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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.

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05 Civ. 6298 (PKC)(AJP)

DECLARATION OF VILLIERS TERBLANCHE

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

1. I am a partner in the law firm of White & Case LLP. Since late January 2006 we have acted as New York counsel for MJ Publishing Trust ("MJPT"), MJ-ATV Publishing Trust ("MJ-ATV"), Michael J. Jackson ("MJJ") and New Horizon Trust ("New Horizon"), in connection with the refinancing (the "Refinancing") of their respective indebtedness to Fortress Credit Corp. and its affiliates ("Fortress"). I submit this declaration in opposition

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EXHIBIT
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EXHIBIT NO. 6
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to plaintiff Prescient Acquisition Group, Inc.'s ("Prescient") motion for a preliminary injunction prohibiting MJPT, MJ-ATV and New Horizon from closing on the Refinancing (the "Prescient Motion").

Background

2. MJPT is a Delaware common law trust whose principal asset is a musical publishing catalog known as the MIJAC Catalog. The MIJAC Catalog is comprised of, inter alia, the songs of MJJ and a number of other well-known artists. MJ-ATV is a Delaware statutory trust which holds a 50% interest in Sony/ATV Music Publishing LLC ("Sony/ATV"), a 50-50 joint venture between MJJ, on the one hand, and Sony Music Entertainment Inc. and various other Sony affiliates ("Sony"), on the other hand. Sony/ATV holds a large musical publishing catalog, which includes the songs of well-known artists. MJJ currently owns 100% of the beneficial interests in MJPT and MJ-ATV. New Horizon is a Delaware statutory trust formed on February 10, 2006, the purpose of which is described below.

3. MJ-ATV is the borrower under a loan facility (the "MJ-ATV Facility") in the original principal amount of $200,000,000, from Bank of America, N.A. ("BOA"). This loan facility was assigned to two Fortress trusts ("FMT I" and "FMT II") pursuant to an Assignment and Assumption Agreement with BOA dated May 3, 2005 (the "MJ-ATV Facility Agreement").

4. MJPT is the borrower under a loan facility (the "MJPT Facility", collectively with the MJ-ATV Facility, the "Existing Facilities") in the original principal amount of $72,500,000 from BOA. The MJPT Facility was assigned to a third Fortress trust ("FMT III") pursuant to an Assignment and Assumption Agreement with BOA dated May 3, 2005 (the "MJPT Facility Agreement").

History of the Refinancing

5. The Existing Facilities currently are in default: MJ-ATV has failed to pay the relevant amounts due under the MJ-ATV Facility at maturity, and MJPT has failed to pay the amounts due under the MJPT Facility at maturity. On December 20, 2005 Fortress, FMT I, FMT II, FMT III, MJJ, MJPT and MJ-ATV entered into an agreement (the "Forbearance Agreement"), whereby FMT I, FMT II and FMT III, agreed, among other things, to forbear any enforcement action based on the defaults existing as of that date, subject to the terms and conditions of the Forbearance Agreement, until January 19, 2006. (A true and correct copy of the Forbearance Agreement is annexed hereto as Exhibit A.) On January 13, 2006, the forbearance period was extended to February 18, 2006 pursuant to an Amended and Restated Put Extension Agreement, among Fortress, MJJ, MJPT, MJ-ATV, and Sony (the "Extension Agreement"). (A true and correct copy of the Extension Agreement is annexed hereto as Exhibit B).

6. The short-term forbearance period granted by the Fortress entities, however, did not eradicate the risk of foreclosure on the assets of MJJ, MJPT and MJ-ATV, which would in all likelihood put them beyond the reach of any future judgment creditor, absent a refinancing of the Existing Facilities.

7. To that end, in January 2006, MJJ, with the assistance of his financial advisors, Omni Global, and certain other parties, invited bids from various financial institutions to refinance the Existing Facilities. In response, MJJ received five expressions of interest from financial institutions: Cerberus; Cheyne Capital; Citigroup Global Markets ("Citigroup"); Fortress; and Goldman Sachs. The two most favorable of these offers

proposed a refinancing based on what is known as a "bankruptcy remote" structure, a commonly used device in refinancings of this kind, that is outlined below.

8. Indeed, Prescient itself appears to have proposed a bankruptcy remote structure to MJJ in late 2004. Darien Dash, a principal of Prescient, alleges to have introduced Transitional Investors LLC ("Transitional"), to individuals purporting to act on behalf of MJJ. See Declaration of Darien Dash, sworn to April 3, 2006, submitted in support of the Prescient Motion ("Dash Decl."). A December 30, 2004 Transitional non-binding letter of intent to refinance the Existing Facilities itself "contemplates that a new, bankruptcy remote, special purpose entity … shall be formed to hold the entire Sony/ATV music library upon consummation of the Financing." (Dash Decl. Ex. D.)

9. Bankruptcy remote structures, commonly used in transactions such as the Refinancing, have at least two important features: first, the transfer of assets from the old entity to the new entity (in this case, from each of MJPT and MJ-ATV to New Horizon) must be for fair value and such transfer cannot be a sham. Second, subsequent to the transfer the respective entities (in this case, MJPT, MJ-ATV and New Horizon) each must maintain its separate existence and agree to take various actions to avoid the co-mingling of assets and obligations. The result of this is that in the event of a bankruptcy filing by either MJJ and/or the two old trusts (MJPT or MJ-ATV), MJJ's and MJPT/MJ-ATV's assets and liabilities would probably not be substantively consolidated with the assets and liabilities of New Horizon under the United States bankruptcy code.

10. From the perspective of a prudent lender, this structure makes commercial sense because it leaves the lender with a solvent borrower in the event of the bankruptcy of some of the persons or entities affiliated with the borrower.

11. After analyzing the five expressions of interest, the MJJ financial advisory team decided to explore a commitment letter with Citigroup. The reasons for this decision included:

a. a favorable interest rate of one-month LIBOR plus 150 basis points, which is significantly better than the various interest rates under the Existing Facilities. The interest saving compared to the non-default interest rate under the Existing Facilities amounts to millions of dollars over the two year term of the loan;

b. the opportunity to lock in a fixed interest rate (in what was widely perceived to be a rising interest rate environment) through an interest rate swap;

c. an interest reserve account that will initially be funded from the proceeds of the Refinancing to pay interest on the principal amount of the loan;

d. significant credit support from Sony, including an undertaking to make an offer for the collateral securing the Refinancing in case of a default under the Refinancing at a price approximately equal to the outstanding amount of the loan, guaranteed payments in respect of Sony/ATV revenue to MJJ of $6,500,000 per year and an undertaking to provide up to $2,000,000 per year, in each case, to service the interest payable on the loan;

e. the ease of administration associated with a single borrower under a single loan facility (as opposed to the multiple borrowers and facilities under the Existing Facilities); and

f. unlike the situation under the Existing Facilities, MJJ would not be required to provide a personal guarantee, and MJJ's principal residence, the Neverland ranch, would no longer form part of the collateral package.

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12. On January 31, 2006, Citigroup extended a commitment to MJJ to arrange for the refinancing of the Existing Facilities (the "Citigroup Commitment"). Among other things, the Citigroup Commitment contemplated that a newly organized Delaware statutory trust (which trust ultimately became New Horizon) would be formed to hold (i) the MIJAC musical publishing catalog owned by MJPT and (ii) the economic interest in the 50% interest of Sony/ATV owned by MJ-ATV. MJPT would contribute or sell to New Horizon the MIJAC Catalog in exchange for a beneficial interest in New Horizon and MJ-ATV would contribute or sell to New Horizon the MJ-ATV interest in exchange for a beneficial interest in New Horizon.

13. Pursuant to the Citigroup Commitment, New Horizon then would borrow $300,000,000 from Citibank, N.A. The proceeds of that loan would be used to repay existing indebtedness, fund an interest reserve account designed to service the interest expense of the new loan, pay fees and expenses associated with the refinancing, and, if any proceeds were left, provide the trust beneficiaries with a relatively small amount for use in their discretion.

14. On February 14, 2006, Fortress proffered its own commitment letter (the "Fortress Commitment"), purporting to match the terms of the Citigroup Commitment pursuant to a right of last offer that it retained in its December 20, 2005 Request for Forbearance and Agreement Regarding Additional Fees, pursuant to which Fortress had the right to match any bona fide written offer from a competing lender subject to certain terms and conditions. (A true and correct copy of the Fortress Commitment is annexed hereto as Exhibit C). Among other things, the Fortress Commitment also contemplated, as it was required to do in order to match the Citigroup Commitment, a bankruptcy remote transaction structure

substantially identical to that contained in the Citigroup Commitment, including insofar as MJPT and MJ-ATV would transfer their assets to New Horizon in exchange for beneficial interests in New Horizon, as described in more detail below.

15. MJJ ultimately proceeded with Fortress as the lender for the Refinancing. Since February 14, 2006, MJJ, MJPT, MJ-ATV, Fortress, Sony and their respective advisors have worked diligently to close the Refinancing as soon as possible.

16. Originally, the target date for the closing was March 2, 2006. While the parties came close to finalizing the Refinancing at that point in time, a small number of rather complex issues remained open and the target closing subsequently was pushed out to March 31, 2006. The current target closing date is April 11, 2006. As of the date of this declaration the transaction documents for the Refinancing are substantially complete and the parties have agreed to postpone the closing until immediately after the hearing on April 11, 2006. However, at least from the perspective of MJJ and his related entities, there are several reasons why the closing cannot be postponed much longer, including a backstop date of April 12, 2006 in a settlement agreement between MJJ and several parties claiming a 5% interest in MJJ's interest in Sony-ATV and the high transaction expenses of the Refinancing. This settlement agreement is an important precondition for the Refinancing to close since it directly affects the collateral of the Refinancing lender. This settlement agreement took many weeks and a significant effort to negotiate and there is currently no certainty regarding the possibility, if any, to extend the backstop date therein if the Refinancing does not close immediately after the hearing on April 11, 2006.

Structure of the Refinancing

17. In sum, the Refinancing is structured as follows. On the closing date, MJPT will transfer to New Horizon, in exchange for a 15% beneficial interest in New Horizon, the MIJAC Catalog and certain other assets, such as its rights under the MIJAC Catalog Administration Agreements and the BMI Agreement. On the same date, MJ-ATV will transfer to New Horizon, in exchange for an 85% beneficial interest in New Horizon, the Sony/ATV Pledged Interest, which is the economic interest in the membership interest of MJ-ATV in the Sony/ATV 50-50 joint venture. (True and correct copies of the relevant transfer agreements are attached hereto as Exhibits D and E.) The 15%/85% allocation of beneficial interests is based on the relative value of the assets contributed to New Horizon by each of MJPT and MJ-ATV.

18. After the transfer and contrary to plaintiff's suppositions, MJPT and MJ-ATV in fact will retain significant assets: MJPT will own a 15% beneficial interest in New Horizon and MJ-ATV will own an 85% beneficial interest in New Horizon. These interests will, in fact, represent the same assets these two trusts held before the transfer. Accordingly, <u>the transfer is for fair value</u> and does not hide or remove assets from Prescient or, indeed, any other creditor or putative future judgment creditor. In fact, as outlined below, the real effect of the Refinancing is to <u>preserve</u> the assets of MJPT and MJ-ATV.

19. Also on the closing date of the Refinancing, New Horizon will enter into a Credit and Security Agreement with Fortress providing for a loan in the amount of $300,000,000 (the "Loan") by Fortress to New Horizon secured by the assets of New Horizon.

20. The proceeds of the Loan primarily will be used to repay the Existing Facilities in the approximate amount of $276,600,000. The remaining proceeds will fund an interest reserve account (approximately $13,500,000) designed to service the interest expense of

the Loan and pay the rather significant fees and expenses associated with the Refinancing. To the extent any proceeds remain, the trust beneficiaries (MJPT and MJ-ATV) will be provided with a relatively small amount to use in their discretion. The current expectation is that at most only a nominal amount of such proceeds will remain.

21. Sony will be providing additional credit support to the Refinancing as outlined in paragraph 11(d) above.

The End Result

22. As noted above, the structure of the Refinancing is, in reality, probably the only way in which the Refinancing could be effectuated on terms as favorable as those obtained by New Horizon. In addition, creating a vehicle -- in this case, New Horizon -- that would probably be shielded from the subsequent bankruptcy of MJPT and/or MJ-ATV or the personal bankruptcy by MJJ is commercially reasonable, in the ordinary course of business and consistent with industry practice as demonstrated by the fact that a number of the competing bids for the Refinancing included a substantially similar structure.

23. The consolidation of the assets of the two trusts (MJPT and MJ-ATV) into a single new trust (New Horizon) also is useful from the lender's perspective because it simplifies foreclosure in the event of default (e.g., there will be no cross-collateralization issues or the need to deal with multiple borrowers). This benefit, in turn, enhances the marketability of the loan. These lender-perspective enhancements are reflected in the new loan's improved interest rate and other attractive features outlined in paragraph 11 above. These features ultimately facilitate the long term financial viability of MJPT and MJ-ATV and help to preserve the assets of these entities.

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24. The Refinancing actually increases the likelihood that a plaintiff such as Prescient would have viable assets against which to execute a putative judgment if it somehow were to be successful in proving its claim in the future. The financial wellbeing of MJPT and MJ-ATV is enhanced by the Refinancing, including through:

a. immediately taking care of the imminent foreclosure risk arising from the fact that the Existing Facilities are in default;

b. putting an end to the high default interest rate that is payable as long as the Existing Facilities are in default;

c. a favorable Refinancing interest rate of one-month LIBOR <u>plus</u> 150 basis points, which is significantly better than the various interest rates under the Existing Facilities;

d. the opportunity to lock in a fixed interest rate through an interest rate swap;

e. an interest reserve account that will initially be funded from the proceeds of the Refinancing and that provides a cushion with respect to the interest payment required under the Loan;

f. significant credit support from Sony, including an undertaking to make an offer for the collateral in case of a default under the Refinancing at a price approximately equal to the outstanding amount of the Loan, guaranteed payments in respect of Sony/ATV revenue to MJJ of $6,500,000 per year and an undertaking to provide up to $2,000,000 per year to service the interest payable on the Loan; and

g. the ease of administration associated with a single borrower under a single loan facility (as opposed to the multiple borrowers and facilities under the Existing Facilities).

25. Finally, it must also be re-emphasized that the alternative to the Refinancing is continued default under the Existing Facilities and foreclosure. It should go without saying that the end result of default and foreclosure would be, in all probability, eventual liquidation of the very assets about which Prescient expresses concern (and in which case the Prescient claim, if successful, will in any event rank behind the secured interests of Fortress and certain other parties). The Refinancing will actually serve to put potential future creditors, such as Prescient, if it somehow is able to prove its claim, in a substantially better position than they would be in its absence.

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

New York, New York
April 7, 2006

Villiers Terblanche

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