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**TO BE FILED UNDER SEAL
PURSUANT TO PROTECTIVE ORDER**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRESCIENT ACQUISITION GROUP, INC.,
d/b/a Prescient Capital Corp.,

Plaintiff,

-against-

MJ PUBLISHING TRUST, MJ-ATV
PUBLISHING TRUST, and MICHAEL
J. JACKSON,

Defendant.

05 Civ. 6298 (PKC)(AJP)

**REPLY DECLARATION
OF STEVEN ALTMAN**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

STEVEN ALTMAN declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the principal of Altman & Company P.C., attorneys for plaintiff Prescient Acquisition Group, Inc. ("Prescient"). I submit this reply declaration in further support of Prescient's motion for (a) leave to amend its complaint to add claims for fraudulent conveyance and a new defendant, New Horizon Trust ("New Horizon"), and (b) a preliminary injunction prohibiting defendants MJ Publishing Trust ("MJPT"), MJ-ATV Publishing Trust ("MJ-ATV") and New Horizon from fraudulently conveying MJPT's and MJ-ATV's assets pending the disposition of this action.

**Additional Facts Supporting the Entry of a Preliminary Injunction:
Fortress's "on-going" Production of Documents**

2. Since April 3, 2006, when Prescient submitted this motion, Fortress Financial Group Inc. and related entities (collectively, "Fortress") has produced more than 17,000 pages of documents. (See Exhibit Y: cover letters dated April 3, 4 and 7, 2006 from John G. Hutchinson, Esq., counsel to Fortress, with my handwritten notes identifying the bates stamp numbered documents received with them)

3. These new documents are in addition to the more than 4,500 pages of documents Fortress produced on March 30 while I was taking the deposition of Fortress Managing Director Dean Dakolias. (See Exhibit Z: four cover letters dated March 30, 2006, the first of which is signed by Mr. Hutchinson, who defended Mr. Dakolias at the deposition, the following three signed by his associate Andrew Hart, all with my handwritten notes identifying the documents produced and the time of we received them)

4. Prior to Mr. Dakolias's deposition, Fortress produced a total of 4,400 pages, 2,500 of which were delivered to my firm's offices on March 29, the day before the deposition. (See Exhibit AA: two letters dated March 29, 2006 from Mr. Hutchinson to me with my handwritten notes identifying bates numbers produced) None of this belated production would have been made without the Court's prior intervention. (See Altman Dec., Exh. N.)¹

5. As shown in my initial declaration on this motion, Fortress mightily resisted producing any documents concerning its current negotiations and dealings with the defendants. (See Altman Dec. ¶¶ 8-10 and Exh. R) Prescient knew nothing about those negotiations – and

¹ References to "Altman Dec." are to my April 3, 2006 Declaration in support of Prescient's motion and the attached exhibits.

certainly nothing about the planned imminent transfer all of the assets of defendants MJPT and MJ-ATV to newly formed third-party New Horizon – until the production by Fortress on March 29 of an apparently very late-stage draft agreement between it, New Horizon and the defendants. (See Altman Dec., Exh. T). The production of that document and Mr. Dakolias’s testimony concerning it on March 30 was the genesis of the current motion.

6. Many of the documents belatedly produced by Fortress since then – none of which have been produced by the defendants – confirm that the defendants’ planned imminent transfer of their assets to New Horizon is a fraudulent conveyance and that Prescient will be irreparably harmed if that transfer is not enjoined. A sampling of those documents are summarized below and annexed hereto.

i. Transfer of All of the Defendants’ Assets to New Horizon

7. The transaction documents confirm that the defendants are about to transfer all of their assets to New Horizon. March 17, 2006 drafts of three separate documents entitled “Trust Assignment and Acceptance Agreement” make clear that all of the assets of MJ-ATV and MJPT, and all of Michael Jackson’s interests in them are to be assigned to New Horizon. (Copies of those Trust Assignment and Acceptance Agreements are annexed as Exhibits BB, CC and DD)

8. The March 9, 2006 draft of the Credit And Security Agreement, which appears to be the heart of the new \$300 million loan from Fortress to New Horizon, confirms that the collateral for the loan is all of the former assets of MJPT and MJ-ATV. (See Exhibit EE: Section 7.01 defining “Collateral” to include “all of the Borrower’s rights and interest of every kind and nature” with respect to Mr. Jackson’s personal catalogue of songs and works, the

MJAC catalog, and the all of his interests in MJ-ATV, in which Mr. Jackson holds his 50% interest in what is commonly referred to as the Beatles Catalogue; and passim) The proposed “Payout, Termination and Release Agreement” between and among Fortress and the defendants (a copy of which is annexed as Exhibit FF) is to the same effect.

9. Defendants indeed do not deny the fact of the asset transfers or that all of the soon to be former assets (if the assignments are not now enjoined) of MJPT and MJ-ATV are the collateral supporting the proposed new \$300 million loan to New Horizon. Defendants’ claim in defense of the transaction is that the proposed assignments were not intended to leave Prescient in the cold. The Fortress documents belie that claim.

ii. **The Planned Asset Transfer is Intended to Thwart Prescient’s Claims**

10. In January 2006, Fortress proposed extending a \$300 million credit facility to the defendants. The terms of that offer were set forth in a document entitled “Outline of Terms and Conditions for Extension of and Increase in Existing Fortress Credit Facility.” A copy of those proposed terms and conditions, and the email which covered its circulation is annexed as Exhibit GG. The borrowers in that proposed transaction were to be MJ-ATV and MJPT. Michael Jackson, MJ-ATV and MJPT were to be guarantors of the entire \$300 million debt, but the credit facility was to be comprised of a \$230 million loan to MJ-ATV and a \$70 million loan to MJPT. The collateral was to be all of the assets of the defendants. It was described in the term sheet as follows:

First liens on the assets of the Borrowers [MJ-ATV and MJPT], including the 50% interest in Sony-ATV held by MJ-ATV, and (ii) the MJAC catalogue. If Borrowers’ and Lenders’ respective counsel are satisfied that the Fortress Credit facility is fully cross-collateralized and cross-guaranteed (which will require, among

othe things, the consent of Sony to changes in the MJ-ATV Trust document), then Neverland Ranch will be released from Fortress's current lien.²

(Exh. GG at bates no. F019082) Prescient would, of course, not be seeking a preliminary injunction had the defendants sought to close that transaction. But sometime in February 2006, the proposed transaction changed – a new borrower (New Horizon) was created (see Altman Dec., Exh. V), and the assets of MJPT and MJ-ATV were sought to be assigned to it. The natural question is how did the parties propose, and how do they expect to deal with Prescient and other creditors and would-be claimants.

11. The Fortress documents show the defendants specifically acknowledged Prescient's claims and are trying to negotiate and paper a new transaction around them. A list of "Discussion Topics" circulated among counsel for Fortress and the defendants on February 26, 2006 states, as item number 6: "**Indemnification should expressly reference Prescient litigation and Branca matters.**" (Exhibit HH at bates no. F022242) (emphasis added) Provisions regarding Prescient can be found buried in Section 11.04(b) on pages 63 and 64 of the March 2, 2006 draft of the Credit and Security Agreement (copies of excerpts of which are annexed as Exhibit II). In that draft, Fortress's counsel inserted language to specifically demand indemnification for:

(ii) any claims, actions, proceedings or litigation of whatsoever kind or nature involving [Ziffen Brittenbaum Branca & Fisher] or any Affiliate thereof...., or (iii) **any claims, actions, proceedings or litigation of whatsoever kind or nature involving [Prescient] or any Affiliate thereof as claimant and regardless of whether such Lender-Related Party is named as a defendant....**

² Defendants do not dispute that their sole material assets are those presently owned by MJPT and MJ-ATV, and the Neverland Ranch.

(Exh. II at bates nos. F022882-83) (emphasis added) An earlier draft of the Credit and Security Agreement (excerpted pages of which are annexed as Exhibit JJ) simply called these the “(ii) [Branca matters] or (iii) [Prescient matters]....” In that draft, the reference to the “Branca matters” is crossed out and a handwritten note stating “discuss scope” is penciled in regarding the “Prescient matters.” (Id.)

12. The claims referred to in item (ii) of those drafts of the Credit and Security Agreement appear to be those asserted by Mr. Jackson’s former lawyer, John Branca, Esq., and his law firm, for fees and other services. Documents recently produced by Fortress show that the defendants appear to be settling those claims, a claim for five percent of MJPT plus approximately \$1 million in legal fees allegedly due and owing, for more than \$14 million. (See Exhibit KK: Payment, Settlement and Mutual Release Agreement) A portion of the \$14-plus million Branca settlement appears intended to be paid out of proceeds from the new Fortress \$300 million loan to New Horizon, and the balance to be paid upon the refinancing of Mr. Jackson’s Neverland Valley Ranch, but in no event later than April 15, 2006. (See Exh. KK §§ 1.a. and 1.b.) Indeed, it appears Fortress will be funding the refinancing of the Neverland Ranch in order to complete the Branca settlement. (A copy of a term sheet for that loan countersigned by Mr. Jackson is annexed as Exhibit LL; see also Exhibit MM: March 27 email from Sidley Austin to White & Case, “it would be helpful for us to share the Fortress N’land mortgage documents w/ the Branca camp to show them the progress we are making on the financing and that the liquidity to pay Branca presumably is forthcoming in the near term.”)

13. But what about Prescient and its claim for nine percent of monies borrowed against MJPT and MJ-ATV under its Engagement Letter one might reasonably inquire.

Prescient's claims are referenced in what appears to be the most recent draft of Credit and Security Agreement. (See Altman Dec., Exh. T at p. 67) Defendants' intent thus appears plainly to be to denude MJPT and MJ-ATV of all of their assets, leave Prescient to pursue their naked shells and chase Mr. Jackson in Bahrain or wherever he may be in residence when Prescient secures judgment. A clearer case of an attempted fraudulent conveyance there may not be.

iii. **Asset Value of MJPT and MJ-ATV Far Exceeds the Proposed Debt**

14. The face amount of the proposed New Horizon loan is \$300 million. (See Altman Dec., Exh. T) That the value of the collateral to be transferred from MJPT and MJ-ATV far exceeds the amount of the loan New Horizon is to secure from Fortress can hardly be disputed.

15. Evidence showing that Mr. Jackson's/MJ-ATV's interest in Sony-ATV (a/k/a the Beatles catalogue) is worth at least \$500 million is all over the Fortress documents. See, e.g., Exh. GG at bates no. F003153, stating a "\$1,000,000,000 total enterprise value of the Sony-ATV joint venture." And, a condition of an April 2005 commitment issued by Fortress out "for execution" in connection with a then proposed \$92 million loan was "that the MIJAC music library and the [Neverland] Ranch have a combined value of not less than \$150,000,000." (See Exhibit NN at bates no. 0063 and Exhibit OO at bates no. F 000222)

16. The initial letter of intent Prescient secured for the defendants, which Mr. Jackson personally signed (Dash Dec., Exh. D),³ also states that "the estimated appraised value of the Sony/ATV music library is about *One Billion Dollars (\$1,000,000,000)*." (Id. at p. 3 under

³ References to "Dash Dec." are to the April 3, 2006 Declaration of Darien Dash submitted with Prescient's initial moving papers and the attached exhibits.

heading entitled “Material Assumptions”) (emphasis in original) An express condition of the commitment Prescient secured for the defendants was an appraisal of the Sony-ATV catalogue “substantiating an appraised value of no less than \$1,000,000,000.” (Dash Dec., Exhs. E and F at p. 2)

15. Dean Dakolias, a Fortress Managing Director intimately involved in the Michael Jackson financing matters, confirmed on deposition that the value of the Sony-ATV company of which MJ-ATV owns 50%, is approximately \$1 billion, that the value of MJPT has been estimated to be somewhere between \$50 and \$100-plus million, and that the approximate value of the Neverland Ranch is in excess of \$25 million. (Dakolias Tr. P. 166, line 23 - p. 170, line 17)⁴

iv. **The Underlying Loans Have Been in Default For 12 Months**

16. In April 2005, the defendants were in default of their obligations under the Bank of America loans for which Prescient was engaged to assist in securing a new lending source. (See Exhibit QQ: April 20, 2005 letters from Bank of America to the defendants entitled “Withdrawal of Forbearance Agreement”) (See also Exhibit RR: May 3, 2005 letter from Fortress to the defendants, “As you know, bank of America, N.A. (Bank) has declared the MJPT Facility in default by reason of a covenant default and other unspecified defaults.”)

17. The loans continued to be in default in December 2005. (See Dash Dec., Exh. J: December 20, 2005 Request for Forbearance and Agreement Regarding Additional Fees) (See also Dash Dec., Exh. K: Put Extension Agreement at Recital E. “Both of the facilities have

⁴ (References “Dakolias Tr. ___” are to the transcript of the March 30, 2006 testimony Constantine Dakolias, cited excerpts of which are annexed as Exhibit PP)

matured and are fully due and payable. MJ-ATV has failed to pay the amounts due under the MJ-ATV Facility. MJPT has failed to pay the amounts due under the MJPT Facility.”) And, the defendants concede they are currently in default.

Fortress Documents Confirm Prescient’s Role

18. Finally, briefly segueing back to the merits of Prescient’s claims.

Documents recently and belated produced by Fortress indisputably confirm Prescient’s role in securing a commitment for financing from Fortress for the defendants. On April 14, 2005, Michael Jackson gave Ronald Burkle of the Yucaipa Companies and others written authority to act on his behalf. (See Exhibit SS: April 14, 2005 letter from Michael Jackson to Jane Heller at Bank of America) Shortly thereafter, Stuart Shelly of Transitional Investors, LLC, Fortress’s joint venture partner, wrote to Mr. Burkle’s colleague, Steve Mortenson introducing himself and confirming the commitment from Fortress then already secured for the defendants by Prescient. On April 25, 2005, Mr. Shelley wrote to Mr. Mortenson:

Steve,

I have been trying to reach you so I may introduce myself, my firm and our relationship with Michael Jackson. You may be aware that we have an LOI in place with Michael Jackson as well as a series of Term Sheets and most recently a Commitment Letter to provide financing to Michael.

We are keen to share our thoughts on our various proposals as well as the results of our diligence to date and plan for the financing contemplated.

We recognize there are pressing payment deadlines and hope we can accommodate them in the short time remaining.

Please call me at the below numbers at your convenience.

Regards,

Stuart Shelly

(See Exhibit TT: April 25, 2005 email thread ending with email from Stuart Shelly to John Cox, Mr. Dakolias of Fortress and Jackson lawyer, Michael Sydow, Esq.) (See also Exhibit UU: April 26, 2005 email thread ending with email from Stuart Shelly to, among others, Darien Dash, Don Stabler, Randy Jackson and Mr. Dakolias)

19. To the same effect is the email and enclosures from Fortress counsel, Edward Prokop, Esq. of Sidley Austin dated April 17, 2005. That email (a copy of which is annexed as Exhibit VV) attached a "PDF versionfor execution" of a \$92 million loan commitment by Fortress to MJPT. Notably and not surprisingly given Prescient's indisputable role in the transaction, Mr. Prokop's email and the attached execution copy of the Fortress Commitment Letter was addressed to (i) Jackson counsel, Michael Sydow, Esq., (ii) Don Stabler, who signed Prescient's Engagement Letter, at two email addresses, (iii) Randy Jackson and Carmela Jackson, (iv) Prescient principal, Darien Dash, and (v) a principal of intervenor-plaintiff, Perfect Circle Entertainment Inc., Robert Pryce.


20. This evidence is only a portion of what will ultimately be Prescient's affirmative case. It is noted and referenced here simply because it is correspondence not produced by the defendants and provided by Fortress only after Court intervention and threat of further action.

Conclusion

21. For all of the reasons set forth in its initial moving papers and the reply papers submitted herewith, Prescient's motion should be in all respects granted.

22. I declare under penalty of perjury that the foregoing is true and correct.

New York, New York
April 10, 2006



STEVEN ALTMAN