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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

INCENTIVE CAPITAL, LLC, a Utah Limited Liability Company, Plaintiff, v. CAMELOT ENTERTAINMENT GROUP, INC., a Delaware Corporation; CAMELOT FILM GROUP, INC., a Nevada Corporation; CAMELOT DISTRIBUTION GROUP, INC., a Nevada Corporation, ROBERT P. ATWELL, an individual; JAMIE R. THOMPSON, an individual; STEVEN ISTOCK, an individual; TED BAER, an individual; PETER JAROWEY, an individual, Defendants.	**DECLARATION OF JOSEPH G. PIA IN SUPPORT OF PLAINTIFF'S MEMORANDUM IN OPPOSITION TO TED BAER'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** Civil No. 2:11-cv-00288 Judge Clark Waddoups **(Oral Argument Requested)**

I, Joseph G. Pia, state and declare as follows:

1. My name is Joseph G. Pia. I am a citizen of the United States, am a resident of the State of Utah, am over the age of 21, and am competent to make this Declaration. I have personal knowledge of the facts contained herein and I attest that these facts are true and correct.

2. I am an attorney and partner with the law firm of Pia Anderson Dorius Reynard & Moss ("PADRM").

3. I, along with the other attorneys at PADRM, act as counsel for Incentive Capital, LLC ("Incentive"), which is the Plaintiff in the above-captioned lawsuit.

4. I submit this Declaration in support of Incentive's Memorandum in Opposition to the Motion to Dismiss for Lack of Personal Jurisdiction filed with this Court by Defendant Ted Baer ("Baer").

5. I, along with the other attorneys at PADRM, were involved with the short-term loan (the "Loan" or "Loan Transaction") made by Incentive Capital, LLC to Camelot Entertainment Group, Inc. ("CEG"); Camelot Film Group, Inc. ("CFG"); and Camelot Distribution Group, Inc. ("CDG" and collectively with CEG and CFG, "Camelot") in the initial principal amount of $650,000 (the "Loan Amount") to be used by Camelot for purposes of purchasing all rights, title and interest to a large film library (the "Liberation Library") of approximately 880 existing motion picture titles (each a "Film") and PADRM, particularly Nathan Dorius, Esq., was involved in the agreements and ancillary documents relating to the Loan Transaction, including "Promissory Note Term Loan" (the "Note"), evidencing the Loan, and the two separate Security Agreements which secured the Loan with the Film Library itself (collectively, the "Loan Documents").

6. In March of 2010, Camelot approached Incentive for the Loan to secure acquisition of the "Liberation Assets" using the proceeds of the Loan.

7. Over the next approximately 5 week period, Camelot and Incentive negotiated the terms of the Loan, the security and guarantees thereto, along with the terms of the promissory note and other documents that would memorialize the Loan Transaction.

8. On or about April 27, 2010, the Loan Transaction closed when Incentive and CFG entered into, among other things, a "Promissory Note Term Loan" (the "Note") for the Loan Amount of $650,000. [*See* **Exhibit 1** hereto, the Note.]

9. Defendant Baer acted as Camelot's representative in negotiating the Loan Transaction and was Camelot's primary legal counsel with regard to the Loan. Nathan Dorius ("Dorius") and myself acted as Incentive's primary legal counsel in connection with the Loan Transaction. Indeed, as Baer notes in an email to Dorius dated March 29, 2010, there were only four individuals participating in reviewing and preparing the Loan Transaction document on behalf of Camelot—(i) Baer; (ii) Bob Atwell, Camelot's CEO; (iii) Peter Jarowey ("Jarowey"), Camelot's financial advisor in Boston; and (iv) Phil Levoff ("Levoff"), the only other attorney working for Camelot on the deal who, like Jarowey, is based out of Boston and who, prior to the Loan Transaction, had done no previous work for Camelot. [*See* **Exhibit 2** hereto, Email from Baer to Dorius dated 3/29/2010.]

10. Beginning in March 2010 and continuing until the Loan Transaction closed on or about April 27, 2010, Baer, on the one hand, and myself and Dorius, on the other hand, exchanged dozens of emails and telephone calls in which the terms and conditions of the Note and the other Loan Transaction documents were discussed, negotiated and agreed upon.

11. Baer was actively involved in the drafting of all of the agreements as well as the Asset Purchase Agreement ("APA") pertaining to Camelot's purchase of the Liberation Library (using a portion of the Loan proceeds) and was primarily responsible for negotiating, reviewing and making changes and edits to the provisions of the Loan Transaction documents (prepared by Dorius and myself) on behalf of Camelot.

12. Incentive alleges in its Amended Complaint that "Baer, acting as counsel for

CEG, CFG, and CDG during the negotiation of the loan agreements [i.e. the Loan Transaction documents], misrepresented that CDG's assets have a significantly higher value than the amount of the proposed loan and the interest thereon." [*See* Plaintiff's Amended Complaint at ¶80.]

13. In addition, Incentive alleges in its Amended Complaint that, in order to induce Incentive to make the Loan, Baer (along with the other Defendants) misrepresented Camelot's financial stability, its ability to undertake and pay back loans, and its track record and abilities as a distributor of films and in generating revenues from the exploitation of the Liberation Library, and grossly overstated the value of the Liberation Library itself. [*See* Plaintiff's Amended Complaint, at ¶¶ 2, 75.]

14. In particular, in an email to Baer dated April 1, 2010, Dorius stated, among other things, that "[a]s for the guarantors [of the Loan], the lender requires that Bob Atwell, Ted Baer, and Peter Jarowey personally guaranty payment of the Note." [*See* **Exhibit 3** hereto, Email from Dorius to Baer dated 4/1/2010.] Incentive wanted Baer and Jarowey to guarantee the Loan, despite neither of them being an owner or director of Camelot at the time, to ensure that they communicated correct and accurate information to Incentive regarding Camelot's assets, its business, and the value of the Liberation Assets and stood behind the representations regarding such that they made in connection with the Loan Transaction.

15. In response to Dorius' request made on behalf of Incentive that each of Atwell, Baer and Jarowey execute personal guarantees to guarantee Camelot's repayment of the Loan, Baer sent an email to Dorius also dated April 1, 2010, in which Baer makes the following representation:

> Also, of particular note, I should point out that the parent company, Camelot Entertainment Group, Inc. [CEG], is a public company, and, as such, has substantial value that is far more secure than personal guarantees. For example,

> the company would consider placing into escrow $650,000 in convertible preferred stock in the public-traded entity in order to give your lender additional comfort of a substantial guarantee. The escrow would only be released upon satisfaction of the loan.

[*See* **<u>Exhibit 4</u>** hereto, Email from Baer to Dorius dated 4/1/2010.]

16. Ultimately, acting in reliance on Baer's representation that a placing of CEG's shares equal in value to the Loan Amount of $650,000 would have "substantial value that is far more secure than [the] personal guarantees" of Atwell, Baer and Jarowey which Incentive had requested, the parties entered into an escrow agreement (the "Escrow Agreement") at the Closing of the Loan which required that a share certificate valued at the Principal amount of $650,000 worth of CEG Class F Convertible Preferred shares ("Pledged Shares") shall be delivered to an unnamed escrow agent. [*See* **<u>Exhibit 5</u>** hereto, Escrow Agreement at p. 1, ¶ 1(a).]

17. Baer also attached four (4) separate files to his email to Dorius dated April 1, 2010, which Baer represented as "cover[ing] the unencumbered assets of the two borrowing entities: Camelot Film Group [CFG] and Camelot Distribution Group [CDG]." [*See* **<u>Exhibit 4</u>** hereto, Email from Baer to Dorius dated 4/1/2010.] Baer named these four (4) attached files to his April 1, 2010 email as follows:

> "1 – the Camelot Distribution Group Sales Revenue Projections on Liberation Library titled to be purchased" (herein after referred to as "File #1");
>
> "2 – the Up-dated 2010 valuation of the Liberation Library prepared by the Liberation management (i.e. an update from the Salter report enclosed)" (herein after referred to as "File #2");
>
> "3 – the Camelot Distribution Group Sales Revenue Projections for the new film titles licensed by CDG over the last number of months" (herein after referred to as "File #3"); and
>
> 4 – the Slater Library valuation report of the Liberation Library" (herein after referred to as "File #4").

[*See id.*]

18. After listing the files attached to his April 1, 2010 email, Baer represented to Dorius, Pia and Incentive that "[t]ogether these assets [i.e. the Liberation Library (including the Distribution Assets)] have a significantly higher value than the amount of the Loan and the interest thereon." [*See* **Exhibit 4** hereto, Email from Baer to Dorius dated 4/1/2010.]

19. File #1 (attached by Baer to his April 1, 2010 email) provides, in sum, the following revenue projections from the Liberation Library:

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

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

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

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

[*See* **Exhibit 4** hereto, Email from Baer to Dorius dated 4/1/2010 at attached File #1.]

20. File #1 is attached as Exhibit A to the Note and is initialed by Camelot's CEO, Atwell, as representing the gross proceeds to be generated from the Liberation Library ("Gross Revenue Representations"). In addition to sending the Gross Revenue Representations to Incentive's representative's as File #1 to his April 1, 2010 email, Baer, acting as Camelot's counsel in the Loan Transaction, reviewed, edited and made modifications and changes to the Note and the attached Exhibit A to the Note containing the Gross Revenue Representations. [*See* **Exhibit 1** hereto, the Note at Exhibit "A".]

21. In relation to the Gross Revenue Representations, the Note (which Baer personally reviewed and edited) provides the following "Warranties":

> . . . 6. The Borrower [CFG] has furnished to the Lender financial assumptions which, in the opinion of Borrower, fairly and accurately reflect the financial assumptions for the operations of Borrower, and there has been no material adverse change in the Borrower's financial prospects since that date which would require revision of the same;

> 7. The Borrower represents and warrants that the international sales projections previously provided by Borrower in connection with the parties' initial term sheet shall not vary by more than 25% less than that represented therein on the estimated low value and short term sales potential 10% columns. A copy of the international sales projections is attached hereto [to the Note] as Exhibit A. . . .

[*See* **Exhibit 1** hereto, the Note at p. 3, ¶¶ 6 – 7.]

22. Based on the Gross Revenue Representations made by Atwell, which were included as File #1 to Baer's April 1, 2010 email and in Exhibit A to the Note attached thereto by Baer, along with the Warranties contained in the Note itself, it was Incentive's understanding that Incentive would receive at least 25% of $2,284,500 to $4,153,650 in gross participation from the Library.

23. Incentive materially relied upon Baer's and the other Defendants' representations that Incentive would receive at least 25% of $2,284,500 to $4,153,650 in gross participation from the Library in entering into the Note.

24. Moreover, also included in Exhibit A to the Note were File #2 and File #3 attached to Baer's April 1, 2010, which were attached to the Note as sales projections, which Baer, acting as Camelot's counsel in the Loan Transaction, also reviewed and included with the Note. According to the representations made by Camelot, Baer and the other Defendants in these sales projections, Incentive would receive 10% of the Existing Sales Revenue generated from the Liberation Library, or at least $15,000 monthly, and 10% of the Exploitation Revenues, or at least $190,375 monthly, for a total of $205,375 each month ("Payment Benchmark"). These representations about the sales projections were false.

25. Alternatively, according to File #2 and File #3 (attached to Baer's April 1, 2010 email and as Exhibit "A" to the Note) the representations made by Camelot, Baer and the other Defendants in the sales projections reviewed and included in the Note by Baer, Incentive would

receive 10% of the Existing Sales Revenue from the Liberation Library, or at least $15,000 monthly, and 10% of the Exploitation Revenues as modified by the 25% cushion referenced in the preceding paragraph, or at least $142,781.25 monthly, for a total of $157,781.25 ("Cushioned Benchmark"). These representations were also false.

26. Baer admits that he sent Files #1-4 as an attachment to his April 1, 2010 email to Dorius.

27. Baer claims that he "did not prepare any of the four documents that were sent as attachments" to his April 1, 2010 email to Dorius. Baer also claims that he "did not prepare or calculate any of the information or estimates contained in the four attached documents" to his email but rather, the information contained in the documents was "were prepared by someone other than" Baer and was "provided to him" by Camelot "to send to a representative of Plaintiff Capital Incentive."

28. Conspicuously absent from Baer's Affidavit is any statement denying that he reviewed the information contained in Files #1-4 attached to his April 1, 2010 email to Dorius or regarding whether or not he knew the information contained in the files was false, inaccurate and/or overstated.

29. Furthermore, Baer does not deny that he made the following representations to Incentive and Dorius in Baer's April 1, 2010 email (as identified above), that he knew such representations were false at the time they were made, or that he knew Incentive relied on such representations when it accepted the escrowed stock of Camelot in lieu of receiving the personal guarantees of both Jarowey and Baer which Incentive had initially requested and in making its decision to make the Loan to Camelot:

a. That CEG has "substantial value";

b. That the value of CEG is "far more secure" than the personal guarantees of Atwell, Jarowey and Baer requested by Incentive; and

c. That the Liberation Library (including the Distribution Assets) "have a significantly higher value than the amount of the Loan and the interest thereon."

[*See* **Exhibit 4** hereto, Email from Baer to Dorius dated 4/1/2010.]

30. On March 24, 2010, Camelot's representative and Boston-based financial advisor, Defendant Jarowey, sent an e-mail to me stating:

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

[*See* **Exhibit 6** hereto, Email from Jarowey to Pia dated 3/24/2010.]

31. Attached to the March 24, 2010 Jarowey E-mail is a spreadsheet with three tabs: (1) Year to Date Revenue; (2) 2009 Forecast and SGA Detail; (3) SGA 2009 & 2010 Forecasts. [*See* **Exhibit 6** hereto, Email from Jarowey to Pia dated 3/24/2010, attachments thereto.] Tab 1 of these spreadsheets, consisting of the purported Year to Date Revenue for the Liberation Library, shows total revenues on the Liberation Library of $6,004,373. [*See id.*] This

information is false.

32. Jarowey's email to me dated March 24, 2010 was also sent to Baer. [*See* **Exhibit 6** hereto, Email from Jarowey to Pia dated 3/24/2010.] Baer does not deny receiving Jarowey's email, knowing that the information contained therein was false and took no action to correct such information or otherwise notify Incentive that it was inaccurate.

33. On March 30, 2010 Jarowey sent a follow-up e-mail to me stating that his estimate of monthly gross revenue for the Liberation Assets was and would continue to be "around $200,000 per month net of the overhead reductions, maybe more [c]ould be as much as $300,000 per month." [*See* **Exhibit 7** hereto, Email from Jarowey to Pia dated 3/30/10.] This information was also false. [*See id.*]

34. Jarowey's March 30, 2010 email was also sent to Baer. [*See* **Exhibit 7** hereto, Email from Jarowey to Pia dated 3/30/10.] As with Jarowey's March 24, 2010 email to me, Baer does not deny receiving Jarowey's March 30, 2010 email, knowing that the information contained therein was false and took no action to correct such information or otherwise notify Incentive that it was inaccurate.

35. Incentive materially relied upon Jarowey's representations in the March 24, 2010 e-mail and the March 30, 2010 e-mail in making its decision to provide the Loan to Camelot.

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

37. On Wednesday, June 2, 2010, Dorius and I, acting in our capacity as Incentive's legal counsel, prepared and sent a letter to Camelot entitled "Notice and No Waiver." [*See* **Exhibit 8** hereto, Notice and No Waiver Letter dated 6/2/2010.] The June 2, 2010 letter states:

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

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

Your representations in the final Note confirm this to be the case and specifically reference the sales projections enclosed herewith as Exhibit A. The Note states in pertinent part that payment is 'conditioned upon the (a) Borrower's and Guarantors' performance of all other obligations under th[e] Note and the related loan documents . . . (b) all representations and warranties by Borrower and the Guarantors in the Loan Documents being true and accurate . . . Incentive Capital now believes that the Warranties set forth in the Note are in breach. That relevant section of the Note reads: 'The Borrower represents that the international sales projections previously provided by Borrower in connection with the parties' initial term sheet shall not vary by more than 25% less than that represented therein on the estimated low value and short term sales potential 10% columns. A copy of the international sales projections is attached hereto as Exhibit A.' Thus, it continues to be Incentive Capital's express understanding of the parties' agreements that in addition to your representations that $150,000 was being generated by the film library ***at the time it was acquired***, that the 'Short Term Sales Potential" payments to Incentive Capital of 10% of gross are $2,284,500. This representation has been relied upon by Incentive Capital.

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

To make sure that there was a meeting of the minds between lender and borrower on this critical issue, the Note provides for operational advances on the express condition that all representations be accurate and true, including (as mentioned above) the representation that the film library would generate revenues within 25% of the projections provided by borrower to lender (which were attached as an

> exhibit to the Note and incorporated by reference). Those projections indicate that the library will generate $22,845,000 annually (under the "Estimated Total Value – Low" column"). The film library would need to generate gross revenues of approximately $1,427,812.50 per month in order to hit the annualized target amount of $17,133,750 (given the 25% margin provided for in the Note). Clearly, the participation payments made to lender thus far show that borrower's exploitation of the film library is generating revenues far below the projected amounts.
>
> Based upon the participation payments received to date, lender is concerned that one of two things is happening: (a) ***borrower is not generating monthly gross revenues as it represented in order to induce lender to make this loan***, or (b) borrower is not making the full participation payments as required under the loan documents. Despite the occurrence of what lender believes to be material breaches of the loan documents by borrower, lender, without waiving its rights and remedies under the loan documents, has made the promised operational advances to borrower.

[*See id.* (emphasis added).]

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

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

40. Despite Baer's representations to Incentive in his April 1, 2010 email to Dorius that Camelot's stock had "substantial value" which was "far more secure" than the personal guarantees of Atwell, Jarowey and Baer requested by Incentive, Camelot's most recent stock quote on its website shows its current stock value to be $0.0001 per share, with total monthly earnings of $391.75. Apparently, Camelot's stock is in lock-down and has been unable to trade

more than a few thousand dollars per day. Indeed, Investigation into Camelot's financials indicates that there is no discernable market for Camelot's stock nor can it be readily liquidated.

41. Moreover, Atwell as a guarantor (the only personal guarantee obtained by Incentive in connection with the Loan as it agreed to receive Camelot stock in escrow in lieu of receiving guarantees from Jarowey and Baer (as Incentive had requested) as a result of Baer's representations to it regarding the substantial value and security of such stock) has few or no assets because, among other things, he pledged all of his assets towards the building of a motion picture studio resulting in the loss of his home and other value.

42. In an email from Jamie Thompson ("Thompson"), Camelot's Sales Manager, to me, dated April 16, 2010, Thompson represents that the proceeds from the Loan will, in part, be used to pay all fees incurred by Camelot (i.e. legal fees billed by Baer in addition to other consultants retained by Camelot) associated with the Loan Transaction. [*See* **Exhibit 9** hereto, Email from Thomson to Pia dated 4/16/2010.]

43. Pursuant to federal law (28 U.S.C. §1746), I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

EXECUTED on this the 5th day of August 2011.

/s/ Joseph G. Pia________________
Joseph G. Pia