

Case assigned to D48 Judge Elizabeth Allen White

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FILED
LOS ANGELES SUPERIOR COURT

APR 07 2008

JOHN V. CLARKE, CLERK
BY MARY GARCIA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

IMAGE ENTERTAINMENT, INC., a
Delaware corporation,

Plaintiff,

v.

RELATIVITY MEDIA, LLC, a California
limited liability company; and DOES 1-20,
inclusive,

Defendants.

Case No. BC388639

COMPLAINT FOR:

- (1) BREACH OF CONTRACT
- (2) BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING
- (3) PROMISSORY FRAUD

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INTRODUCTION

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1. This action arises out of defendant Relativity Media, LLC's ("Relativity") intentional and fraudulent failure and refusal to honor any of its contractual obligations under an exclusive ten-year home video distribution agreement (the "Distribution Agreement") with plaintiff Image Entertainment, Inc. ("Image"). Based on the false representations and promises of Relativity's founder and owner, Ryan Kavanaugh ("Kavanaugh"), Image entered into the Distribution Agreement with Relativity in August 2006. Pursuant to the Distribution Agreement, Relativity was required to provide Image with a minimum of three motion pictures in 2007, and a minimum of seven pictures (while using reasonable commercial efforts to provide up to 20 pictures) during each calendar year thereafter. The delivery of major studio caliber titles to Image for home video and digital distribution was expected to generate millions of dollars in revenues to Image and dramatically enhance the value of Image's existing library of films and videos, among other things.

2. To date, even though Relativity has continued to finance, produce and release numerous films over the year and a half since the Distribution Agreement was executed, Relativity has failed to deliver a single title to Image. Rather than comply with its contractual obligations to Image, Image is informed and believes that Relativity has granted distribution rights that belong to Image to other film distributors, including, upon information and belief, Lions Gate Films, Inc. ("Lions Gate").

THE PARTIES

3. Image is a Delaware corporation with its principal place of business in Chatsworth, California. Image is a publicly traded company on the NASDAQ stock exchange. It has been in business for over 24 years and is one of the largest independent home video distributors of motion picture and television programming in the United States.

4. Image is informed and believes, and based thereon alleges, that Relativity is a California limited liability company doing business in the State of California, County of Los Angeles. Image is informed and believes, and based thereon alleges, that Relativity is a motion picture financing and production company.

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LOS ANGELES

1 5. Image is informed and believes, and based thereon alleges, that the fictitiously named
2 defendants sued herein as Does 1 through 20, inclusive, and each of them, were in some manner
3 responsible or legally liable for the wrongful and fraudulent conduct, actions, events, transactions,
4 circumstances and damages alleged herein, including by, among other things, directing and/or
5 participating in the fraudulent conduct and by intentionally interfering with Image’s rights described
6 herein. The true names and capacities of said fictitiously named defendants, whether individual,
7 corporate or otherwise, are presently unknown to Image, and Image will amend this complaint to
8 assert the true names and capacities of said fictitiously named defendants when and if the same have
9 been ascertained. For convenience, each reference to a named defendant herein shall also refer to
10 the Doe defendants, and each of them.

11 GENERAL ALLEGATIONS

12 Kavanaugh Approaches Image Regarding a Distribution Deal

13 6. In 2006, Image was engaged with Lions Gate Entertainment Corp. (“LGE”) in a
14 proxy contest in which LGE had nominated a slate of directors to replace Image’s board of
15 directors. LGE’s unsolicited attempt to take over Image had commenced almost a year earlier, in or
16 about August 2005, when LGE made a proposal to purchase 100% of Image’s outstanding common
17 shares for \$4.00 per share in cash. That bid had been rejected by Image’s board, and LGE had
18 renewed its offer of \$4.00 per share in or about July 2006.

19 7. In the midst of this proxy contest, in or about June 2006, Kavanaugh approached
20 Image’s CEO, Martin Greenwald (“Greenwald”), and proposed the concept of a long-term
21 distribution deal between Relativity and Image. Image is informed and believes, and based thereon
22 alleges, that prior to approaching Image, Kavanaugh had attempted to strike a distribution deal with
23 LGE’s subsidiary, Lions Gate, but was unsuccessful in doing so.

24 8. At or about that time, Kavanaugh stated to Greenwald that Relativity’s “single
25 picture production business” intended to finance up to 20 films a year through a hedge fund affiliate
26 named Verite Capital Onshore Loan Fund, LLC (“Verite”), an entity which Kavanaugh stated was
27 created to fund the production of single motion pictures. Kavanaugh further stated that Verite had
28

1 already committed the production costs of over a dozen of Relativity's theatrical motion pictures in
2 2006 and early 2007.

3 9. During the negotiations in July and August 2006 leading up to the execution of the
4 Distribution Agreement, Kavanaugh stated to Greenwald, among other things, that he was "very
5 excited about our new partnership," that the "opportunities [were] overwhelmingly endless," that he
6 "looked forward to a long and prosperous relationship" and that "the sky's the limit." During these
7 discussions, Kavanaugh further stated that, in return for granting distribution rights to Image, he
8 wanted a deal that provided Relativity with Image stock.

9 10. Based on Kavanaugh's representations and promises, Image agreed to enter into the
10 Distribution Agreement with Relativity. Image's expectation in entering into the Distribution
11 Agreement was that it would propel Image beyond its existing position as a leading supplier of
12 independent DVD programming to become a significant provider of major motion pictures to the
13 home entertainment industry. Based on Kavanaugh's representations, and with his full knowledge,
14 Image projected that the deal would generate hundreds of millions of dollars for Image and its
15 shareholders on a going forward basis.

16 11. In an August 14, 2006 press release issued in conjunction with the execution of the
17 Distribution Agreement, Kavanaugh stated as follows:

18 "This deal is a significant component of the expansion of our single-
19 picture business. After analyzing the various home video platforms
20 available, we concluded that Image's solid record of success and
21 innovation, paired with the depth and breadth of its North American
22 retail exposure and its relationships with the major retailers, made
23 Image the ideal partner for us to take such a large and important step.
24 We believe that, with this deal, we are in a position to significantly
25 increase Image's value for their shareholders, and that together Image
26 and Relativity will be establishing further creative business
27 transactions."
28

1 12. Shortly thereafter, during an August 16, 2006 investor conference call held by Image,
2 Kavanaugh stated, among other things, that Relativity had already “greenlit . . . approximately 15
3 movies” in its single picture business. Kavanaugh further stated, among other things, that “[o]ur
4 target is to do about 20 films per year in that [single picture] business. It is our primary focus
5 currently.” As it turned out, and unbeknownst to Image, none of the films would ever be provided
6 to Image for distribution.

7 **The Distribution Agreement**

8 13. On or about August 11, 2006, Image and Relativity entered into the Distribution
9 Agreement. (Attached hereto as Exhibit “A” is a true and correct copy of the Distribution
10 Agreement.)

11 14. Paragraph 2 of the Distribution Agreement requires that Relativity provide Image
12 with the exclusive home video and digital distribution rights in North America to *all* motion pictures
13 100% financed by Verite or otherwise under the control of Relativity, *subject only* to the specific
14 limitations set forth in paragraph 3.3 of the Distribution Agreement, in exchange for which Image is
15 solely responsible for all distribution services of the home video and digital release of each
16 “Picture.”

17 15. Under Paragraph 3.1 of the Distribution Agreement, “Picture” means a motion
18 picture financed 100% by Verite or otherwise under the control of Relativity during the ten-year
19 term of the Distribution Agreement and as to which Relativity controls the home video and digital
20 distribution rights in the United States and Canada. Each title distributed throughout the ten-year
21 output term is to carry a ten-year exclusive distribution term from the date of release.

22 16. The Distribution Agreement sets forth certain minimum requirements regarding
23 Relativity’s mandatory obligation to provide Pictures to Image for distribution. Specifically,
24 Paragraph 3.2 requires, among other things, that:

25 “within seven (7) days after Relativity’s receipt of a signed copy of
26 this Agreement, Relativity shall identify to Image at least three (3)
27 expected Pictures for distribution during calendar year 2007. If one or
28 more of such identified Pictures do not proceed to production,

1 Relativity will provide substitute Picture(s) for distribution by Image.
2 Thereafter, Relativity will provide to Image a minimum of seven (7)
3 Pictures (and will use its reasonable commercial efforts to provide up
4 to twenty (20) Pictures) during calendar year 2008 and each year of
5 the Term thereafter”

6 17. Under paragraph 7 of the Distribution Agreement, Image is to receive a distribution
7 fee on gross receipts received from the home video and digital distribution of each Picture.

8 18. As part of the deal, Relativity was given the right to obtain 3.4 million shares of
9 Image common stock upon compliance with certain terms and conditions. Under the operative
10 transaction agreements, including a Stock Release Agreement dated as of August 11, 2006 (the
11 “Stock Release Agreement”), the stock was subject to certain restrictions on sale or transfer and
12 would not be released to Relativity until designated title delivery, box office performance, financial
13 and/or payment requirements were met. Among other things, under the Stock Release Agreement
14 Relativity had the ability to obtain the release of Image shares based upon, a “Change in Control” of
15 Image (as defined in the Stock Release Agreement). Specifically, the Stock Release Agreement
16 provided that, upon a Change in Control, 1.8 million shares would be released to Relativity upon
17 payment of a release amount of \$3.80 per share. In addition, Relativity had the ability to obtain an
18 additional one million shares upon a Change in Control based on the payment of the greater of \$4.00
19 or a percentage of the total consideration per share received by Image in connection with such
20 Change in Control. (Attached hereto as Exhibit “B” is a true and correct copy of the Stock Release
21 Agreement.)

22 **Relativity’s Fraudulent Plan**

23 19. Unbeknownst to Image, at the time of execution of the Distribution Agreement,
24 Relativity had no intention of providing titles to Image pursuant to the terms of the Distribution
25 Agreement. Rather, upon information and belief, Relativity secretly expected that LGE would gain
26 control of Image shortly after execution of the Distribution Agreement, and that upon such “Change
27 in Control,” Relativity automatically would be entitled to millions of dollars in Image stock without
28 ever having to provide a single film title to Image. In addition, upon Lions Gate’s acquisition of

1 Image, Relativity then would have a distribution agreement with Lions Gate (rather than with
2 Image), which, upon information and belief, is what Relativity really wanted. However, Relativity's
3 secret plan did not work as intended because, as described below, LGE's attempt to acquire control
4 of Image failed in October 2006.

5 20. At a shareholders' meeting held on October 10, 2006, Image shareholders voted in
6 favor of keeping in place the existing Image board, thereby rejecting Lions Gate's bid to elect a
7 Lions Gate-backed slate of directors to the Image board. Thus, the Change in Control that was vital
8 to Relativity's scheme did not occur, and Relativity was left holding a Distribution Agreement with
9 Image that it had never intended to comply with from inception.

10 21. In connection with the Distribution Agreement, Relativity's co-founder and co-
11 managing member, Lynwood Spinks ("Spinks"), had joined Image's board of directors in August
12 2006. However, Spinks' tenure on the Image board lasted only a few months, and during that time
13 he failed to participate in board activities. Notably, Spinks did not attend the October 10, 2006
14 shareholder meeting (attended by all other Image directors), and, shortly after Lions Gate's takeover
15 attempt failed, Spinks resigned from Image's board on November 20, 2006.

16 **Relativity's Material Breaches of the Distribution Agreement**

17 22. Notwithstanding Kavanaugh's and Relativity's representations and promises,
18 Relativity's mandatory obligations set forth in Paragraph 3.2 of the Distribution Agreement, and
19 Image's numerous demands for performance, more than a year and a half has passed since the
20 execution of the Distribution Agreement and, to date, Relativity has failed and refused to perform
21 any of its obligations under the Distribution Agreement.

22 23. Among other things, Relativity failed to provide *any* titles – much less three – for
23 Image to distribute in 2007, and has failed to provide any titles for 2008. Relativity's failure to
24 provide Image with any titles for distribution, in direct violation of Paragraph 3.2 of the Distribution
25 Agreement, has deprived and continues to deprive Image of millions of dollars in lost revenues.
26 Although Image has, on multiple occasions, reminded Relativity of its contractual obligations and
27 has demanded performance, Relativity has, without explanation, failed and refused to take any
28 action to comply with the Distribution Agreement.

1 24. In addition, Image is informed and believes, and based thereon alleges, that multiple
2 film titles which should have been given to Image under the Distribution Agreement were instead
3 given to other film distributors. By way of example only and without limitation, Image is informed
4 and believes, and based thereon alleges, that three Relativity films – *3:10 to Yuma*, *The Forbidden*
5 *Kingdom* (formerly known as *J&J*) and *The Bank Job* (formerly known as *Baker Street*) – qualify as
6 “Pictures” (as defined in the Distribution Agreement) and therefore should have been provided to
7 Image for distribution.

8 25. There were preliminary discussions between Image and Relativity regarding the
9 above-referenced titles. However, without warning, discussions regarding these titles were
10 terminated by Relativity. Thereafter, it was publicly announced that the U.S. distribution rights to
11 these three films had been given to Lions Gate.

12 26. On August 8, 2007, Image sent a letter to Relativity asking, among other things, that
13 (a) Relativity provide a written explanation and documentation justifying Relativity’s failure to give
14 Image the distribution rights to *3:10 to Yuma*, *The Forbidden Kingdom* and *The Bank Job*, including
15 whether Relativity was contending that such films constituted “Excluded Films” under paragraph
16 3.3 of the Distribution Agreement; and (b) Relativity advise Image in writing whether there were
17 any other films which constitute “Excluded Pictures,” and, if so, that Relativity explain the basis for
18 such position and provide supporting documentation.

19 27. Relativity failed to provide the information and documents requested by Image’s
20 August 8, 2007 letter. Furthermore, notwithstanding subsequent requests, to date Relativity has
21 failed to supply any documentation, including any agreements, to support its failure and refusal to
22 give Image the distribution rights to these three films or any other Relativity films. Relativity’s only
23 purported justification for refusing to provide such documentation is that, according to Relativity,
24 the documents are confidential.

25 28. *3:10 to Yuma* was released theatrically in the U.S. by Lions Gate in or about
26 September 2007. Image is informed and believes, and based thereon alleges, that *3:10 to Yuma* has
27 grossed more than \$50 million in domestic box office receipts. Image is further informed and
28 believes that the film was released in home video format by Lions Gate in January 2008.

1 29. *The Bank Job* was released theatrically by Lions Gate on or about March 7, 2008.
2 Image is informed and believes, and based thereon alleges, that *The Forbidden Kingdom* is
3 scheduled to be released theatrically by Lions Gate in or about April 2008.

4 **FIRST CAUSE OF ACTION**

5 (Breach of Contract – Against Relativity)

6 30. Image realleges and incorporates herein by reference each and every allegation of
7 paragraphs 1 through 29 above, as though fully set forth herein.

8 31. Image has performed each and every act, condition and covenant incumbent upon it
9 in accordance with the terms of the Distribution Agreement, except as excused, waived or prevented
10 by the acts of Relativity.

11 32. As described above, Relativity has materially breached the Distribution Agreement
12 by, among other things, (a) failing to deliver any films to Image for home video distribution, and (b)
13 upon information and belief, granting to other distribution companies home video distribution rights
14 which were required to be given to Image pursuant to the Distribution Agreement.

15 33. As a direct and proximate result of Relativity's material breaches and conduct
16 described above, Image has suffered and continues to suffer substantial damages, including, without
17 limitation, lost distribution fees, profits and other damages.

18 **SECOND CAUSE OF ACTION**

19 (Breach of the Covenant of Good Faith and Fair Dealing – Against Relativity)

20 34. Image realleges and incorporates herein by reference each and every allegation of
21 paragraphs 1 through 33 above, as though fully set forth herein.

22 35. Implied in the Distribution Agreement is a covenant of good faith and fair dealing
23 pursuant to which Relativity was required to deal in good faith and fairly with Image and to refrain
24 from taking any action that would deprive Image of the benefits of the Distribution Agreement.

25 36. Relativity has breached and continues to breach the covenant of good faith and fair
26 dealing implied in the Distribution Agreement by, among other things, taking the actions described
27 above, including by, without limitation, failing to deliver any titles to Image and failing to even
28 make any good faith effort to provide titles to Image, all the while providing titles to other

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1 distribution companies and thereby depriving Image of millions of dollars in distribution fees and
2 other benefits to which it is entitled under the Distribution Agreement.

3 37. Image has performed each and every act, condition and covenant incumbent upon it
4 in accordance with the terms of the Distribution Agreement, except as excused, waived or prevented
5 by the acts of Relativity.

6 38. As a direct and proximate result of Relativity's conduct described above, Image has
7 suffered and continues to suffer substantial damages, including, without limitation, lost distribution
8 fees, profits and other damages.

9 THIRD CAUSE OF ACTION

10 (Promissory Fraud – Against Relativity)

11 39. Image realleges and incorporates herein by reference each and every allegation of
12 paragraphs 1 through 38 above, as though fully set forth herein.

13 40. In an effort to induce Image to enter into the Distribution Agreement and related
14 transaction documents, Relativity made the promises and representations set forth above, including,
15 without limitation, the representations and promises contained in the Distribution Agreement.
16 These promises and representations included, among other things, that (a) Relativity intended to
17 fund up to twenty motion pictures per year through Verite and that Verite had committed to fund the
18 production costs of over a dozen of Relativity's motion pictures in 2006 and early 2007; (b)
19 Relativity would provide Image with at least three films for distribution in 2007; (c) Relativity
20 would provide Image with at least seven films for distribution in 2008 and each year thereafter; (d)
21 Relativity would use reasonable commercial efforts to provide up to 20 pictures to Image in 2008
22 and each year thereafter; and (e) in instances where Relativity shared control of a film with a co-
23 producer or co-rights holder, Relativity would use its "reasonable commercial efforts" to obtain
24 approval from such co-producer or co-rights holder for the film to be delivered to Image for video
25 distribution.

26 41. At the time Relativity made the foregoing promises to Image and entered into the
27 Distribution Agreement, Relativity did not intend to perform its promises and obligations
28 thereunder. Unbeknownst to Image, Relativity had no intention of providing any titles to Image

1 under the Distribution Agreement – much less three titles in 2007 and seven titles each year
2 thereafter – or otherwise complying with its promises set forth above. Rather, upon information and
3 belief, and as described above, Relativity secretly expected that LGE would acquire Image shortly
4 after execution of the Distribution Agreement and that, upon such a “Change in Control,” Relativity
5 would obtain millions of dollars in Image stock without ever having to provide a single film title to
6 Image.

7 42. Relativity knew that, but for these promises being made, Image would not have
8 entered into the Distribution Agreement and related transaction documents. Relativity made the
9 aforementioned promises with the intent to defraud Image and to induce Image to, among other
10 things, enter into and rely upon the Distribution Agreement and related transaction documents.

11 43. At the time Relativity made the above-alleged promises, Image was unaware of
12 Relativity’s secret intention not to perform its contractual obligations, and was unaware that
13 Relativity’s secret purpose of entering into the Distribution Agreement was to obtain Image stock by
14 way of a Change in Control of Image. In reasonable and justifiable reliance on the above-alleged
15 promises of Relativity, Image entered into the Distribution Agreement, among other things. If
16 Image had known of Relativity’s actual intentions, it would not have entered into the Distribution
17 Agreement and related transaction documents.

18 44. Relativity has failed to abide by its above-alleged promises, including those made in
19 the Distribution Agreement. Relativity has materially breached the Distribution Agreement by,
20 *inter alia*: (a) failing to deliver any films to Image for home video distribution, and (b) upon
21 information and belief, granting to other distribution companies home video distribution rights
22 which were required to be given to Image pursuant to the Distribution Agreement.

23 45. As a direct and proximate result of Relativity’s above-alleged fraudulent conduct,
24 Image has suffered and continues to suffer damages in an amount to be proven at trial.

25 46. In committing the above-alleged wrongful and fraudulent acts, Relativity acted with
26 the intent to fraudulently deceive Image and thereby deprive it of its rights in connection with the
27 Distribution Agreement, and was guilty of malice, oppression and fraud. The conduct of Relativity
28 warrants an assessment of exemplary and punitive damages.

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1 **WHEREFORE**, Image prays that a judgment be entered against Relativity, and Does 1-20,

2 as follows:

3 **AS TO THE FIRST CAUSE OF ACTION:**

- 4 1. For compensatory damages in an amount to be proven at trial;
- 5 2. For reasonable attorneys' fees, costs and expenses incurred in connection with this
- 6 litigation pursuant to Paragraph 9.1 of the Distribution Agreement;

7 **AS TO THE SECOND CAUSE OF ACTION:**

- 8 1. For compensatory damages in an amount to be proven at trial;
- 9 2. For reasonable attorneys' fees, costs and expenses incurred in connection with this
- 10 litigation pursuant to Paragraph 9.1 of the Distribution Agreement;

11 **AS TO THE THIRD CAUSE OF ACTION:**

- 12 1. For compensatory damages in an amount to be proven at trial;
- 13 2. For punitive and exemplary damages;

14 **AS TO ALL CAUSES OF ACTION:**

- 15 1. For any interest as may be allowed by law;
- 16 2. For costs of suit incurred herein; and
- 17 3. For such other and further relief as the Court may deem just and proper.

18 Dated: April 7, 2008

CHRISTENSEN, GLASER, FINK, JACOBS,
WEIL & SHAPIRO, LLP

20 By: 

21 **BRIAN C. LYSAGHT**
Attorneys for plaintiff
22 **IMAGE ENTERTAINMENT, INC.**

TERM SHEET

HOME VIDEO DISTRIBUTION AGREEMENT

IMAGE ENTERTAINMENT -- RELATIVITY MEDIA

As of August 11, 2006

1. **Parties:** Image Entertainment, Inc. ("Image") and Relativity Media, LLC ("Relativity").

2. **Concept:** Relativity's single-picture production business works with experienced producers to independently finance and executive produce theatrical motion pictures. Relativity intends to fund up to twenty (20) motion pictures per year through Verite Capital Onshore Loan Fund, LLC ("Verite"; that term shall also be deemed to include any successor to or substitute for the existing entity). Verite, a partnership between Relativity and an affiliate of Stark Investments, a US-based \$9 billion hedge fund, was specifically created to fund the production of single motion pictures. To date, Verite has committed to fund the production costs of over a dozen of Relativity's theatrical motion pictures in 2006 and early 2007. Relativity and Image hereby enter into this home video and digital distribution agreement (the "Agreement") whereby Relativity will provide Image with the exclusive home video and digital distribution rights (subject to certain limitations as detailed in Paragraph 3.3 below) to all motion pictures 100% financed by Verite or otherwise under the control of Relativity, in exchange for which Image shall be solely responsible for all distribution services of the home video and digital release of each "Picture" (defined below).

3. **Pictures:**

3.1 Subject to Paragraphs 3.3 and 3.4 below, a "Picture" means a motion picture financed 100% by Verite or otherwise under the control of Relativity during the "Term" (defined below) and as to which Relativity controls the "Image Rights" (defined below) in the "Territory" (defined below). Image will be obligated to distribute a Picture under this Agreement provided that such Picture meets the requirements of Paragraph 3.4 below. With respect to each Picture delivered during the Term hereof, Relativity will license or caused to be licensed to Image the Image Rights in the Territory during the "Distribution Period" (defined below).

3.2 Relativity will "greenlight" Pictures for production, and Image will distribute such Pictures hereunder on the following basis: within seven (7) days after Relativity's receipt of a signed copy of this Agreement, Relativity shall identify to Image at least three (3) expected Pictures for distribution during calendar year 2007. If one or more of such identified Pictures do not proceed to production, Relativity will provide substitute Picture(s) for distribution by Image. Thereafter, Relativity will provide to Image a minimum of seven (7) Pictures (and will use its reasonable commercial efforts to provide up to twenty (20) Pictures) during calendar year 2008 and each year of the Term thereafter, provided however, Image guarantees Relativity may "put" (as such term is commonly understood within the motion picture industry) to Image up to twenty (20) Pictures per calendar year for distribution. If Relativity is unable to provide the minimum number of Pictures in a calendar year of the Term as described herein due to Relativity significantly changing or ceasing its business such that the minimum number of Pictures

are no longer available or Relativity is unable to attract and/or finance motion pictures which would not be Excluded Pictures (defined below), such inability shall not be considered a breach of this Agreement and shall only affect the release schedule of Image's Common Stock (as such term is defined in the Stock Purchase Agreement dated as of August 11, 2006 between Image and Relativity).

3.3 Notwithstanding anything to the contrary in this Agreement, the defined term "Picture" does not include motion pictures ("Excluded Pictures") financed by and/or under the sole control of Relativity that are distributed by a "major" motion picture studio (i.e., Fox, Paramount, Sony, Disney, Universal, Warner Brothers, Lions Gate, The Weinstein Company, New Line, MGM, and their respective subsidiaries and affiliates such as Vantage, Focus, Searchlight, etc., individually and collectively "US Studio") pursuant to (a) a agreement with a rights-holder or material creative element which requires that a US Studio retain, be granted, or have a "1st" lock" as to distribution rights that include rights in the Territory that would otherwise be Image Rights; (b) a multi-picture distribution agreement or the Distribution Joint Venture Agreement in negotiation between New Regency Productions and Relativity; and (c) multi-picture co-financing agreements pursuant to which Relativity raises financing for US Studio films (e.g., Gun Hill Road). Image agrees and acknowledges that in the event that Relativity shares control of a motion picture (whether or not such motion picture is financed by Relativity) ("Shared Picture") with a co-producer and/or co-rights-holder ("Co-Producer"), Relativity must receive the mutual approval of such Co-Producer for the Shared Picture to be deemed a Picture for purposes of this Agreement. Relativity will use its reasonable commercial efforts to obtain such approval, but should the Co-Producer disapprove, then the Shared Picture shall be deemed an Excluded Picture. For the sake of clarity, Excluded Pictures shall not be subject to the terms and conditions of this Agreement.

3.4 To qualify as a Picture hereunder, a motion picture must meet the following requirements: have a rating no more restrictive than an MPAA "R" rating (or its then equivalent); have a running time (including main and end titles) of no less than 75 minutes; be of 1st class technical production quality as understood in the motion picture industry; be shot in 35mm film or industry-accepted digital media; and be primarily in the English language (but may be in other languages if such Pictures are comparable in stature to such films as *Crouching Tiger, Hidden Dragon*, etc.).

4. Other definitions:

4.1 "Term" means ten (10) years from the date of Relativity's receipt of a signed copy of this Agreement.

4.2 "Territory" means the United States and Canada.

4.3 "Image Rights" means the right to manufacture and distribute a Picture on video cassettes, video tapes, video discs (including without limitation DVDs, HD-DVDs, Blu-ray Discs, etc.) and similar compact audio-visual devices whether now known or hereinafter devised, and intended to be sold or leased to the public as a device intended primarily for "home use" (as such term is commonly understood in the motion picture industry) and/or other personal use (e.g. portable devices). "Image Rights" shall also include the right to exploit a Picture via secure digital transmission (but specifically excluding theatrical broadcast rights, pay and basic cable television rights, and television "video on demand" rights) of still photos, excerpts, clips or the complete program via any

and all devices, including but not limited to wireless devices, mobile phones, personal computers, personal video players, personal video recorders, download to burn, and other similar devices utilizing industry standard transmission technologies (i.e., used by one or more Studio home video divisions) whether now known or hereinafter devised. Usage of still photos, excerpts and clips will be subject to agreements with 3rd parties (e.g. talent and guilds), and Relativity shall provide Image with copies of such agreements or of the applicable portions thereof.

4.4 "Distribution Period" means the period commencing on the date of the initial home video release of a Picture and ending ten (10) years thereafter, followed by a non-exclusive six month "sell-off" period, subject to Relativity's underlying rights in each Picture.

Notwithstanding anything to the contrary in this Agreement, Relativity reserves all rights in and to each Picture not expressly granted to Image herein.

5. **Release/Holdbacks:** Image and Relativity will work in good faith to determine the best available United States home video release date for each Picture within parameters then current in the motion picture industry (e.g., the holdback period after a theatrical release). Once a release date is agreed to between Image and Relativity, then Image shall not release another "competitive" film (i.e., the same genre and primary target audience, exact definition to be negotiated in good faith) within ten (10) days prior to or after the home video release of a Picture.

6. **Marketing/Distribution:** Image shall be solely responsible for advancing 100% of expenses relating to exploitation of the Image Rights in the Territory during the Term, including without limitation all creative services and package design, authoring and compression (including hi-def compression), manufacturing of marketing materials, DVD's and other "packaged goods" copies of each Picture, production of ancillary content (including talent fees and music royalties paid for rights to use excerpts, clips, still photos, etc., collectively "Ancillary Fees"), order fulfillment, picking, packing and shipping ("pick/pack/ship") from Image's replicator and/or warehouse(s), freight, market development funds, marketing, distribution (including vendor managed inventory and digital distribution expenses), advertising, merchandising (including Mosaic and Anderson fees) sales, and sales and rentals tracking (collectively, "Distribution Expenses"; Distribution Expenses minus marketing and advertising expenses shall be known as "Capped Expenses") in connection with the home video and digital release of each Picture. Image will exploit, market and distribute the Pictures in the same manner as other major US produced, financed, and/or distributed films, provided, however, that Image's Capped Expenses on each Picture will not exceed 20% of the aggregate Gross Receipts (defined below) derived by Image with respect to that Picture without the prior written consent of Relativity in its sole discretion. As to each Picture, Relativity and Image will mutually decide upon the home video marketing and advertising plans (both creative and resource allocations among media), but at a minimum such plans shall be established in a manner that, taken as a whole, are consistent with those for other major US home video releases of motion pictures of similar budget, genre, stature, target audience, reviews, rating, seasonality, US theatrical results, piracy concerns, etc. (the "Advertising Expenses"). Advertising Expenses shall not exceed 15% of aggregate Gross Receipts (unless otherwise agreed to by Relativity), although the entirety of Advertising Expenses in the marketing and advertising plans approved by Relativity on each Picture shall nevertheless be reimbursable to Image. Image's agreements with

sister companies or affiliates with respect to the expenditure of any distribution costs shall be on an arm's length, fair market basis. Distribution Expenses will not include internal charges or any advertising overhead or other charges, except for those charges described on Exhibit A. Image's use of third parties in connection with the advertising and marketing creative shall be generally consistent with its own films of genre and budget similar to the applicable Picture.

7. **Allocation of Receipts:** 100% of Gross Receipts (defined below) actually received by or credited to Image with respect to each Picture will be applied (on a continuing and cumulative basis) as follows on an unconsolidated, Picture by Picture basis (i.e., the Pictures are not cross-collateralized):

7.1 Subject to the percentage limitations provided in Paragraph 6 above, Image will retain amounts equal to its Capped Expenses and Advertising Expenses; then

7.2 Image and Relativity will share equally (i.e., on a 50/50 basis) a distribution fee ("Distribution Fee") of 20% of 100% (or less, if jointly agreed by Relativity and Image) of Gross Receipts on home video, and will share equally a percentage of Gross Receipts on digital distribution of at least 20% of 100% of Gross Receipts, with Relativity using its reasonable commercial efforts to secure for Image and Relativity, on a Picture by Picture basis, a digital distribution fee that is as high as reasonably practicable (notwithstanding the foregoing, for the first 50,000 home video units of each Picture only, the Picture's Distribution Fee shall be split on the following basis: 12.5% of 100% to Image and 7.5% of 100% to Relativity (or the same 62.5%/37.5% ratio if the Distribution Fee is less than 20% of 100%)); then

7.3 The remainder (if any) will be paid to Relativity (30 days after the end of each month starting from the fourth full month after the home video release of each Picture).

7.4 Image will have the right to maintain a Twenty-Five Percent (25%) returns reserve for each Picture for the one (1) year period following the home video release of such Picture, which reserve will be fully liquidated the following calendar month and fully liquidated on a calendar monthly basis thereafter. Such returns reserves shall be based upon gross sales of Units and applied against returns and credits. During the last six (6) months of the Distribution Term, Image shall have the right to hold a Fifty Percent (50%) returns reserve which will be fully liquidated at the end of the accounting for the sell-off period.

7.5 "Gross Receipts" means gross revenues derived from exploitation of the Image Rights in and to each Picture prior to any deduction for returns or Distribution Expenses.

8. **Stock Release Agreement:** As a material inducement to enter into this Agreement, the parties have also entered into a Stock Release Agreement dated as of August 11, 2008.

9. **Other Terms:**

9.1 This Agreement and its validity, construction and effect shall be governed by the laws of the State of California applicable to contracts wholly to be performed therein.

Any action to enforce this Agreement may be filed only in the Superior Court of the State of California for the County of Los Angeles, Central District. In the event of any action, suit or proceeding in connection with or concerning the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees, costs and expenses actually incurred in connection with such proceedings.

9.2 The parties intend to enter into more formal documentation (the "Long Form Agreement") including terms and provisions customary for agreements of this nature (e.g., grants of security interests, financial definitions and accounting and audit details, representations and warranties, indemnities, industry standard delivery requirements (e.g. hi-def master, chain-of-title, copyright, E&O insurance, etc.), promotional unit allowances, placement of image logo on packaging, etc., subject to good faith negotiation of the details thereof), but unless and until such documentation is fully signed and delivered, this Agreement is fully-binding and constitutes the entire agreement and understanding between the parties concerning the subject matter hereof, and supersedes and replaces all prior negotiations, written and oral, relating thereto. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing waiver. This Agreement is assignable by either party in the event of a change-in-control of such party. The parties hereto may amend or modify this Agreement in such manner that may be agreed upon by written instruments executed by such parties. Whether or not the Long Form Agreement is ever signed and delivered, the parties also agree to execute and deliver such further instruments as are necessary or appropriate to effectuate the intent of this Agreement (e.g., short-form copyright mortgages and assignments, financing statements, financier-guarantor-distributor interparty agreements, etc.).

9.3 This Agreement may be executed in one or more separate counterparts, each of which, when so executed shall, together, constitute and be one and the same instrument.

Please confirm the foregoing by signing in the space provided below.

Best regards,



Ryan Kavanaugh
Co-Managing Member

Accepted and Agreed:

Image Entertainment, Inc.

By:
Its:


JCS/CEO

EXHIBIT A

Package Design: \$10,000

Standard-Def Authoring and Compression: \$5,000

Hi-Def Authoring and Compression: Actual out-of-pocket expense if outsourced to third party, TBD if brought in-house

STOCK RELEASE AGREEMENT

This Stock Release Agreement ("Agreement") is entered into as of August 11, 2006, by and between Image Entertainment, Inc., a Delaware corporation ("Image"), and Relativity Media, LLC, a California limited liability company ("Relativity").

1. Recitals.

A. Concurrently herewith, and as part of the same overall transaction, the Parties have entered into, executed and delivered a Home Video Distribution Agreement ("Distribution Agreement"), Stock Purchase Agreement, Security Agreement, Stock Pledge, and related documents (collectively, the "Transaction Documents"), all of which are incorporated herein by reference. Capitalized terms used without definition have the meanings set forth in the Transaction Documents.

B. In order to induce Relativity to enter into the Distribution Agreement, concurrently with this Agreement, Image is agreeing to authorize, issue and deliver Three Million Four Hundred Thousand (3,400,000) registered Shares of Image Common Stock to Relativity.

C. As set forth in the Transaction Documents, the Stock is being conditionally transferred to Relativity under an agreement pursuant to which Relativity may forfeit the right to the Shares at a later date.

D. In order to secure Relativity's performance under the Transaction Documents, Image has been granted a Security Interest in the forfeitable Shares pursuant to the Security Agreement, the Shares have been pledged to Image pursuant to the Stock Pledge, and a restrictive legend has been placed on the stock certificates representing the Shares.

E. The purpose of this Agreement is to set forth the terms, conditions and timing pursuant to which the Shares will be fully vested and released from all contractual restrictions under any of the Transaction Documents, and become unforfeitable and freely transferable by Relativity.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

2. Release of Shares. Notwithstanding any other provision of any of the Transaction Documents, Shares will be Released to Relativity as follows:

A. Six Hundred Thousand (600,000) Shares, upon payment to Image of the Release Amount for such Shares at any time through December 31, 2010.

Provided, that each of the Shares provided for in this Section 2(A) that are not Released to Relativity within the times set forth above will be Forfeited.

B. Up to One Million Eight Hundred Thousand (1,800,000) Shares upon the *earlier* of any of the following:

(1) Qualifying Pictures. One Hundred Thousand (100,000) Shares, upon Image's DVD home video release of each Qualifying Picture through December 31, 2010, after its release of the first Fifty (50) Qualifying Pictures;

(2) Annual Profits. One (1) Share, for each Profit Increment by which Image's annual Net Profits for any calendar year through December 31, 2010 exceed Fifty Million Dollars (\$50,000,000);

(3) Cumulative Profits. One (1) Share, for each Profit Increment by which Image's cumulative Net Profits at any time through December 31, 2010 exceed One Hundred Fifty Million Dollars (\$150,000,000);

(4) Payment and Delivery. Sixty Thousand (60,000) Shares, upon delivery to Image of each Theatrical Picture at any time through December 31, 2010, plus payment to Image of the Release Amount for such Shares within four (4) years after the delivery of each such Picture; and

(5) Payment. One Million Eight Hundred Thousand (1,800,000) Shares, upon a Change in Control through December 31, 2010, plus payment to Image of the Release Amount for such Shares;

Provided, that each of the Shares provided for in this Section 2(B) that are not Released to Relativity within the times set forth above will be Forfeited.

C. Up to One Million (1,000,000) Shares upon the *earlier* of any of the following:

(1) Cumulative Profits. One Million (1,000,000) Shares, upon Image earning total cumulative Net Profits of at least Five Hundred Million Dollars (\$500,000,000) at any time prior to the end of the Term;

(2) Cumulative Box Office. One Million (1,000,000) Shares, upon delivery of Pictures to Image with total cumulative Box Office of at least Five Billion Dollars (\$5,000,000,000) at any time prior to the end of the Term; and

(3) Change in Control. One Million (1,000,000) Shares, upon the closing of a Change in Control during the Term of the Distribution Agreement, plus payment to Image within thirty (30) days of the closing an amount equal to the number of such Shares multiplied by the following percentage of the total consideration per share of Common Stock paid by the acquiring Person and/or received by Image in connection with or as a result of the Change in Control:

- (a) Eighty Percent (80%), if on or before December 31, 2007;
- (b) Sixty Percent (60%), if on or before December 31, 2008; and
- (c) Forty Percent (40%) thereafter;

Provided, that in no event will the amount per Share to be paid by Relativity pursuant to this Section 2(C)(3) be less than Four Dollars (\$4.00); and

Provided further, that any of the Shares provided for in this Section 2(C) that are not Released to Relativity by the end of the Term will be Forfeited.

For the sake of clarity, Shares that are Released to Relativity as set forth in Sections 2(B)(1), 2(B)(2), 2(B)(3), 2(C)(1), and 2(C)(2) will not require payment of the Release Amount.

Furthermore, the only reason that any Shares once Released to Relativity as set forth in Sections 2(A), 2(B)(4), 2(B)(5) and 2(C)(3) above may be Forfeited would be by reason of Relativity's failure to pay the Release Amount within the applicable time period, which will remain an obligation subject to the Security Agreement and Stock Pledge until such Release Amount is paid.

3. Definitions.

A. "Box Office" means gross domestic box office receipts, as reported in *Variety* or any successor industry trade publication, within one hundred twenty (120) days of each Picture's initial theatrical release.

B. "Change in Control" means: (a) any Person, other than a trustee or other fiduciary holding under an employee benefit plan, becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act) of securities representing fifty percent (50%) or more of (i) the outstanding shares of Common Stock or (ii) the combined voting power of the Company's then outstanding securities; (b) the Company is party to a merger or consolidation which results in the voting securities of the Company outstanding immediately prior thereto failing to continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving or another entity) at least fifty percent (50%) of the combined voting power of the voting securities of the Company or such surviving or other entity outstanding immediately after such merger or consolidation; (c) the sale or disposition of all or substantially all of the Company's assets (or consummation of any transaction having similar effect); (d) the dissolution or liquidation of the Company; or (e) the composition of the Board of Directors changes during any period of thirty-six (36) months such that individuals who at the beginning of the period were members of the Board of Directors (the "Continuing Directors") cease for any reason to constitute a majority thereof or the relative percentage (of the whole Board) of the directors previously designated or nominated by a shareholder entitled to do so is reduced; unless a majority of the Continuing Directors has either (i) approved the election of the new Directors, or (ii) if the election of the new Directors is voted on by shareholders, recommended that the shareholders vote for approval.

C. "Closing Price" means the average of the closing price per share of the Common Stock on NASDAQ over the ten consecutive trading days immediately prior to the date of this Agreement.

D. "Forfeit" means, as to the number of Shares in question: (a) Relativity will forfeit the right to the Shares conditionally transferred, (b) all right, title and interest of Relativity in and to such Shares will be automatically deemed sold, transferred and assigned to Image, and

(c) all certificates representing such Shares will be immediately released or returned to Image for cancellation and return to Image's corporate treasury.

E. "Net Profits" means the aggregate net Distribution Fees actually received and retained by Image as its share, as measured at the end of any applicable calendar year.

F. "Profit Increment" means ten times the Release Amount for one (1) Share.

G. "Qualifying Picture" means each Picture that generates at least Twenty Five Million Dollars (\$25,000,000) in Box Office.

H. "Release" means, as to the number of Shares in question: (a) the Shares will become fully vested and unforfeitable, (b) the Shares will no longer be subject to the Pledge Agreement, (c) the Shares will cease to constitute Collateral under the Security Agreement, and (d) all contractual restrictive legends will be promptly removed from the certificates representing the Shares.

I. "Release Amount" means, as to the number of Shares in question, a dollar amount equal to: (a) fifty percent (50%) of the number of such Shares multiplied by the Closing Price, plus (b) fifty percent (50%) of the number of such Shares multiplied by the higher of the Closing Price or Four Dollars (\$4.00).

J. "Theatrical Picture" means each Picture: (a) released on 500 or more theatrical screens in the United States before delivery to Image, (b) generating at least \$5,000,000 in revenue to Image within the first 18 months of such Picture's home video release date, or (c) selling at least 500,000 home video units within the first 18 months of such Picture's home video release date.

4. Controlling Document. To the extent that this Agreement conflicts with or is in any way incompatible with any other Transaction Document, this Agreement shall control over any other such document, and if this Agreement does not address an issue, then each other such document shall control to the extent that it deals most specifically with an issue.

5. Miscellaneous.

A. Governing Law. This Agreement will be governed by and construed in accordance with the domestic laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

B. Amendment. This Agreement may not be amended or modified except by a written agreement signed by Relativity and Image

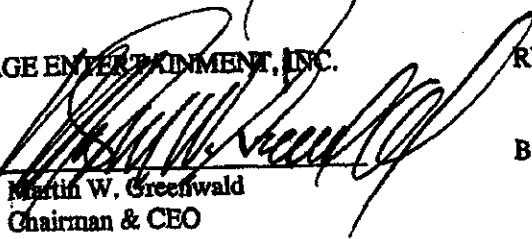
C. Counterparts. This Agreement may be executed in one or more counterparts, including by means of facsimile, each of which will be deemed an original, and all of which together will constitute one and the same instrument.

D. Entire Agreement. This Agreement and the Transaction Documents constitute the entire agreement between the Parties, and supersedes and cancels any and all prior and contemporaneous promises, representations, agreements and understandings between the Parties, whether written, oral or implied.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

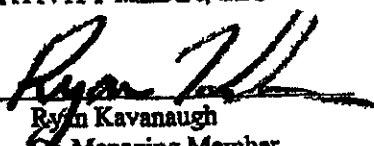
IMAGE ENTERTAINMENT, INC.

By:


Martin W. Greenwald
Chairman & CEO

RELATIVITY MEDIA, LLC

By:


Ryan Kavanaugh
Co-Managing Member