1:	318 N CARSON ST #208	Address 2:	
City:	CARSON CITY	State:	NV
Zip Code:	89701	Country:	
Status:	Active	Email:	
President - ROBERT P ATWELL			
Address 1:	318 N CARSON ST #208	Address 2:	

City:	CARSON CITY	State:	NV
Zip Code:	89701	Country:	
Status:	Active	Email:	
Secretary - STEVEN ISTOCK			
Address 1:	318 N CARSON ST #208	Address 2:	
City:	CARSON CITY	State:	NV
Zip Code:	89701	Country:	
Status:	Active	Email:	
Treasurer - STEVEN ISTOCK			
Address 1:	318 N CARSON ST #208	Address 2:	
City:	CARSON CITY	State:	NV
Zip Code:	89701	Country:	
Status:	Active	Email:	

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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number:	3109885	Incorporation Date / Formation Date:	10/12/1999 (mm/dd/yyyy)
Entity Name:	CAMELOT ENTERTAINMENT GROUP, INC.		
Entity Kind:	CORPORATION	Entity Type:	GENERAL
Residency:	DOMESTIC	State:	DE

REGISTERED AGENT INFORMATION

Name:	DELAWARE INTERCORP, INC.		
Address:	113 BARKSDALE PROFESSIONAL CENTER		
City:	NEWARK	County:	NEW CASTLE
State:	DE	Postal Code:	197113258
Phone:	(302)266-9367		

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

Would you like Status Status, Tax & History Information

To contact a Delaware Online Agent [click here](#).

EXHIBIT B

Promissory Note
Term Loan

\$650,000.00

April 27, 2010

FOR VALUE RECEIVED, CAMELOT FILM GROUP, INC., a Nevada 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 ("**Borrower**"), shall pay to the order of INCENTIVE CAPITAL, LLC, a Utah limited liability company with a place of business at 2755 E. Cottonwood Parkway, Suite 100, Salt Lake City, UT 84121, and its successors and assigns ("**Lender**"), the principal amount of Six Hundred Fifty Thousand and No/100 Dollars (\$650,000.00) plus interest from this date until paid. The principal amount together with accrued interest thereon shall be due and payable on January 31, 2011 ("**Maturity**"). Lender has advanced the initial principal amount of \$500,000 to Borrower. Within fourteen (14) days from the date that Borrower makes at least one "Distribution Payment" (defined below and in the Security Agreement, incorporated herein by this reference, to Lender as set forth herein and in the Security Agreement, Lender shall advance \$60,000 to Borrower ("**Additional Principal Amount**"); the remaining \$90,000 (the \$150,000 constituting the "**Operational Advance**") shall be disbursed to Borrower as follows: \$45,000 to Borrower on or before May 27, 2010, which shall be conditioned upon (a) Borrower's and Guarantors' performance of all other obligations under this Note and the related loan documents executed concurrently herewith (the "**Loan Documents**"); and (b) all representations and warranties by Borrower and the Guarantors in the Loan Documents being true and accurate; and \$45,000 to Borrower on or before June 27, 2010, which shall be conditioned upon (c) Lender's reasonable satisfaction with Borrower's efforts to exploit the Liberation Assets being purchased with the initial principal advance hereunder upon confirming that all of the representations and warranties of Borrower are accurate and upon receiving at least one other (a second) distribution payment on the 10% of gross (defined as the "Distribution Payments") set forth in the Security Agreement (incorporated herein by this reference). Any and all Distribution Payments to Lender must be accompanied by verifiable documentation supporting the calculation of the distribution amount. In other words, the Distribution Payment must actually be derived from 10% of the gross revenue generated from the exploitation of the Library as further set forth in this and the other contemporaneous documents executed herewith.

Interest. Borrower shall pay interest on all principal amounts advanced hereunder at the rate of one and one-half percent (1.50%) per month. All computations of interest shall be made on the basis of a 360-day year and paid for the actual number of days elapsed. Whether or not this Note is prepaid, Borrower shall pay Lender no less than six (6) months of interest – or nine percent (9%) – on the principal amount advanced hereunder.

Payments. Commencing May 27, 2010, and continuing on the 27th day of each consecutive month until Maturity, Borrower shall pay interest then accrued and unpaid on the outstanding balance of this Note. At Maturity or the earlier acceleration of this Note, Borrower shall pay the entire principal amount, plus all accrued and unpaid interest and fees due as set forth in the Loan Documents hereinafter defined. Borrower shall make all payments on this Note to Lender at its address stated above, or at such other place as the Lender or any other holder of this Note may designate. Borrower may make prepayments of principal at any time. For any payment due under this Note not made within ten (10) Business Days after its due date, Borrower shall pay a late fee equal to the greater of five percent (5%) of the amount of the payment not made or \$50.00. Lender shall apply all payments received on this Note to any unpaid late charges and prepayment premiums (if any), accrued and unpaid interest then due and owing, and the reduction of principal of this Note, in such order and in such amounts as Lender may

determine from time to time. The sum or sums shown on Lender's records shall be rebuttably presumptive of the correct unpaid balance of principal and interest on this Note. If any payment comes due on a day that is not a Business Day, Borrower may make the payment on the first Business Day following the payment date and pay the additional interest accrued to the date of payment. "Business Day" means a day of the year on which banks are not required or authorized by law to close in Salt Lake City, Utah.

Fees. As additional consideration for the extension of credit by Lender evidenced by this Note, Borrower shall pay Lender (a) a closing fee, and (b) an origination fee, each in the amount of Sixteen Thousand Two Hundred Fifty Dollars (\$16,250.00), for a total of Thirty Two Thousand Five Hundred Dollars (\$32,500.00), on or before the date of Maturity. The said closing fee and origination fee shall be included in the principal amount of this Note and shall be deemed a principal advance under the terms of this Note, and said fees shall bear interest under this Note as set forth herein above. As further consideration, \$20,000 in legal fees shall be withheld by Lender as follows: \$10,000 from the Additional Principal Amount; \$5,000 from the May 27, 2010 Operational Advance; and \$5,000 from the June 27, 2010 Operational Advance.

Default Rate. At Lender's election, without notice or demand, Borrower shall pay interest at the rate of three and one-half percent (3.50%) per month ("*Default Rate*") on the outstanding balance of this Note during the period that any Event of Default exists (as defined below), on past due interest on this Note, on all other amounts payable to Lender by Borrower in connection with this Note, and on any unsatisfied judgment on this Note. In no event, however, shall the interest rate on this Note exceed the highest rate permitted by law.

Warranties. The Borrower and each Guarantor hereunder represents and warrants to the Lender (which representations and warranties will survive the delivery of the Note) that:

1. Borrower and Guarantors are each corporations duly organized, validly existing and in good standing under the laws of the State of incorporation of each as set forth herein and has all requisite power and authority to own its property and to carry on its business as now being conducted, to execute and deliver this Note and all other instruments, agreements, and documents entered into from time to time, evidencing or securing this loan or any obligation of payment thereof or performance of Borrower's or Guarantors' obligations in connection with the transactions contemplated hereunder, each as amended (collectively referred to as "*Loan Documents*"), and to carry out the provisions and conditions of the Note and Loan Documents. Borrower is duly qualified to do business and is in good standing in every jurisdiction where the failure to so qualify would have a material adverse effect.

2. Borrower and Guarantors have full power, authority and legal right to incur the obligations provided for in, and to execute and deliver and to perform and observe the terms and provisions of this Note and the Loan Documents; each of them has been duly executed and delivered by Borrower and Guarantors and have been authorized by all required action; Borrower and Guarantors have obtained all requisite consents to the transactions contemplated thereby; and this Note and the Loan Documents constitute the legal, valid and binding obligations of Borrower and Guarantors enforceable against Borrower and Guarantors in accordance with their respective terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency or other similar laws affecting creditors' rights generally.

3. Neither the execution and delivery of this Note and the Loan Documents, nor the compliance by Borrower and Guarantors with the terms and conditions of this Note and the Loan Documents, nor the

consummation of the transactions contemplated thereby, will conflict with or result in a breach of the Articles of Incorporation or Code of Regulations, as applicable, or other governing documents of Borrower or Guarantors, or any of the terms, conditions or provisions of any agreement or instrument or any charter or other corporate restriction or law, regulation, rule or order of any governmental body or agency to which Borrower or Guarantors are now a party or is subject, or imposition of a lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Borrower or Guarantors pursuant to the terms of any such agreement or instrument.

4. No consent, approval, authorization or order of any court or governmental agency or body is required for the consummation by Borrower or Guarantors of the transactions contemplated by this Note and the Loan Documents.

5. Neither the Borrower nor either of the Guarantors is (i) in material default under any indenture or contract or agreement to which it is a party or by which it is bound; (ii) in violation of its articles of incorporation or Code of Regulations, as applicable, or any other governing document; (iii) in default with respect to any order, writ, injunction or decree of any court; or (iv) in default under any order or license of any federal or state governmental department. There exists no condition, event or act which constitutes, or after notice or lapse of time or both would constitute, an Event of Default.

6. The Borrower 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 as Exhibit A.

Collateral/Guaranties. Borrower 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.

Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default under this Note:

1. If (a) the interest hereunder or any commitment or other fee due under the Loan Documents shall not be paid in full punctually when due and payable or within five (5) Business Days thereafter, or (b) the principal hereof shall not be paid in full punctually when due and payable.

2. If Borrower or any Obligor fails to perform or observe any covenant or agreement (other than as referred to in (1) above) contained in this Note or in any other of the Loan Documents, and such failure remains unremedied for thirty (30) days after the Lender gives notice thereof to Borrower or such Obligor.

3. If any representation, warranty or statement made in or pursuant to this Note or any Loan Document or any other material information furnished by Borrower or any Obligor to Lender or any other holder of this Note, shall be materially false or erroneous.

4. If (a) any material provision, in the sole but reasonable opinion of Lender, of this Note or any Loan Document shall at any time for any reason cease to be valid, binding and enforceable against Borrower or any Obligor; (b) the validity, binding effect or enforceability of this Note or any Loan Document against Borrower or any Obligor shall be contested by Borrower or any Obligor without legal justification; (c) Borrower or any Obligor shall deny that it has any or further liability or obligation thereunder without legal justification; or (d) any Loan Document shall be terminated, invalidated or set aside, or be declared ineffective or inoperative or in any way cease to give or provide to Lender the benefits purported to be created thereby without legal justification.

5. If any event of default or default shall occur under any other Loan Document, or if under any Loan Document any payment is required to be made by Borrower or any Obligor on demand of Lender, such demand is made but such payment is not made.

6. If Borrower shall default in the payment of principal or interest due and owing upon any other material obligation for borrowed money, beyond any period of grace provided with respect thereto or in the performance or observance of any other agreement, term or condition contained in any agreement under which such obligation is created, if the effect of such default is to allow the acceleration of the maturity of such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to its stated maturity and such default is not cured by Borrower.

7. A final judgment or order for the payment of a material amount of money shall be rendered against Borrower or any Obligor by a court of competent jurisdiction, that remains unpaid or unstayed and undischarged for a period (during which execution shall not be effectively stayed) of thirty (30) days after the date on which the right to appeal has expired.

8. There shall have occurred any condition or event that Lender reasonably determines has or is reasonably likely to have a material adverse effect on (a) the business, operations, property or condition (financial or otherwise) or prospects of Borrower; (b) the business, operations, property or condition (financial or otherwise) of Borrower and its subsidiaries, if any, taken as a whole; or (c) the validity or enforceability of this Note or any of the other Loan Documents or the rights and remedies of Lender hereunder or thereunder.

9. If Borrower or any Obligor shall (a) discontinue business, (b) generally not pay its debts as such debts become due, (c) make a general assignment for the benefit of creditors, (d) apply for or consent to the appointment of a receiver, a custodian, a trustee, an interim trustee or liquidator of all or a substantial part of its assets, (e) be adjudicated a debtor or have entered against it an order for relief under Title 11 of the United States Code, as the same may be amended from time to time, (f) file a voluntary petition in bankruptcy or file a petition or an answer seeking reorganization or an arrangement with creditors or seeking to take advantage of any other law (whether federal or state) relating to relief of debtors, or admit (by answer, by default or otherwise) the material allegations of a petition filed against it

in any bankruptcy, reorganization, insolvency or other proceeding (whether federal or state) relating to relief of debtors, (g) suffer or permit to continue unstayed and in effect for thirty (30) consecutive days any judgment, decree or order entered by a court of competent jurisdiction, that approves a petition seeking its reorganization or appoints a receiver, custodian, trustee, interim trustee or liquidator of all or a substantial part of its assets, or (h) take any action in order thereby to effect any of the foregoing, or omit to take, any action in order to prevent any of the foregoing.

Remedies upon Default. If any Event of Default shall occur, Lender may, at its election, and without demand or notice of any kind, do any one or more of the following:

1. Declare all of the Borrower's obligations to Lender under this Note immediately due and payable, whereupon all unpaid principal, interest and fees in respect of this Note and the Loan Documents, together with all of Lender's costs, expenses and attorneys' fees related thereto, under the terms of this Note or otherwise, shall be immediately due and payable;

2. Exercise any and all rights and remedies available to Lender under any applicable law;

3. Exercise any and all rights and remedies granted to Lender under the terms of this Note and any of the other Loan Documents; and/or

4. Set off the unpaid balance hereunder against any debt owing to Borrower by the Lender.

Governing Law. This Note shall be construed and enforced under the laws of the State of Utah and any applicable federal laws. Time is of the essence in the payment of this Note. All grace periods in this Note and all other Loan Documents shall run concurrently.

Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing and, if to Borrower, mailed or delivered to it, addressed to it at the address specified on the signature pages of this Note, or if to Lender, mailed or delivered to it, addressed to the address of Lender specified on the front page of this Note. All notices, statements, requests, demands and other communications provided for hereunder shall be deemed to be given or made when delivered or forty-eight (48) hours after being deposited in the mails with postage prepaid by registered or certified mail, addressed as aforesaid, or sent by facsimile with telephonic confirmation or receipt, except that notices from Borrower to Lender pursuant to any of the provisions hereof shall not be effective until received by Lender.

Binding Effect. This Note shall be binding upon the Borrower and upon Borrower's respective heirs, successors, assigns and legal representatives, and shall inure to the benefit of the Lender and its successors, endorsees and assigns.

Amendments. Any amendment hereof must be in writing and signed by the party against whom enforcement is sought. Unenforceability of any provision hereof shall not affect the enforceability of any other provision. A photographic or other reproduction of this Note may be made by the Lender, and any such reproduction shall be admissible in evidence with the same effect as the original itself in any judicial or administrative proceeding, whether or not the original is in existence.

Indemnification. In consideration of this loan, Borrower hereby releases and discharges Lender and its shareholders, directors, officers, employees, agents and attorneys (collectively, "Related Parties") from any and all claims, demands, liability and causes of action whatsoever, now known or unknown,

arising out of or any way related to any of the Borrower's obligations hereunder or under the Loan Documents provided the Lender complies with its obligations to Borrower under this Note and the Loan Documents. Borrower shall indemnify, defend and hold harmless the Lender and the Related Parties against any claim brought or threatened against the Lender by the Borrower, any Guarantor or endorser hereof, or any other person on account of Lender's relationship with the Borrower or any Guarantor or endorser hereof provided the Lender complies with its obligations to Borrower under this Note and the Loan Documents.

No Waiver. None of the following will be a course of dealing, estoppel, waiver, or implied amendment on which any party to this Note or any Loan Document may rely: (1) Lender's acceptance of one or more late or partial payments; (2) Lender's forbearance from exercising any right or remedy under this Note, or any document providing security for or guaranty of repayment of this Note; or (3) Lender's forbearance from exercising any right or remedy under this Note or any Loan Document on any one or more occasions. Lender's exercise of any rights or remedies or a part of a right or remedy on one or more occasions shall not preclude Lender from exercising the right or remedy at any other time. Lender's rights and remedies under this Note, the Loan Documents, and the law and in equity are cumulative to, but independent of, each other.

Costs, Expenses, Fees and Taxes. Borrower agrees to pay on demand all costs and expenses of Lender, including but not limited to (a) administration, travel and out-of-pocket expenses, including but not limited to reasonable attorneys' fees and expenses, of Lender in connection with the preparation, negotiation and closing of the Loan Documents and the administration of the Loan Documents, the collection and disbursement of all funds hereunder and the other instruments and documents to be delivered hereunder, (b) extraordinary expenses of Lender in connection with the administration of this Note and the other Loan Documents, (c) the reasonable fees and out-of-pocket expenses of special counsel for Lender, if any, with respect to the foregoing, and of local counsel, if any, who may be retained by said special counsel with respect thereto, (d) all fees due in any of the Loan Documents, and (e) all costs and expenses, including reasonable attorneys' fees, in connection with the determination of Lender's lien priority in any collateral securing this Note, or the restructuring or enforcement of this Note or any Loan Document. In addition, Borrower shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution and delivery of any Loan Document, and the other instruments and documents to be delivered hereunder, and agrees to hold Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes or fees. Notwithstanding anything to the contrary contained hereinabove, Lender expressly agrees that Borrower shall pay Lender a cumulative total of no more than \$10,000 for all fees and expenses referenced in sections (a), (b) and (c) above upon Lender's providing Borrower with bills or invoices for all such fees and expenses.

Borrower Waivers. Borrower waives presentment, demand, notice, protest, and all other demands and notices in connection with delivery, acceptance, performance, default, or enforcement of this Note.

Jurisdiction. Borrower hereby irrevocably submits to the non-exclusive jurisdiction of any Utah state or federal court sitting in Salt Lake City, Utah, over any action or proceeding arising out of or relating to this Note, and Borrower hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such Utah state or federal court. Borrower hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

Jury Trial Waiver. BORROWER WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN LENDER AND BORROWER ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS NOTE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREBWITH OR THE TRANSACTIONS RELATED THERETO.

Borrower:

Camelot Film Group, Inc.

By: 

Robert P. Atwell, President

Guarantors:

Camelot Distribution Group, Inc.

By: 

Robert P. Atwell, President

Camelot Entertainment Group, Inc.

By: 

Robert P. Atwell, President


Robert P. Atwell, Individually



Exhibit A
Avalls by Key Territory Summary

Territory	# Avail PTV	Low License fee per title	Estimated Total Value (low)	Short Term Sales Potential (10%)	Med License fee per title	Estimated Total Value (med)	Short Term Sales Potential (10%)
CIS (Fmr USSR)	261	\$2,500	\$652,500	\$65,250	\$5,000	\$1,305,000	\$130,500
Benelux	290	\$2,000	\$580,000	\$58,000	\$4,000	\$1,160,000	\$116,000
Bulgaria	289	\$1,000	\$289,000	\$28,900	\$2,000	\$578,000	\$57,800
Czech	366	\$2,000	\$732,000	\$73,200	\$3,000	\$1,098,000	\$109,800
Fmr Yugo	291	\$1,000	\$291,000	\$29,100	\$1,500	\$436,500	\$43,650
France	287	\$5,000	\$1,435,000	\$143,500	\$8,000	\$2,296,000	\$229,600
Germany	310	\$5,000	\$1,550,000	\$155,000	\$10,000	\$3,100,000	\$310,000
Greece	287	\$2,000	\$574,000	\$57,400	\$4,000	\$1,148,000	\$114,800
Hungary	293	\$2,000	\$586,000	\$58,600	\$4,000	\$1,172,000	\$117,200
Italy	273	\$5,000	\$1,365,000	\$136,500	\$8,000	\$2,184,000	\$218,400
Poland	287	\$3,000	\$861,000	\$86,100	\$5,000	\$1,435,000	\$143,500
Portugal	289	\$1,500	\$433,500	\$43,350	\$3,000	\$867,000	\$86,700
Romania	332	\$1,500	\$498,000	\$49,800	\$3,000	\$996,000	\$99,600
Scandinavia	291	\$3,000	\$873,000	\$87,300	\$6,000	\$1,746,000	\$174,600
Spain	261	\$4,000	\$1,044,000	\$104,400	\$8,000	\$2,088,000	\$208,800
United Kingdom	187	\$5,000	\$935,000	\$93,500	\$10,000	\$1,870,000	\$187,000
S Africa	286	\$1,500	\$429,000	\$42,900	\$3,000	\$858,000	\$85,800
Thailand	292	\$1,000	\$292,000	\$29,200	\$2,000	\$584,000	\$58,400
Middle East	290	\$2,000	\$580,000	\$58,000	\$5,000	\$1,450,000	\$145,000
Turkey	265	\$2,000	\$530,000	\$53,000	\$4,000	\$1,060,000	\$106,000
Japan	278	\$5,000	\$1,390,000	\$139,000	\$9,000	\$2,502,000	\$250,200
Australia/NZ	269	\$3,000	\$807,000	\$80,700	\$6,000	\$1,614,000	\$161,400
Latin America	258	\$8,000	\$2,064,000	\$206,400	\$14,000	\$3,612,000	\$361,200
USA	287	\$10,000	\$2,870,000	\$287,000	\$15,000	\$4,305,000	\$430,500
Canada	296	\$4,000	\$1,184,000	\$118,400	\$7,000	\$2,072,000	\$207,200
Total			\$22,845,000	\$2,284,500		\$41,536,500	\$4,153,650

EXHIBIT C

SECURITY AGREEMENT

THIS SECURITY AGREEMENT ("Security Agreement"), dated as of April 27, 2010 by and between **Camelot Distribution Group, Inc.**, a Nevada corporation ("Debtor") and **Incentive Capital, LLC**, a Utah limited liability company ("Secured Party"), is made with reference to the following facts:

A. Camelot Film Group, Inc. ("Borrower") has executed or shall execute and deliver to Secured Party simultaneously herewith that certain Promissory Note -Term Loan (the "Note") in the original principal amount of \$650,000 in connection with a secured term loan (the "Loan") from Secured Party to Borrower.

B. Debtor has agreed to grant the Secured Party a security interest in the property hereinafter described as security for the prompt and complete payment of the payment and other obligations of the Borrower to the Secured Party under the Note.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and other agreements hereinafter contained, Debtor hereby agrees with Secured Party for the benefit of Secured Party as follows:

1. Grant of Security Interest.

Debtor hereby grants to the Secured Party a continuing first priority security interest in all Debtor rights to the property as set forth on **Schedule 1** attached hereto ("Distribution Assets") and by this reference incorporated herein, and all products and proceeds thereof, including (a) the Distribution 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 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"). Terms used in this Security Agreement are used as defined in (i) the Utah Uniform Commercial Code in effect from time to time; or (ii) the Asset Purchase Agreement executed by Borrower concurrently herewith (the "Purchase Agreement").

2. [Reserved.]

3. Security for Obligations. This Security Agreement secures, and the Collateral is collateral security for, the prompt payment or performance in full when due, whether at stated maturity, by acceleration or otherwise (including the payment of amounts which would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. Section 362(a)), to Secured Party of Debtor's indebtedness and other obligations now existing or hereafter arising to Secured Party with respect to the Note, whether for principal or interest (including, without limitation, interest which, but for the filing of a petition in bankruptcy, would accrue on such obligations) or payments of fees, expenses or otherwise pursuant to the Note and/or any other documents or instrument executed pursuant thereto or hereto (all such obligations being the "Note").

4. **Actions to Perfect.** Debtor hereby authorizes Secured Party at any time and from time to time to file one or more financing or continuation statements describing the Collateral. Debtor further agrees that at any time and from time to time, at the expense of the Debtor, Debtor will promptly execute and deliver all further Instruments and documents, and take all further action that may be reasonably necessary or desirable, or that Secured Party may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Such actions may include, without limitation, the delivery to Secured Party of Collateral for which delivery is required to perfect, the signature by bailees or depository banks on control agreements in favor of Secured Party with respect to Collateral in the possession of bailees, or complying with the provisions of any applicable statutes governing perfection or protection of the security interest granted hereby in the Collateral.

5. **Representations and Warranties.** Debtor represents and warrants as follows:

(a) **Status of Debtor: Authorization.** Debtor (I) is a corporation duly organized, validly existing and in good standing under the laws of the state of Nevada, and (II) is duly qualified or licensed to conduct business in each jurisdiction in which the nature of its business or assets requires such qualification or licensing under applicable law except where the failure to be so qualified would not have a material adverse effect on the business, operations or financial condition of Debtor. Debtor has the requisite power and authority to own its assets and to transact the business in which it is presently engaged and in which it proposes to engage and to grant to Secured Party the security interests in the Collateral as herein provided. Debtor has taken all action necessary to authorize the execution and delivery of this Security Agreement, and the consummation of the transactions contemplated hereby.

(b) **Binding Security Agreement.** This Security Agreement constitutes the legal, valid and binding agreement and obligation of Debtor, enforceable against Debtor in accordance with its terms, except as enforceability may be limited by the bankruptcy, insolvency, fraudulent conveyance, and similar laws and equitable principles affecting the enforcement of creditors' rights generally.

(c) **Title to Collateral.** Debtor has good and marketable title to its interest in the Collateral, free and clear of any mortgage, pledge, lien, security interest, encumbrance, conditional sale contract or other title retention agreement, or any other adverse claim of any nature whatsoever (collectively, "Lien") except for (x) the first priority security interest granted to the Secured Party hereby. No effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any recording office.

(d) **No Default or Required Consent.** The execution, delivery and performance of this Security Agreement by Debtor, and the effectuation by the Secured Party of any of its rights and remedies thereunder or hereunder, whether upon default or